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UNITED NATIONS ARMS TRADE TREATY: RUSSIA'S JUSTIFICATIONS FOR ABSTENTION AND THE TREATY'S EFFECTIVENESS IN APPLICATION

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Abstract

Over the last two decades, many States have recognized the need for a multi-lateral treaty regulating weapons that are used all over the world to commit genocides and other atrocities. The United Nations (UN) Arms Trade Treaty (ATT) was passed on April 2, 2013, and came into effect on December 24, 2014, as an attempt to address this problem. However, after a nearly universal acceptance of the need for such a treaty, Russia, along with many other key States, has abstained from joining the ATT. While Russia did not object outright to an arms trade treaty, Russia does not have any clear intent to join the current ATT. Russia has listed several reasons for its abstention including: the non-binding nature of the treaty, the treaty's failure to address transfers to private parties, the treaty's low standards, and its potentially discriminatory effect against Russia.

This Comment considers the validity of Russia's justifications for abstention and the effectiveness of the ATT without Russia and other key States being parties to the treaty. Russia's abstention raises serious questions as to the ATT's effectiveness. Russia is the second largest arms distributor in the world and is more than capable of arming States that would otherwise be barred under the ATT. Additionally, since transfers to private parties remain unregulated and because much of the treaty's terms are mere recommendations, it is likely the ATT is nothing more than a superficial attempt to remedy a deep problem. However, while the ATT may seem to be weak, it is still a step in the right direction.

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I. INTRODUCTION

The world has a problem: arms have been and are still used to commit genocides and other atrocities on nearly a daily basis,[1] and small or conventional arms cause approximately ninety percent of these atrocities.[2] A half a million civilians or more are killed annually in conflicts using conventional arms,[3] and there are "two bullets" produced for every person on this planet.[4] The transfer of arms continues to ignite differences into full-fledged armed conflict, which allows major arms exporters "to profit from the misery of others."[5] The question remains whether the global community can effectively band together to solve this problem.

The United Nations (UN) Arms Trade Treaty (ATT) was passed in an effort to reduce arms from ending up in the hands of those who will use them to commit such atrocities.[6] The ATT is "for the purpose of: contributing to international and regional peace, security and stability; reducing human suffering; [and] promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties."[7]

The ATT has been described as "the most important [treaty] in the history of the United Nations in the field of conventional arms control standards."[8] But is the ATT really the solution? UN Secretary General Ban Ki-moon opened the 2012 General Assembly stating, "[t]he arms trade fuels ill-regulated and civil conflicts, destabilizes regions and expands the capabilities of terrorists and criminal networks. We do not have a multilateral treaty on global trade in conventional arms. It's a shame."[9] The ATT was designed to "prevent and eradicate" this problem;[10] but, will it meet this goal?

Whenever States with principled positions attempt to reach an agreement, some question arises as to the viability of such an agreement.[11] Not every UN Member State[12] has faith in the ATT's ability

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[1] *See* Anup Shah, *Arms Trade—A Major Cause of Suffering*, GLOBAL ISSUES (June 30, 2013), http://www.globalissues.org/issue/73/arms-trade-a-major-cause-of-suffering.

[2] *See id.*

[3] *See id.*

[4] Earth has a population of over seven billion people. *See* Sergei Vasilenkov, *UN unable to take arms under control*, PRAVDA.RU (Mar. 22, 2013), http://english.pravda.ru/hotspots/conflicts/22-03-2013/124138-un_arms_control-0/.

[5] *See* Anup Shah, *Small Arms—They Cause 90% of Civilian Casualties*, GLOBAL ISSUES (Jan. 21, 2006), http://www.globalissues.org/article/78/small-arms-they-cause-90-of-civilian-casualties.

[6] United Nations Arms Trade Treaty, available at https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf.

[7] *Id.*

[8] Lyuba Lulko, *Will There Ever Be Order in International Arms Trade?*, PRAVADA.RU (Jun. 07, 2012), http://english.pravda.ru/business/companies/06-07-2012/121571-international_arms_trade-0/.

[9] *Id.*

[10] *See* United Nations Arms Trade Treaty, *supra* note 6.

[11] *See* Vasilenkov, *supra* note 4.

[12] At its founding in 1945, the UN was comprised of 51 original members. Over the years, the UN's growth in membership has risen to 193 Member States. *See Growth in United Nations*

to effectively address the problem. Russia, one of the world's largest dealers in arms,[13] believes the ATT is no more than a superficial Band-Aid on a deep wound.[14] And if Russia does not get on board with the ATT, then how effective can it really be?

Russia's justifications for abstention from signing on to the ATT have some merit, as the ATT does not address arms transfers to private parties. However, Russia's justifications are also likely, in part, a ploy to allow Russia to transfer arms to States that might otherwise be prohibited under the ATT. A nation balancing conflicting interests can be tricky; such is the situation with Russia, therefore justifying its abstention from the ATT is complex.

Additionally, the ATT's effectiveness in accomplishing its intended purpose is in serious question. First, the ATT fails to specifically address transfers to non-state actors. Second, it leaves the black market relatively untouched. Further, the ATT's goals will, more often than not, be subjugated to the interest of the parties, resulting in transfers that might arguably be prohibited under the ATT but are economically or politically advantageous to the exporting nation. Finally, even if the ATT can draw more abstainers to support it, certain Member States will remain in opposition by expressly opposing it or through abstaining to recognize it.

This Comment provides a close look at the ATT and at Russia's objections to signing the ATT. This Comment is not an attempt to solve any specific problems but, rather, an attempt to consider whether Russia's concerns are valid or mere political posturing. Part II briefly reviews the history of the ATT. Part III takes a look at Russia's specific justifications for abstention from signing the ATT, then considers the validity of Russia's justifications. Part IV contemplates the potential effectiveness of the ATT when Russia is not a party. Finally, Part V concludes by questioning the effect of the UN General Assembly's treaty process.

II. BRIEF HISTORY OF ATT

The ATT is "the first attempt of humanity to control the movement of the products that kill about 700,000 people a year with 500,000 of them being civilians."[15] Even though many, if not all, Member States

Membership, 1945 – Present, UNITED NATIONS, http://www.un.org/en/members/growth.shtml (last visited Nov. 18, 2014).

[13] *See SIPRI Arms Transfers Database*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE (March 17, 2014), http://www.sipri.org/media/pressreleases/2014/AT_march_2014. After the end of the Cold War, Russia's arms trade spent a few years in shambles. In recent years, Russia has been making a strong comeback, usurping first place from the United States in 2013.

