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Policy Brief

# Arms Trade and Human Rights: A New Paradigm?

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## SUMMARY

The new security paradigm – the human security – is a people-centered approach, which aims to shift focus from states and their military apparatuses to the individual citizens and their security concerns. The Arms Trade Treaty, which entered into force on 24 December 2014, has captured some of these concerns into the prohibitions and export assessments criteria for arms trade. Serbia's new legislation successfully addresses these concerns, too. However, taking into account the sheer financial volume of the arms trade, tensions between the state economic gains and the human rights criteria will inevitable occur.

## INTRODUCTION

The Arms Trade Treaty<sup>1</sup> is the first international legally binding agreement that sets standards for conventional arms transfers and obligates state parties to establish, maintain and report on arms transfer.<sup>2</sup> Negotiations on ATT criteria, not least the wording of the agreement, were extensive.<sup>3</sup> After the Treaty was put to the UN General Assembly for a vote on 2 April 2013, it was adopted with 156 in favor, 23 abstentions, and 3 opposed. The minimum standards for export and export assessment – agreed after a lengthy debate – now constitute a range of obligations for state parties, from improving national legislation to annual reporting on the authorization of arms transfers.<sup>4</sup>

Serbia's new Arms Trade Law (*Zakon o izvozu i uvozu naoružanja i vojne opreme - Sl. Glasnik RS 107/2014*) is to a great extent in line with ATT, not least the EU Common Position 2008/944/CFSP which sets even higher standards. However, there are some loose ends, as will be discussed in this policy brief. In order to point out the policy inconsistencies this paper offers: (a) a discussion about the new law and the ATT criteria; (b) a look into Serbia's enforcement of human rights criteria for export authorizations and national reporting practices on arms transfers; (c) a set of policy recommendations to the relevant decision-makers and policy-makers.

## THE EBB AND FLOW OF NEW LEGISLATION

During the last decade, Serbia has been selling arms in line with 2005 legislation on arms and dual-use goods trade in line with the EU Code of Conduct on Arms Export. The 2005 legislation established the practice of the arms trade licensing and obliged the Government to submit a report to the Parliament on annual bases on the arms export conducted over a one-year period.

A new legislative package proposed in mid-2013 separated arms and dual-use goods into two discrete laws. The Dual-Use Goods Trade Law entered into force on 8 November 2013 (*Zakon o izvozu i uvozu robe dvostruke namene - Sl. Glasnik RS 95/2013*). The draft Arms Trade Law was proposed by the Government on 25 July 2014 and discussed at the parliamentary sessions held on 2, 3 and 7 October, and was subsequently adopted by the Parliament on 8 October 2014. The law entered into force on 16 October 2014.

Aimed to improve the standards, the new Serbian laws includes provision on brokers and brokering of the arms trade, in line with article 10 of the ATT, which states: "Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms... Such measures may include requiring brokers to register or obtain

1 ATT was opened for signatures on 3 June 2013. To date, 130 states signed the Treaty and 69 ratified it. Serbia signed it on 12 August 2013 and ratified it on 5 December 2014. The ATT report is due 31 May 2016, although the report format is still in negotiation. <http://www.un.org/disarmament/ATT/>

2 Throughout the document transfer is used to refer to arms export, import, trade, and brokering.

3 See Basu Ray D. (2013) Navigating the National Security Barrier: A Human Security Agenda for Arms Control in the Twenty First Century. In Martin M. and Owen T. (eds) *Routledge Handbook of Human Security*. (pp .197-209) London: Routledge.

4 See Baure S. and Bromely M. Implementing the Arms Trade Treaty: Building on Available Guidelines and Assistance Activities. SIPRI Background Paper, May 2015.

written authorization before engaging in brokering”. The brokering provision is a breakthrough in the international arms trade standards, although as the European standard exists since 2003.

In line with the ATT provision, the new law requires record keeping for a minimum of ten years (Article 27). Article 17 of the law<sup>5</sup> lists criteria for a conventional arms exporting licensing and prohibitions.<sup>6</sup> Article 6 of ATT obliges state parties to prohibit exports that would: violate UN arms embargoes; be used for transfers or illicit trafficking in conventional arms; be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements. In addition, article 7 obliges the exporting state party, prior to authorization of the export of conventional arms, to assess whether these items: would contribute to or undermine peace and security; could be used to commit or facilitate a serious violation of international humanitarian law; and/or a serious violation of international human rights law; and/or an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; and/or an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.