[14] *See UN General Assembly Approves 1st Global Conventional Arms Trade Treaty*, THE VOICE OF RUSSIA (Apr. 3, 2013), http://voiceofrussia.com/2013_04_03/UN-General-Assembly-approves-1st-global-conventional-arms-trade-treaty/; *Arms Trade Treaty Standards Too Low to Join – Moscow*, RT (Sept. 26, 2013), http://rt.com/politics/arms-russia-trade-join-377/.

[15] Lulko, *supra* note 8.

have uniformly recognized the need for such a treaty,[16] such uniformity is not present in regards to the treaty's content.[17] A sufficient number of Member States have, nonetheless, moved forward with the ATT.[18]

Efforts to curb arms transfers are not new, but many of the efforts have proved unfruitful.[19] Since the early 1900s, the global community has made efforts to regulate arms transfers but with little avail.[20] For example, in 1925, a draft Convention on the Arms Trade was produced, but never adopted.[21] Over the next century, major importing and exporting States consistently opposed such attempts to regulate arms, seeing the free trade of arms as necessary for developing alliances and building a strong economy.[22]

From 2008 to 2012, the top five major exporters of arms in the world—accounting for approximately seventy-five percent of arms exports—were the United States of America, Russia, Germany, France, and China.[23] Not surprisingly, even today, many of the top arms-exporting countries have continued to provide opposition to global efforts to regulate arm transfers.[24] And even with the passing of the ATT, Russia and China have abstained from joining the treaty.[25]

[16] *See* UN Secretary-General, *Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms*, A/62/278 (part II) (Aug. 17, 2007), http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/463/53/PDF/N0746353.pdf?OpenElement.

[17] *See* Vasilenkov, *supra* note 4. India abstained from the ATT due to its concern with how the ATT would handle its current arms contracts. *See*, *e.g.*, Neil MacFarquhar, *UN Treaty is First Aimed at Regulating Global Arms Sales*, THE NEW YORK TIMES (Apr. 2, 2013), http://www.nytimes.com/2013/04/03/world/arms-trade-treaty-approved-at-un.html?pagewanted=all&_r=0. Article 26 of the ATT addresses how the ATT affects other, already-existing international agreements. *See* United Nations Arms Trade Treaty, *supra* note 6.

[18] *See Arms Trade Treaty*, UNITED NATIONS OFFICE FOR DISARMAMENT AFFAIRS, http://disarmament.un.org/treaties/t/att (last visited Nov. 21, 2014).

[19] *See* American Society of International Law, Washington, D.C. International Legal Materials, 52 I.L.M. 985 (Apr. 2, 2013).

[20] *See id.*

[21] *See Arms Trade Treaty*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE, http://www.sipri.org/research/armaments/transfers/controlling/att (last visited Oct. 24, 2014).

[22] American Society of International Law, *supra* note 19.

[23] *See International Arms Transfers*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE, http://www.sipri.org/yearbook/2013/05 (last visited Nov. 12, 2014).

[24] *See*, *e.g.*, Rick Gladstone, *UN Misses Its Deadline for Arms Pact*, THE NEW YORK TIMES, (July 27, 2012), http://www.nytimes.com/2012/07/28/world/proponents-of-arms-trade-treaty-urge-final-approval.html?_r=0.

[25] *See* G.A. Res. 67/234B, UN GAOR, 67th Sess. UN DOC. ATT Voting Chart, (Apr. 2, 2013), http://www.un.org/disarmament/update/20130402/ATTVotingChart.pdf.

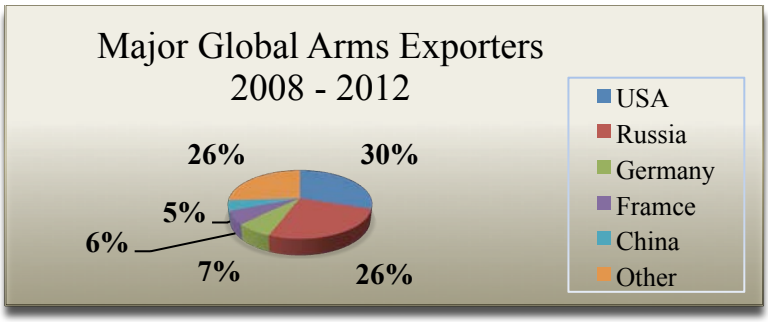

Figure 1[26]

While various agreements concerning arms trade existed prior to the ATT, a need for a more multilateral, collaborative effort was evident. These agreements were widely considered to be inadequate as they were quite limited in their scope and reach and more voluntary than obligatory.[27] Furthermore, States were exasperated by the seemingly nonstop violation of these agreements and UN embargoes.[28] Shortly after the Persian Gulf War in 1991, various non-governmental organizations began a lobbying campaign to curtail arms transfers.[29] However, a vote in the General Assembly did not come until more than two decades later.[30]

Finally in 2006, Argentina, Australia, Costa Rica, Kenya, and others, in an effort to curb this problem, proposed the first-ever multilateral treaty aimed at regulating the world's arms trade.[31] Member States that pushed the ATT forward contended that the ATT was needed to prevent the transfer of arms to those who would destroy peace, commit atrocities, and weaken the world's efforts to cut poverty.[32]

Nonetheless, passing the ATT was not without difficulty, even with consensus among the vast majority of States to the need of such a treaty.[33] By July 2012, six years after the proposal first came, a draft treaty was finally proposed. However, some Member States objected to the draft and sought more time to negotiate the terms of the treaty.[34] The

[26] *See International Arms Transfers*, *supra* note 23.

[27] These agreements were considered inadequate as they were quite limited in their scope and reach and as they were more voluntary than obligatory.

[28] *See* Louis Charbonneau, *UN Arms Embargoes Don't Work, Arms Treaty Needed: Rights Groups*, REUTERS (Mar. 19, 2013), http://www.reuters.com/article/2013/03/19/us-arms-treaty-un-idUSBRE92I1A120130319.

[29] The Persian War made clear the problem that Iraq had more arms than France. *See* MacFarquhar, *supra* note 17.

[30] *See id.*

[31] Member States that first introduced the arms trade resolution at the UN General Assembly included Argentina, Australia, Costa Rica, Finland, Japan, Kenya and the United Kingdom. *See* G.A. Res. 61/89, UN GAOR, 61st Sess., UN DOC. A/RES/61/89, (Dec. 18, 2006), http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/61/89&Lang=E.

[32] *See* UN Secretary-General, *The Arms Trade Treaty: Rep. of the Secretary-General*, UN Doc. A/66/166, (July 20, 2011) (citing views of member states on the need for an Arms Trade Treaty).

[33] *See* Vasilenkov, *supra* note 4.

[34] The United States was a leading force in the objection to the adoption of the 2012 draft. *See* Gladstone, *supra* note 24.

objectors, headed by the United States, suggested that the 2012 draft inadequately addressed the complex problem of illegal arms trafficking and that in order to achieve consensus more time and revision was needed.[35] At the time, however, the United States did not provide any clear specifics as to what exactly needed to be addressed.[36] And some questioned whether the United States had any intent to join and ratify the ATT, as economic and political pressures might not favor its existence.[37] In the first round of 2013 negotiations, the ATT's main objectors—Iran, North Korea, and Syria—prevented consensus.[38] During the second round of negotiations in March 2013, consensus once again seemed unlikely, but Member States, led by the United States, developed a circumventing process around the need for consensus,[39] requiring only a majority vote.[40]

After years of debate, the UN General Assembly finally passed the ATT on April 2, 2013.[41] One hundred and fifty-four Member States voted in favor of the ATT, with only Iran, North Korea, and Syria voting in outright opposition.[42] Not every Member State voted; Russia abstained from the vote along with twenty-two other Member States.[43] The ATT was not to come into force until ninety days after the fiftieth Member State ratified the treaty.[44]

The treaty has moved forward at an unprecedented rate,[45] meeting the minimum ratification requirement in less than a year and a half.[46] The number of Member States who have ratified the ATT surpassed fifty on September 25, 2014; the treaty entered into force on December 24,

[35] The United States firmly stated that the regulation of arms should be controlled by the individual states. Press Statement, Victoria Nuland, Department Spokesperson, *Arms Trade Treaty Conference*, Office of the Spokesperson (July 27, 2012), http://www.state.gov/r/pa/prs/ps/2012/07/195622.htm. From the ATT's early days in 2006, the United States had been a consistent and, at oft times, lone objector to the ATT. *See* Paul Holtom & Mark Bromley, *Arms Trade Treaty Negotiations*, SIPRI Yearbook 2013: Armaments, Disarmament and International Security, available at http://www.sipri.org/yearbook/2014/files/sipri-yearbook-2014-chapter-10-section-i.

[36] *See* Nuland, *supra* note 35.

[37] *See* Noah Rayman, *The Real News at the UN: U.S. Signs Arms Trade Treaty*, TIME (Sept. 26, 2013), http://world.time.com/2013/09/26/the-real-news-at-the-u-n-u-s-signs-arms-trade-treaty/.

[38] *The Long Journey Towards an Arms Trade Treaty*, AMNESTY INTERNATIONAL (June 5, 2013), http://www.amnestyusa.org/news/news-item/the-long-journey-towards-an-arms-trade-treaty.

[39] *See* G.A. Res. 67/234A, UN GAOR 67th Sess. UN Doc. A/RES/67/234 (Jan. 4, 2013), http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/67/234.

[40] *The Long Journey Towards an Arms Trade Treaty*, *supra* note 38.

[41] *See* G.A. Res. 67/234B, *supra* note 25.

[42] Iran, North Korea, and Syria voted "No" in opposition of the ATT. *See id.*

[43] Abstaining nations include Angola, Bahrain, Belarus, Bolivia, China, Cuba, Ecuador, Egypt, Fiji, India, Indonesia, Kuwait, LAO PDR, Myanmar, Nicaragua, Oman, Qatar, Russia, Saudi Arabia, Sri Lanka, Sudan, Swaziland, and Yemen. *See id.*

[44] *See* United Nations Arms Trade Treaty, *supra* note 6, at art. 22. The specific procedures for ratifying a treaty may be different in every State, but typically ratification is the legislative process authorizing the treaty.

[45] Optimistic projections for when the ATT would enter into force hover around three years. *See* Paul Hotom & Mark Bromley, *Next Steps for the Arms Trade Treaty: Securing Early Entry Into Force*, ARMS CONTROL ASSOCIATION (June 3, 2013), https://www.armscontrol.org/act/2013_06/Next-Steps-for-the-Arms-Trade-Treaty_Securing-Early-Entry-Into-Force.

[46] *See Arms Trade Treaty*, *supra* note 18.

2014.[47] However, only time can truly tell what effect the ATT will have on the transfer of the conventional arms, which kill someone every minute.[48]

III. RUSSIA'S JUSTIFICATIONS FOR ABSTENTION AND THEIR VALIDITY

While having expressed support for the idea of a multi-lateral arms trade treaty, Russia does not have any clear intention of signing the ATT. Although, it is possible that Russia may decide to join the treaty at some point down the road.[49] Deputy Foreign Minister Sergey Alexeevich Ryabkov[50] stated at the Russia Arms Expo 2013, "Our decision on whether we should join this treaty has not yet been taken. It will be taken later, with consideration of many factors not excluding the speed of the treaty's ratification by countries that had already signed it."[51]

At the time of adoption in 2013, Russia abstained from signing the agreement in order to perform a more careful analysis.[52] Even the UN Secretary General recognized that "sales of conventional weapons was an important and complex sector, affecting the financial interests of the countries, their national security and foreign policy on the one hand, and directly relating to humanitarian and legal aspects of international law on the other."[53]

After studying the ATT more carefully, Russia had several objections to the ATT and concluded that it "lacked substance."[54] While the ATT's proponents believe that it will help stop the transfer of arms to terrorists,[55] "Russia is more skeptical."[56]

Russia has raised several justifications for its abstention from the ATT.[57] Among those justifications are the following: a) the ATT is not legally binding; b) the ATT does not address transfers to private actors;

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[47] *See id.*

[48] *See* Shah, *supra* note 5.

[49] The Russian envoy to the UN, Vitaly I. Churkin, noted that Russia is concerned "about what he called ambiguities in the treaty, including how terms like genocide would be defined, had pushed his government to abstain." But Russia did not completely reject the ATT altogether. *See* MacFarquhar, *supra* note 17.

[50] Mr. Ryabkov has been the Deputy Foreign Minister of the Russian Federation since 2008. *See Sergey Alexeevich Ryabkov*, THE MINISTRY OF FOREIGN AFFAIRS OF RUSSIA, http://www.mid.ru/bul_ns_en.nsf/kartaflat/en03.02.04 (last visited Oct. 7, 2014).

[51] *Arms Trade Treaty Standards Too Low to Join – Moscow*, *supra* note 14.

[52] Igor Siletsky, *Moscow Not to Sign Arms Trade Treaty that Discriminates Against Russian Military-Industrial Sector,* THE VOICE OF RUSSIA (May 20, 2014), http://voiceofrussia.com/news/2014_05_20/Moscow-not-to-sign-Arms-Trade-Treaty-that-discriminates-against-Russian-military-industrial-sector-9345/.