Additionally, ATT export assessment standards include ‘confidence-building measures or jointly developed and agreed programmes by the exporting and importing States’. Hence, ATT criteria specifically address ‘the risk of the conventional arms being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children’. The Serbian law does not cover these two standards.

The ATT also encourage states not to authorize export if there is an overriding risk of any of the negative consequences indicated by the assessment and considered available mitigating measures. It is not publicly known whether and how many exports Serbia has not authorized based on these criteria to date.

The new law also brings the duration of export licenses into line with international best practices by limiting license to a maximum of one year (in exceptional cases for the duration of the agreed trade) and obliging traders and brokers to report on their sales on an annual base to the Ministry of Trade.<sup>7</sup> Hence, the letter of the law sets up a Registry of traders and brokers. The Ministry of Trade has passed several by-laws to address operational modalities of the law.<sup>8</sup> The Ministry also organizes annual information sessions for the arms industry, including traders and brokers.<sup>9</sup>

5 See also article 21.

6 Covered under Article 2.1 of ATT: Battle tanks; Armoured combat vehicles; Large-calibre artillery systems; Combat aircraft; Attack helicopters; Warships; Missiles and missile launchers; and Small arms and light weapons. Article 3 of ATT: Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2.1. Article 4 of ATT: Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2.1.

7 The license duration is not the subject of the ATT.

8 Decision on establishing National Control List of Arms and Military Equipment (Official Gazette 76/14); Rule-book on the Register of Persons Licensed to Conduct Export and Import of Arms and Military Equipment, Brokering Activities and Technical Assistance (Official Gazette 28/15); Rule-book on the application form for the issuance of license, license form and other forms of documents accompanying export and import of arms and military equipment (Official Gazette RS 28/15); Rule-book on the specific security checks (Official Gazette RS 28/15).

9 Institute for Integrated Security and MTT organised an information session on Arms Trade Law and Dual-Use Goods Trade Law on 19 June 2015 in Belgrade.

Finally, an additional point not related to the ATT criteria is the penalty policy. The penalty stipulated by Serbian law, in line with existing national legislation on penalties (*Zakon o prekršajima - Sl. Glasnik RS 65/2013*), is the highest possible penalty, or a penalty equal to 20 times the value of the items' value.

## THE CASE FOR HUMAN RIGHTS CRITERIA

This section aims to assess whether Serbia is ready to align its arms trade with human rights criteria, i.e. a new security paradigm.<sup>10</sup> The human security is a people-centered approach, which shifts from the traditional security theories focused on the state and its institutions to the individual citizens and their security concerns. The ATT, and to some extent Serbia legislation, have captured some of these individual citizen's concerns into the prohibitions and export assessments criteria discussed in the previous section (article 6 and 7 of ATT; article 17 of Serbia's Arms Trade Law). Additionally, Serbia's new law is in line with the eight criteria of the EU Common Position 2008/944/CFSP.<sup>11</sup> The criterion two of the EU Common Position, which cites the 'respect for human rights in the country of final destination as well as respect by that country of international humanitarian law', as well as criterion three – 'internal situation of the country of final destination, as a function of the existence of tensions or armed conflicts' and criterion four – 'preservation of regional peace, security and stability', all are in line with human rights concerns and require a thoughtful deliberations on licensing. It should be also noted, that the criterion eight appears in a shortened version in Serbian legislation. Namely, only the technical capacity of the country is taken into account, whereas the economic capacities, as well as human and economic resources for armaments of the recipient country are neglected.

However, taking into account the sheer financial volume of the arms trade, tensions between the state economic gains and the state international obligation will inevitable occur. Hence, these tensions and plain volume of demands for licenses can lead to hasty decisions (235 arms trade licenses have been issued between October 2014 and May 2015)<sup>12</sup> and possibly the neglect of human rights criteria.

A case in point is transfers to the Middle East and North Africa (MENA) region, in particular to Egypt and Libya. Following the "Arab Spring" local governments across MENA region responded to civic protests "by using excessive, often lethal force even against peaceful demonstrators while deploying a wide range of weaponry, munitions, armaments and related material much of it imported from abroad".<sup>13</sup> Serbia has been continuously exporting to Egypt and Libya since 2005, helping accumulation of munitions stockpiles in both countries.<sup>14</sup> The human losses in both countries during and after the Arab Spring were significant.<sup>15</sup>

10 For security paradigm shift see Basu Ray D. (2013) Navigating the National Security Barrier: A Human Security Agenda for Arms Control in the Twenty First Century. In Martin M. and Owen T. (eds) *Routledge Handbook of Human Security*. (pp. 197-209) London: Routledge.