[53] Vasilenkov, *supra* note 4.

[54] Siletsky, *supra* note 52.

[55] Secretary of State, John Kerry, stated, "It will help reduce the risk that international transfers of conventional arms will be used to carry out the world's worst crimes, including terrorism, genocide, crimes against humanity and war crimes." MacFarquhar, *supra* note 17.

[56] *See* Associated Press, *U.S. to Sign New Arms Trade Treaty, Russia Undecided*, THE MOSCOW TIMES (June 4, 2013), http://www.themoscowtimes.com/news/article/us-to-sign-new-arms-trade-treaty-russia-undecided/481080.html.

[57] *See* Siletsky, *supra* note 52; *Arms Trade Treaty Standards Too Low to Join – Moscow*, *supra* note 14.

c) the ATT's standards are too low; and d) the ATT discriminates against Russia.[58]

Even though more than the requisite fifty States quickly ratified the ATT, Russia will likely not become party to the treaty. Political pressure may mount against Russia to join the treaty, but Russian history has shown time and again that Russia is not afraid to stand on its own. Russia's justifications for abstention are motivated in part by valid concerns and in part by political posturing.

A. Legally Binding

While Russia claims that the ATT is not legally binding, the ATT is as legally binding as any multi-lateral treaty. However, Russia's concern is not completely without merit, it is only misstated. Russia's real concern is that much of the ATT's text is recommendatory rather than obligatory. Even so, the ATT will likely have an effect on customary international law in establishing state practice.

1. Russia: ATT Is Not Legally Binding

Russian representatives have expressed concerns that the ATT is not legally binding.[59] Having studied the ATT more fully, Vadim Kozyulin, professor at the Academy of Military Sciences in Moscow,[60] stated that while the ATT was intended to create "rules of civilized weapons trading," it does not require those rules.[61] He added that the rules are more recommendatory than obligatory and "the contract does not provide penalties for its violation."[62] Article 14, the ATT's enforcement provision, provides only that "Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty."[63] Kozyulin concluded, "Since the agreement is not legally binding, we do not want to join it."[64]

2. The ATT Is Actually Legally Binding but Lacks Teeth

Russia's concern that the ATT is not legally binding is misguided. The ATT is legally binding. The ATT "is a multilateral, legally-binding agreement that establishes common standards for the international trade

[58] *See* Siletsky, *supra* note 52 (justifying Russia's abstention by contending that the ATT is not legally binding, does not address transfers to non-state actors, and is discriminatory against Russia); *Arms Trade Treaty Standards Too Low to Join – Moscow*, *supra* note 14 (justifying Russia's abstentions by alleging that the ATT's standards are lower than Russia's standards).

[59] *See id.*

[60] *See Expert*, PIR CENTER, http://www.pircenter.org/en/experts/19-kozyulin-vadim-b (last visited Oct. 7, 2014).

[61] Siletsky, *supra* note 52.

[62] *Id.*

[63] United Nations Arms Trade Treaty, *supra* note 6, Art. 14.

[64] Siletsky, *supra* note 52.

of conventional weapons."[65] Therefore, Russia's contention is misstated. It may be better stated that the ATT's text is more recommendatory rather than obligatory, but all of a treaty's provisions need not be obligatory for the treaty to be legally binding.

While the ATT is binding on the Member-State parties, it lacks any real bite. The ATT's text binds the Member-State parties to very little, leaving much of the treaty as suggestive or recommendatory. Russia's justification that the ATT is more recommendatory in nature than binding is not completely without grounds, and Russia is not alone in this assertion. Even some supporters of the ATT have admitted that it is not obligatory, stating that it "will be used . . . [more] as political and moral guidelines."[66] Such a contention is supported by the text of the ATT.

Although the treaty requires some form of ratification (making the treaty part of a state's domestic law),[67] much of the ATT's text suggests possible courses of action rather than requiring much of anything. Articles 5, 7, 11, 12, 13, 15, and 16 repeatedly use "encouraged" instead of "shall". Even when "shall" is occasionally used, it is typically discounted by qualifying language. Several specific examples from the text of the ATT may illustrate this plainly.

First, in connection with the ATT's attempt to regulate the diversion of arms, Article 11 does not require that the exporting or importing party report or share information with other States.[68] Article 11 provides: "States Parties are *encouraged* to share relevant information with one another."[69] Additionally, "States Parties are *encouraged* to report to other States Parties . . . on measures taken."[70] If states are to be held accountable for the diversion of arms, then the ATT must require, not merely encourage, the reporting and sharing of relevant information. As it is written, Member States can choose if and when to provide any information. That is not binding.

Next, Article 15's International Cooperation provision is almost entirely recommendatory.[71] While this provision begins with the requirement that "States Parties *shall* cooperate," the rest of the provision fails to require much of any real cooperation.[72] "States Parties are *encouraged* to facilitate international cooperation, . . . States Parties are *encouraged* to consult on matters of mutual interest and to share information, as appropriate, . . . States Parties are *encouraged* to cooperate, . . . etc."[73] "Shall" is used one other time in this provision, but

[65] *The Arms Trade Treaty at a Glance*, ARMS CONTROL ASSOCIATION (July 19, 2013), http://www.armscontrol.org/factsheets/arms_trade_treaty.

[66] MacFarquhar, *supra* note 17.

[67] Article 14 requires that "Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty." *See* United Nations Arms Trade Treaty, *supra* note 6, at art. 14, 21–22.

[68] *Id.* at art. 11 (emphasis added).

[69] *Id.* (emphasis added).

[70] *Id.* (emphasis added).

[71] *See id.* at art. 15.

[72] *Id.* (emphasis added).

[73] *Id.* (emphasis added).

is quickly discounted by the qualifier, "where jointly agreed."[74] So, even though the ATT may initially appear to require international cooperation it then makes any type of cooperation something "encouraged" or subject to agreement between the nations.

Further, Article 16 establishes a trust fund for international assistance but fails to require any State Parties to contribute to the fund. It begins, "A voluntary trust fund shall be established," but later concludes, "Each State Party is encouraged to contribute to the fund."[75] This provision is yet another example of how the ATT fails to require much of anything.

Lastly, while Article 12 of the ATT seems to require each party to "maintain national records . . . of its issuance of export authorizations or its actual exports," it does not require any specific information to be included in the reports.[76] The ATT, once again, does not require that certain information be included but only makes several suggestions as to what may be included in the records.[77]

While the ATT is technically binding on the Member-State parties, it lacks any real teeth. The ATT's text binds the Member-State parties to very little, while leaving much of the treaty as suggestive or recommendatory. Russia may be justified in its reticence to join the ATT as it actually requires very little of the parties. However, such a treaty may help to establish state practice when determining customary international law.[78] To say that the ATT is not legally binding is false, and even the recommendatory portions will likely play an important role in creating legally binding obligations concerning the transfer of conventional arms.