11 It should be noted that the secondary legislation from 2005 on eight EU criteria for arms trade is still in force. Sl. List SCG, 11/2005.

12 MTT Information Session 19 June 2015, Belgrade.

13 Arms Transfers to the Middle East and North Africa: Lessons from an Effective Arms Trade Treaty. Amnesty International, London: 2011, page 5.

14 Ibid. Page 31-32 and 45-46.

15 More than 6,000 people were injured during protests in Egypt, while Egyptian Government forces killed at least 840 people in 2011. Some estimates put the 2011 Libyan casualties at 4,700 dead and 2,100 missing. See the Guardian "Libyan revolution casualties lower than expected, says new government", by Ian Black. 8 January 2013.

Serbia continued exports to Egypt and Libya in 2013, too. According to SEESAC Regional Report on Arms Exports in 2013, Serbia issued 7 licenses for Libya in the value of 83,146,241 EURO and exported in the value of 86,308 EURO. For transfers to Egypt, Serbia issued 6 licenses in the value of 2,336,000 EURO and exported in the value of 659,800 EURO.<sup>16</sup>

Interestingly, a documented case of Serbia refusing to authorize the export of more than 30 million EURO of small arms to Libya was “on the ground that one of the brokers who acted on behalf of the Libyan government was blacklisted by the UN for having violated the embargo on arms exports to Liberia”.<sup>17</sup> This may indicate that Serbia limits its arms export policy to the respect for the international embargoes and overlooks the human rights criteria when deliberating export assessments.

Serbia’s international reputation is also linked to cases of the diversion of arms. A case in point was seen in 2010, when ammunition sourced from Serbia appeared in embargoed Cote d’Ivoire, having been re-transported there from Burkina Faso.<sup>18</sup> According to the end-user certificate, Yugoimport-SDPR transferred 350.000 rounds (9X19mm produced by Prvi Partizan) to Burkina Faso, with the aid of a broker from Israel, A.D. Consultant in 2005. The government of Burkina Faso later reported (in June 2010) that it had lost the imported ammunitions in fighting between police and a mutinous military unit in 2006. According to the ATT standards, the *post-facto* control for alleged diversion cases (investigations including those by law enforcement) is an obligation of each state. Hence, article 35 of Serbia’s law stipulates there should be a check ‘if there is a reasonable doubt that the importer, exporter, broker or technical aid provider intends to use the items for a different purpose than the one listed in the license’. Serbia, to date, never conducted a *post-facto* control.<sup>19</sup>

## Reporting Practice

Although Serbia ranked the fourth most transparent country in 2013 in terms of arms transfer reporting, the new Arms Trade Law (Article 28) does not stipulate a timeframe for report delivery to the Parliament.<sup>20</sup> Annual reporting to the Parliament on arms trade has been inconsistent in the past several years. For example, the 2012 annual report was submitted in mid 2014 and subsequent reports for 2013 and 2014 have, to date, not yet been presented to the Parliament.<sup>21</sup> Parliamentarians rarely raise the issue of overdue reports<sup>22</sup> or question the extent and nature of the trade, let alone probe Serbia’s fulfillment of international and EU obligations to sanction sales to certain countries.<sup>23</sup>

On the other hand, Serbia has frequently reported to the UN Register on small arms.<sup>24</sup> According to Small Arms Survey 2015, Serbia reported delivery of 3,000 light machine guns, 3 under-barrel grenade launchers (2009), 8 revolvers or pistols (2012), 2 heavy machine guns and 4 under-barrel grenade

16 In total Serbia issued 35 licenses for the Middle East in the value of 18,768,905 EURO and exported weapons in the value of 5,624,134 EURO. For the North Africa region, Serbia issued 13 licenses in the value of 95,394,129 EURO and exported in the value of 9,915,034 EURO. For the category of armaments licensed and exported see SEESAC Regional Report on Arms Exports in 2013, Belgrade: June 2015. <http://www.seesac.org/res/files/publication/945.pdf>

17 Vranckx, An, Frank Slijper and Roy Isbister (2011) *Lessons from MENA: Appraising EU Transfers of Military and Security Equipment to the Middle East and North Africa—A Contribution to the Review of the EU Common Position*. Gent: Academia Press.