B. Arms Transfers to Non-State Actors

Russia's concern that the ATT does not specifically address arms transfers to non-state actors is a valid concern. Such transfers are not expressly addressed in the ATT and likely result in the furtherance of the very types of human suffering and instability that the ATT is intended to prevent.

1. Russia: ATT Does Not Address Arms Transfers to Non-state Actors

Russia is deeply concerned that arms transfers to non-state actors are not within the scope of the ATT. On a number of occasions, Russia claims to have made efforts to add language to the ATT that would

[74] *Id.*

[75] *Id.* at art. 16.

[76] *Id.* at art. 12.

[77] "Each State Party is encouraged to include in those records: the quantity, value, model/type." *Id.*

[78] "Customary international law refers to international obligations arising from established state practice, as opposed to obligations arising from [treaties]." *Customary International law*, CORNELL UNIVERSITY LAW SCHOOL: LEGAL INFORMATION INSTITUTE, http://www.law.cornell.edu/wex/customary_international_law (last visited Nov. 14, 2014).

include "non-state actors" into the scope of the treaty.[79] These efforts proved unsuccessful, as they were not fully considered by the General Assembly.[80] Deputy Foreign Minister Sergey Ryabkov noted that the proponents' refusal to regulate the transfer of arms to non-state actors is one of Russia's main objections to signing the ATT.[81]

2. The ATT Does Not Specifically Address Arms Transfers to Non-state Actors

Russia's concern that the ATT does not specifically address arms transfers to non-state actors is valid. Russia was not alone in recognizing the ATT's failure to address arms transfers to non-state actors.[82] The ATT fails to expressly prohibit or even address transfers to non-state actors.[83]

The ATT's text appears to only consider transfers to other States, and does not mention other non-state actors.[84] For example, in considering whether or not the export is "prohibited," Article 7, section 1 requires that the "exporting State Party" take into account "information provided by the *importing State*."[85] Article 8 only addresses transfers to State Parties.[86] A major drawback to the ATT is that these export and import provisions do not account for the possibility of exporting the arms to a non-state actor.

Russia is not alone in its concern with the ATT's failure to prohibit transfers to non-state actors.[87] For example, in 2011, China commented, "The arms trade should be strictly limited to transactions between Sovereign States and transfers of arms to non-state actors should be prohibited, so as to effectively combat and curb illegal trafficking and misuse of weapons."[88] In 2012, the Ivory Coast urged that "the transfer of arms to non-state actors should be specifically banned by an ATT."[89]

However, the ATT's proponents have asserted that it is necessary to allow arms transfers to "liberation movements facing abusive governments."[90] That assertion is problematic for many reasons. First, there are several questions. Perhaps transferring arms to non-state actors

[79] Siletsky, *supra* note 52.
[80] *Id.*
[81] *Arms Trade Treaty Standards Too Low to Join – Moscow*, *supra* note 14.
[82] *See* Paul Holtom, *Prohibiting Arms Transfers to Non-State Actors and the Arms Trade Treaty*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE, http://www.sipri.org/research/armaments/transfers/publications/other_publ/other%20publications/Prohibiting%20Arms%20Transfers.pdf (last visited Nov. 19, 2014).
[83] The United States, in large part, is responsible for preventing such an express prohibition. *See* Paul Holtom, *The Arms Trade Treaty*, SIPRI Yearbook 2013: Armaments, Disarmaments and International Security, 446, *available at* http://www.sipri.org/yearbook/2014/files/sipri-yearbook-2014-chapter-10-section-i.
[84] *See* United Nations Arms Trade Treaty, *supra* note 6, at art. 7.
[85] *Id.* (emphasis added).
[86] *See id.* at art. 8.
[87] MacFarquhar, *supra* note 17.
[88] Holtom, *supra* note 83.
[89] *Id.*
[90] MacFarquhar, *supra* note 17.

attempting to overthrow their government does not further the goal of the ATT? What does "abusive governments" mean? Does it mean a government that is not in favor with western countries, or does it have another possible meaning? Second, Russia has not said that the ATT must prohibit any and all arms transfers to non-state actors, but only that the ATT's failure to address the issue is a major omission.

Russia is justified in its concern over the ATT's failure to address arms transfers to non-state actors. Leaving out non-state actors entirely is problematic. There are many instances of arms transfers to non-state actors in the countries of Afghanistan, Lebanon, Libya, Sri Lanka, and Yemen.[91] Non-state actors in countries such as these frequently commit atrocities.[92] In the first eight months of 2014, the self-proclaimed Islamic State, a non-state actor, killed or seriously injured over 24,000 civilians in Iraq.[93] For these reasons, transfers to non-state actors cut against the ATT's purpose.

While the ATT restricts transfers to legitimate governments who are deemed unfit for transfers, it fails to address the problems of those who fight in opposition to their government.[94] Russian media reported that Russia's interest in including private parties within the scope of the ATT "stems from a desire to protect the existing legitimate government authorities from attempts of a military mutiny . . . which has already taken place in Libya and Syria."[95] Some non-state actors of concern may include groups such as terrorist organizations, private military companies, political parties, civilian militias, paramilitary groups, and arms traffickers. One factor that may have played a role in failing to address non-state actors in the ATT is that precisely defining non-state actors is difficult. Other factors might include the finite time for consensus and individual national interests in opposition of Member-States.

C. ATT's Standards

While it is valid that the low standards included in the ATT would not effectively achieve its purpose, this justification is likely a ploy by Russia. Russia's real concern is that the ATT would prohibit many of its current arms transfers. Thus, it is unlikely that Russia's claim, that the ATT's standards are in fact lower than Russia's standards, is valid.

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[91] *See SIPRI Arms Transfers Database*, *supra* note 13.

[92] *See* Masood Haider, *Both State, Non-State Actors Committing Atrocities in Syria: UN Committee*, DAWN (Aug. 28, 2014), http://www.dawn.com/news/1128222.

[93] Samuel Smith, *UN Report on ISIS: 24,000 Killed, Injured by Islamic State; Children Used as Soldiers, Women Sold as Sex Slaves*, THE CHRISTIAN POST (Oct. 9, 2014), http://www.christianpost.com/news/un-report-on-isis-24000-killed-injured-by-islamic-state-children-used-as-soldiers-women-sold-as-sex-slaves-127761/.

[94] *See* Siletsky, *supra* note 52.

[95] Vasilenkov, *supra* note 4.