18 According to the report by the expert panel that monitored the UN embargo on Côte d’Ivoire

19 For a better understanding of the official discourse on diversion in Serbia and the South East Europe region see: Addressing unauthorised re-export or re-transfer of arms and ammunition SEESAC, UNDP. June 2014.

20 See the Small Arms Survey Transparency Barometer for the list of the countries.

21 The 2013 Report has been posted on MTT website in mid April 2015. According to the international organizations working on capacity development only several MPs showed an interest into arms trade, and came for the information session to the Ministry of Trade held in mid-May.

22 In 2014 the arms trade was discussed in depth only once, at the parliamentary session on the new arms trade law.

23 For example, in May 2014 Serbia aligned itself with the EU Council Decision 2014/214/CFSP on Myanmar. Myanmar is a long-standing importer of Serbia produced munitions. Due to delayed annual reports and passive parliamentary debate it is impossible to establish whether Serbia fully aligned itself with the Council Decision.

24 Support and technical expertise in small arms related issues is available via South East and East Europe Clearinghouse for the Control of Small Arms and Light Weapons – SEESAC, based in UNDP Serbia Office since 2002.

launchers (2013) to Egypt;<sup>25</sup> and 35,000 light machine guns (2009), 4,000 revolvers (2012), 15,000 revolvers and pistols, 1,500 rifles, 34,000 assault rifles, 11,000 light machine guns, 3,000 heavy machine guns, 8,600 under-barrel and grenade launchers (2013) to Libya.<sup>26</sup> The transfers to Libya were conducted at the time of the embargo lift.

## POLICY IMPLICATIONS

As Serbia begins to enforce new legislation on arms trade, systematic export assessment deliberations would prove country's commitment to the human rights values and ease reporting. Taking into account Serbia's past record on severe breaches of human rights in the wars fought from 1991 to 1999 in former Yugoslavia, the Serbian Government bears additional responsibility in this regard. Hence, special consideration should be given to the fact that Serbia's arms industry is heavily oriented on small arms, light weapons and ammunition (SALW), which are considered to be the deadliest armaments and thus responsible for more civilian casualties and fatalities than any other weapon or system.<sup>27</sup> The country's international reputation needs improvement, and demonstrating that Serbia has learned from its past mistakes can improve that image significantly.

Additionally, and in order to demonstrate commitment to new criteria, the following policy recommendations should be taken into consideration by the Serbian Government:

- **Vigorously apply export assessment criteria (*ex-ante* control) when deliberating authorizations for the certain arms transfers**, especially to the Middle East and North Africa (MENA) regions, by enforcing to the full article 17 of the new law. This effort could prevent diversion and save resources required for *post-facto* control (Article 35);
- **Take into consideration gender-based violence criteria when deliberating authorizations for certain arms transfers**, especially to less developed regions. The GBV concerns are in line with the best international practice and ATT, although not included in the new Serbian legislation;
- **Strengthen out-reach to the industry and arms traders and brokers to inform them about their obligations**. In line with international best practices, aim to familiarize the industry and arms traders and brokers with the ATT and the new legislation criteria. In particular, familiarize the industry with prohibition provisions. This effort could prevent costly litigation in the long run;

25 See Table 4.6a Reported deliveries of small arms to Egypt, 2001–13 in Small Arms Survey 2015.

26 See Table 4.8a Reported deliveries of small arms to Libya, 2001–13. Ibid.

27 See <http://www.un.org/disarmament/convarms/salw/>

- **Deliver an annual national report to the Parliament within the first quarter of the subsequent year.** Although Article 28 of the Arms Trade Law (Zakon o izvozu i uvozu naoružanja i vojne opreme - *Sl. Glasnik RS 107/2014*) does not stipulate the time frame for the annual report, well-timed and time-consistent reports could improve parliamentary debates and raise interest among general public;
- **Intensify cooperation between the Ministry of Defense, Ministry of Trade, Ministry of Foreign Affairs and the civil society organisations,** in line with best international practices. Capitalize on momentum gained between the National Convention for the EU Working Group for Chapter 30 and 31 and the line ministries and seek the way to utilize the knowledge and experience on human rights issues in the Serbian civil society organizations.



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