1. Russia: ATT's Standards Are Too Low

Russia claims that the ATT's standards are not strict enough.[96] From the beginning, Russia called for stricter "regulations on the re-export of weapons." [97] This proved unsuccessful. Deputy Foreign Minister Ryabkov explained Russia's abstention by stating that the ATT's standards are "inferior" to Russia's own standards.[98] Russia claims that their arms transfers "are under strict control." [99] Countries that import Russia's arms are required to provide a certificate, which allegedly guarantees that the arms will not be sent or supplied to third-party countries.[100]

The ATT has other shortcomings. Even supporters have admitted that the ATT has "significant loopholes."[101] As mentioned above, the ATT's focus is on arms sales to other State parties and not on transfers to non-state actors. Additionally, the ATT leaves open other "ways in which conventional arms are transferred including as gifts, loans, leases, and aid."[102]

2. The ATT's Standards Are Likely Not Lower than Russia's

Russia's justification that the ATT's standards are too low is likely an attempt to conceal another, more probable motive: to avoid being subject to the arms regulations. While Russia alleges that its own standards are higher than the ATT's standards, the fact that the country transfers arms to Syria and other nations may indicate otherwise.

Many Russian arms transfers to Syria would be prohibited under the ATT. Over the past few years alone, the Syrian government has directly attacked its civilian population.[103] Attacks against civilian populations are prohibited under the ATT.[104] Article 6 of the ATT prohibits transfers to States that attack their civilian populations if the exporting State has knowledge at the time of the arms transfer authorization that the arms will be used in committing prohibited acts and atrocities.[105] Under the ATT, any arms transfers from Russia to Assad ruled Syria would not be allowed because of Russia's knowledge that the arms will be used in a way prohibited by the ATT.

Russia's justification that the ATT's standards are too low is not valid. Article 7 provides that the export assessment should be done

[96] *See* Siletsky, *supra* note 52; *Arms Trade Treaty Standards Too Low to Join – Moscow*, *supra* note 14.
[97] Siletsky, *supra* note 52.
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] MacFarquhar, *supra* note 17.
[102] *Id.*
[103] *See* Daryl G. Kimball, *Russia Undecided on Arms Trade Treaty*, ARMS CONTROL ASSOCIATION, https://www.armscontrol.org/act/2014_06/News_Brief/Russia-Undecided-on-Arms-Trade-Treaty (last visited Dec. 3, 2014).
[104] United Nations Arms Trade Treaty, *supra* note 6, at art. 6.
[105] *See id.*

"pursuant to [the Exporting State's] national control system."[106] So Russia can claim that its standards are higher than the ATT's standards, but the ATT does not prohibit Russia from using their "higher" standards. In fact, the ATT even requires States to incorporate their own national standards, disarming Russia's original claim.

D. Discriminatory Effect

The concern that the ATT may discriminate against Russian interests is valid. The ATT may, in fact, prohibit more Russian arms transfers than American or other western States' transfers should Russia become a party to the ATT.

1. Russia: ATT Discriminates Against Russian Interests

Russia claims that the ATT, as drafted, discriminates against Russian interests. Believing that the implications of the ATT had not been fully considered, Russia expressed concern that the treaty would discriminate against "the Russian military-industrial complex."[107] In an effort to avoid the negative implications of such a treaty, Russia did not become a party to the ATT.[108] Rather, Russia will continue to supply arms according to "its own ideas about who, where and why it is selling these weapons."[109] According to Kozyulin, "The [ATT] has a number of points that can be considered discriminating against [Russia]."[110]

The foremost concern revolves around the likely negative impact on Russia's military-industrial sector.[111] Joining the treaty would affect Russia's "ability to supply arms to individual States, which the US and the West can equate to 'terrorist regimes.'"[112] Russia believes that the ATT is drafted to prohibit more Russian arms transfers than American or other western States' transfers.[113]

Another of Russia's concerns is with the potentially discriminatory effect of the amendment provision of the ATT.[114] Article 20 of the ATT provides the option, according to some experts, of making amendments that may be even harsher on Russia, depriving "some Russian producers from certain arms markets . . . [a]nd . . . limit[ing] the supply of arms into Russia."[115]

Russia did not end the ATT talks because it was optimistic that its concerns would be taken more seriously.[116] However, until the above

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[106] *Id.*
[107] Siletsky, *supra* note 52.
[108] *Id.*
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *See id.*
[114] *Id.*
[115] *See id.*; United Nations Arms Trade Treaty, *supra* note 6, at art. 20.
[116] Siletsky, *supra* note 52.

mentioned concerns are more adequately addressed, Russia feels "the entire story of the contract looks more like another attempt to 'put pressure' on Russia and displace it from its traditional markets."[117] Russia sees the ATT as an example of the West's efforts to "use international treaties as a political lever to limit Russian military exports."[118]

2. The ATT May Discriminate Against Russian Interests in Its Effect but Not on Its Face

The justification that the ATT discriminates against Russia, if indeed true, is a valid concern for Russia. Russia has not claimed that the ATT, on its face, expressly discriminates against Russia, but rather that the result of the ATT is discriminatory.[119]

First, if Russia were a party to the ATT, a significant curb in arms sales would likely result, seriously damaging Russia's military-industrial sector.[120] As reported by Russian news outlets, at least half of Russia's arms transfers go to nations, such as Syria, Venezuela, and China, which have been deemed "unreliable or criminal" due to previous behavior.[121] If half of Russia's arms transfers go to States that would likely be prohibited under the ATT, then serious damage to Russia's arms trade business would result from joining the ATT. The ATT may actually affect more Russian arms transfers than American arms transfers. That result would not only be discriminatory in relative terms, but it would have a large impact in absolute economic terms. After all, Russia is the second largest arms supplier in the world.[122]

Additionally, the fact that the United States signed and ratified the ATT and that Russia abstained from signing the treaty may indicate that the treaty is more favorable to American interests than to Russian interests. With the help of its allies, the United States has a history of promoting favorable UN resolutions that effectively create sales markets for its businesses.[123] Strong American and European business interests drive a lot of political action.[124] The United States and some other western States joined the ATT after opposing it for a number of years. That delay may suggest that the United States and the other western States only joined after crafting the treaty to better favor their national interests.[125]

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[117] *Id.*
[118] *Id.*
[119] *See id.*
[120] *See id.*
[121] In 2012, Russia had arms sales of approximately $13.5 billion that resulted from transfers to States with a less than perfect human rights record. *See*, *e.g.*, Lulko, *supra* note 8.
[122] *See International Arms Transfers*, *supra* note 23.
[123] Lulko, *supra* note 8.
[124] Approximately ninety percent of large conventional arms companies are American and European. Such companies include "Lockheed Martin, BAE Systems, Boeing, Northrop Grumman and General Dynamics." *Id.*
[125] *See* Nuland, *supra* note 35; *Arms Trade Treaty*, *supra* note 18.

Russia is not alone in thinking that the ATT may be discriminatory. Other States, such as Bolivia, Cuba, and Nicaragua, have expressed concern that the ATT "might be abused to create political pressure."[126] Even American media outlets recognize the "hope" of the ATT's proponents that some otherwise "reluctant to ratify" nations "will feel public pressure."[127] The United States and its allies in favor of American interests at the expense of other nations' interests would likely wield this abuse of public pressure. Throughout history large, powerful western nations have used their political and economic power to advance their own national interests over the interests of weaker nations.[128] The ATT might be yet another tool to create pressure on countries to behave in a way that advances western interests over other nations' own interests.

Lastly, Russia's concern with future amendments to the ATT possibly being discriminatory against Russia has no more basis than it has with any other multi-lateral treaty. This concern may be present with all treaties that are subject to future amendments. Yes, Article 20 of the ATT provides for future amendments to the ATT; however, Article 24 provides for the ability of any party to withdraw from the treaty.[129] In the future, States will likely propose amendments that will better protect their own national interests. Such proposals may hurt other States' interests. It is up to each State to protect its own interests. Russia can vote for or against amendments, propose their own amendments, or withdraw completely from the ATT, just like any other nation.

Russia may be justified in its concern over the ATT's possible discriminatory effects. The ATT may treat western States more favorably than Russia. Naturally, a State is not inclined to join a treaty that may unfairly value other States' interests over its own. For this reason, Russia and other States may have reason to be skeptical of the ATT and its potential discriminatory effect on some countries and its favorable treatment towards others.[130]

It is possible that hurting Russia's arms trade business is necessary to achieve the ATT's purpose. Some have admitted that "making it harder for Russia to argue that its arms deals with Syria are legal under international law" will help to achieve the ATT's goal of curbing arms sales "that kill tens of thousands of people every year."[131] Clearly, if the purpose of the ATT is to curb Russia's arms transfers, then it is discriminatory. However, on its face, the purpose of the ATT is not to curb Russian transfers, but it is to contribute to "peace, security, and stability," to reduce "human suffering," and to promote "cooperation,

[126] Such States include Bolivia, Cuba, and Nicaragua. MacFarquhar, *supra* note 17.
[127] *See, e.g.*, *id.*
[128] *See* Michael Parenti, *Imperialism 101*, http://www.michaelparenti.org/Imperialism101.html (last visited Nov. 21, 2014).
[129] *See* United Nations Arms Trade Treaty, *supra* note 6, at art. 20, 24.
[130] Lulko, *supra* note 8.
[131] MacFarquhar, *supra* note 17.

transparency and responsible action by States Parties in the international trade in conventional arms."[132]

IV. EFFECTIVENESS OF THE ATT IN APPLICATION

Though there may be reason to question the ATT's potential effectiveness in its application, the ATT may still be a step in the right direction. Several things, however, cut against the ATT's likely success in fully achieving its goal to curb arms being used in the commission of genocides and other atrocities. First, Russia and other key states, such as China, are not parties to the treaty. Second, the treaty's text has large gaps, such as its failure to address the transfer of arms to non-state actors. Lastly, interests of individual Member State parties will subjugate the ATT's goals.

First, many States, including Russia, either rejected the ATT or abstained from joining it.[133] Additionally, the majority of the States who are signatories to the ATT have not yet ratified it and may avoid ratifying the treaty altogether.[134] Just as various countries thought it unwise to join the treaty when the largest producer and seller of weapons was rejecting the treaty,[135] it may be unwise to think the treaty will be effective when the second largest producer and seller is not party to the treaty. The more countries that do not feel compelled to abide by the ATT—either because they are not party to the treaty or because they do not feel obligated—will equate to more arms transfers occurring outside the confines of the ATT. Nic Marsh of the Peace Research Institute Oslo[136] stated, "Having the abstentions from two major arms exporters lessens the moral weight of the treaty . . . . By abstaining they have left their options open."[137]

Moreover, some of the Member States that most needed to join the treaty did not. Skeptics contend that the ATT will experience the same fate as the Convention on Cluster Munitions (CCM), which prohibited "the use, transfer and stockpiling of cluster bombs."[138] In the case of the CCM, States that had never made cluster bombs readily signed the treaty, while States that made and possessed cluster bombs did not sign the treaty.[139] The United States, Germany, France, the United Kingdom, Spain, Italy, and Sweden have all ratified the ATT. However, Russia, with a quarter of global arms sales, and China, with another five percent

[132] *See* United Nations Arms Trade Treaty, *supra* note 6, at art. 1.
[133] *See* G.A. Res. 67/234B, *supra* note 25.
[134] *See Arms Trade Treaty*, *supra* note 18.
[135] When the United States was still unwilling to accept the ATT, several countries followed suit and rejected the treaty. Vasilenkov, *supra* note 4.
[136] *See generally About PRIO*, PEACE RESEARCH INSTITUTE OSLO, http://www.prio.org/About/ (last visited Oct. 29, 2014) (conducting "policy-relevant research" and training "in the promotion of peace through conflict resolution").
[137] MacFarquhar, *supra* note 17.
[138] Lulko, *supra* note 8.
[139] *Id.*

of global sales, have neither signed nor ratified the treaty.[140] Several major arms importers, including India, Pakistan, South Korea, and Singapore, have avoided ratifying the treaty as well.[141] Further, of the twenty-three countries that abstained, many have the kind of human rights records that the ATT is designed to prevent.[142]

Second, the ATT's text has large gaps that can leave Member States to act almost without restriction in some arms transfer areas. For example, the ATT does not specifically address arms transfers to non-state actors,[143] thereby failing to prevent the transfer of arms to non-state actors or other illegal transfers which often result in the commission of atrocities contrary to the ATT's purpose. Several Member States expressed concern that the ATT's omission of non-state actors "deeply weakened the [ATT] and undermined its effectiveness."[144] Nicaragua's delegate expressed concern with this gap, calling it, "dangerous," recalling the "tens of thousands of lives" that were lost in his country during the 1980s due to arms transfers to non-state actors.[145]

The current situation with the self-proclaimed 'Islamic State' highlights this "gap" in a different light.[146] Countries party to the ATT, such as the United States, the United Kingdom, France, Germany, the Netherlands, Saudi Arabia, and Qatar, "have all either supplied or said they will supply weapons to [non-state actors] . . . fighting the Islamic State in Syria and Iraq and . . . the Assad regime in Syria."[147]

Moreover, these gaps in the text may have been caused in part by the many competing States' interests. The "black market" transfers arms through poorly controlled regions and "under the guise of equipment or spare parts."[148] These black markets' successes are due in large part to weak, compromised agreements.[149] The treaty does not properly take care of arms trafficking or "the illegal trade through third countries,"[150] which seriously undermines the ATT's effectiveness.

Finally, the ATT's main purpose to "reduce human suffering" will be subjugated to other State interests and may possibly become so diluted that it will lose meaning in the arms context. "As long as the world is divided into the East and the West, 'democratic' and 'dictatorial' regimes, 'terrorist Islamists' and 'civilized Christians,' the interests of

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[140] Vasilenkov, *supra* note 4; *see Arms Trade Treaty*, *supra* note 18.

[141] *Id.*

[142] Some of these States include Bahrain, Myanmar and Sri Lanka. MacFarquhar, *supra* note 17.

[143] *See* United Nations Arms Trade Treaty, *supra* note 6.

[144] Press Release, General Assembly, Overwhelming Majority of States in General Assembly Say 'Yes' to Arms Trade Treaty to Stave Off Irresponsible Transfers that Perpetuate Conflict, Human Suffering, U.N. Press Release GA/11354 (Apr. 2, 2013), http://www.un.org/press/en/2013/ga11354.doc.htm.

[145] *Id.*

[146] *See* Denis Fitzgerald, *Campaign Against ISIS Exposes Major Gap In Arms Trade Treaty,* UNTRIBUNE.COM (Oct. 2, 2014), http://untribune.com/isis-campaign-exposes-major-gap-arms-trade-treaty/.

[147] *Id.*

[148] Vasilenkov, *supra* note 4.

[149] *Id.*

[150] Lulko, *supra* note 8.

national security and commercial secrets will always be more important than world peace."[151] Many States' budgets are largely shaped by revenue received from arms exports, and these economic and political interests have incentivized States to violate already existing arms norms.[152]

Further, the multilateral nature of the ATT provides for low standards and recommendatory rather than obligatory language. For example, many African countries have long supported the ATT and joined the treaty. These African governments recognized that the ATT's text is weaker than they had hoped.[153] However, some have hoped that even though the treaty's text might be weak, the ATT "would curb the arms sales that have fueled many conflicts."[154] But without Russia, China, and various other influential Member States, the effectiveness of the ATT remains questionable.

Nevertheless, when all has been said and done, some are still hopeful that the ATT "will help to reduce armed violence."[155] Anna MacDonald, Head of Arms Control for Oxfam International,[156] stated, "This treaty won't solve the problems of Syria overnight, no treaty could do that, but it will help to prevent future Syrias . . . It will help to reduce conflict."[157] However, MacDonald's Syrian example is faulty on its face. Claiming that the ATT will stop "future Syrias" from happening is naïve. How would it? Russia is the number one supplier of arms to Syria, and Russia is not party to the ATT.

The ATT will not be as effective in accomplishing its purposes since Russia and other key States are not party to the treaty, the treaty's text contains large gaps, and the treaty's interests will lose out to the Member State parties' national interests. However, that does not mean that the ATT will fail altogether. Brian Wood, Head of Arms Control and Human Rights, believes in the ATT. He noted that what makes the ATT so great is that "for the first time in history – states would have to consider international human rights and humanitarian law, as well as international criminal law, as a basis on which to decide whether an arms transfer across borders should go ahead."[158] Even though the ATT may not be as strong as many would like, the ATT is still a step in the right direction: a step toward global cooperation in creating and preserving peace and security.

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[151] *Id.*
[152] Vasilenkov, *supra* note 4.
[153] *See* MacFarquhar, *supra* note 17.
[154] *Id.*
[155] *Id.*
[156] *See generally Our Purposes and Beliefs*, OXFAM INTERNATIONAL, http://www.oxfam.org/en/our-purpose-and-beliefs (last visited Oct. 29, 2014) (striving to create "a just world without poverty").
[157] MacFarquhar, *supra* note 17.
[158] *The Long Journey Towards an Arms Trade Treaty*, *supra* note 38.

V. CONCLUSION

The ATT's goal to end the commission of genocides and protect the hundreds of thousands of civilians who are killed each year is praiseworthy. The killing that occurs on a daily basis is atrocious and the global community should come together in an effort to solve this problem. Some Member States feel that the ATT is a valiant effort at curbing such violence, but others Member States are skeptical and for good reason.

Russia has some real reasons to be concerned with and skeptical of the ATT. First, while the ATT is, in all reality, legally binding, the ATT's text appears to be more recommendatory than obligatory. Second, the ATT fails to address arms transfers to non-state actors. And third, it may be discriminatory in its effect against Russia. However, Russia's justifications are likely, in part, a ploy to allow Russia to transfer arms to States that would otherwise be precluded under the ATT. Russia claims that the ATT's standards are lower than Russia's standards, but that is doubtful.

Additionally, the ATT will not be as effective as it could be. Without Russia joining the treaty, the ATT loses some of its potential effectiveness. Russia is one of the largest suppliers of arms in the world, meaning that Russia alone could supply arms to many of the States that the ATT is intended to prevent from getting arms. Additionally, other States, including China, have followed suit and avoided becoming party to the ATT. With so many key exporting and importing States abstaining or objecting, the ATT will not be able to regulate much of the world where the need for such regulation exists. Further, as long as the ATT does not regulate transfers to non-state actors, much of the problem the treaty was intended to address will be left unaffected by the ATT. Lastly, even the Member States who are party to the ATT will likely subordinate the ATT's goals to their own State's interests.

Many of the ATT's shortcomings are likely a result of the process through which multi-lateral treaties come into being in the UN General Assembly. The ATT is only one example from the many treaties enacted by the UN General Assembly. The ATT's ineffectiveness is not unique to the ATT—the effectiveness of any treaty that goes through the General Assembly can be decreased. The Member States, playing political games, may want to appease political and social pressures but will almost always act in furtherance of their own State's interest. For example, a State may act as if it is in favor of the treaty but might, in reality, be doing everything it can to weaken the effect of the treaty. With so many different and often opposing interests, a multi-lateral treaty will almost never survive the process with any real teeth. Is this the result we want from the treaty process? And if a treaty is in fact ineffectual, then does it matter whether a State chooses to abstain from or join the treaty?

While weak treaties may not be the best result, a weak treaty can still be seen as a step forward. Indeed, having low standards is better than having no standards, and addressing part of the problem is better than ignoring the problem altogether. The UN General Assembly treaty process may not be perfect, but it is better than nothing and can suffice until a better process for creating multi-lateral treaties is implemented.