

Trade and trafficking: Ukraine and the regulation of international arms trade

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The new Arms Trade Treaty

On Monday, the 3rd of June 2013, representatives of 67 nations united in the UN headquarters in New York City to sign on the Arms Trade Treaty (ATT), a document laying down a fundament for a supposedly more regulated world trade in conventional arms. The treaty covers multibillion worth trade in small arms, light and heavy weapons, and ammunition. It promotes national control of export, import, transport, trans-shipment and brokering of arms. In particular, it stipulates that parties to the treaty establish national control systems to keep record of, control, and exchange information about the arms trade. ATT explicitly prohibits export of weapons to countries on which the UN imposed arms trade embargo, and urges state parties to ban export of arms to countries where they can be used for genocide and human rights violations. Moreover, the ATT provides a general framework for national institutions of arms export assessment. The ATT is hoped to contribute to alleviating the dire conditions of civilian populations in intra-state conflicts, especially because it covers small arms and light weapons.

For the ex-Soviet states, especially Russia and Ukraine, which are among the top ten world arms exporters, the treaty could signify a more stringent control over international arms transfers. Russia, according to the 2013 yearly report¹ by the Stockholm International Peace Research (SIPRI), is the world's second largest exporter of arms. It supplies 26% of the market of conventional weapons, just after the USA with 30% market coverage, and before Germany with 7%. Ukraine shares three last positions in SIPRI's top-ten ranking with Italy and Israel, at 2% of the world major conventional arms export volume.

Throughout the 22 years of independence, Ukraine has consistently scored in the world's top ten arms exporters. Due to a number of successful contracts of heavy military machinery supplies to Iraq and Thailand, last year the country jumped to the fourth place of the SIPRI ranking. This became a reason for self-congratulatory announcements and even greater plan for future by Ukrainian military establishment. Yet, the export of Ukrainian arms has been an object of severe international criticism. In

¹ SIPRI does not take into consideration small arms, light weapons and ammunition.

the last 20 years Ukraine has been involved in a number of big arms trafficking scandals, presumably selling weapons indiscriminately and without a due control of end use.

In this context, the question to ask is whether ATT could become an important leverage for a stricter international control arms trade, including the exports from the post-Soviet space?

Arms trade or arms trafficking? The case of Ukraine

“Arms trafficking is a state business,” the Slovenian journalists Blaž Zgaga and Matej Šurk said in an interview to the magazine “The Ukrainian Week”, commenting on a plausible involvement of Ukrainian Ministry of Defense in an illegal supply of small arms and light weapons to Slovenia and further to Croatia in early 1990s. Zgaga and Šurk’s investigation into the involvement of Slovenian high state officials in illegal arms trade during the wars of Yugoslav succession has recently prompted a full-fledged police investigation stretching among several EU countries. Zgaga and Šurk discovered that at least 8 cargo ships with Ukrainian arms arrived from Mykolayiv to the Slovenian port of Koper (the only port not under an international supervision during the war) as a part of the illicit campaign of arms supplies to belligerent parties. Only the last ship — *Jadran Express* — was arrested in Italy, while the others went unnoticed. *Jadran Express* carried 133 containers with arms, worth at least USD 22 million. One of the middlemen involved in the *Jadran Express* case and trialed in Italy, a Ukrainian Dmytro Streshyns’kyi, pointed that the trade was supervised by then Ukrainian Minister of Defense Marchuk. The inquest has not found any evidence of Marchuk’s involvement into the deal; nevertheless, Zgaga and Šurk stress, it is most certainly a fact that the arms came from Ukraine, and that the chain of arms supply was not merely a mafia arrangement. Their provenance is proved both by bank accounts, and a parallel investigation led by the Slovenian Parliament. The journalists ask: “Can a criminal group simply steal a ship with such a cargo and have it passed through the Dardanelles so that no patrol ever noticed it? [Arms trafficking] is a state business, and those involved in it use mafia to conceal it.”

After the fall of the USSR, Ukraine inherited powerful military-industrial complex, nuclear weapons and large amounts of arms kept in warehouses. The country soon relinquished its nuclear missiles. Because of the economic liberalization the military-industrial complex was partly destroyed, and partly had to shift the production to mass consumption goods, civil electronics etc. The fraction of defense enterprises that survived turned to international markets — mostly those in the former Third World countries previously supplied by the USSR — where their most immediate competitor was Russia. Unlike Russia, however, Ukraine does not produce small arms and light weapons, but it possesses large

storages of Soviet-time weapons.

Perhaps, the quickest to enter the world arms market were the weapons accumulated in military storages around the country. Over the 20 years of independence Ukrainian army downsized from 780 thousand soldiers before the dissolution of the USSR to 192 thousand soldiers in 2011. Redundant ammunition and weapons were sold on the international market; part of them was trafficked to 'hot spots' like Angola, Sierra Leone and ex-Yugoslav countries. The economic collapse of the 1990s, a drastic reduction of defense expenditures, and rampant corruption among the ranks of army personnel contributed to the sellout and embezzlement of military assets. Following a wave of accusations of illegal international trade in arms, Ukraine started a parliamentary investigative commission to verify the accusations. The commission discovered that in the first 10 post-Soviet years Ukrainian military assets inherited from the USSR and worth USD 90 billion, reduced by 1/3. This reduction was not accounted for by official documents. The commission concluded that USD 32 billion-worth assets were practically stolen.

Other cases of illegal arms trade in which Ukraine has assumingly been involved, point more unequivocally at the fact of the state participation in arms trade against both international and domestic norms. Thus, in 2001, Ukrainian arms export became the centre of international attention for the alleged sale of high-tech major conventional weapons (radar systems "Kol'chuga," land-land rockets and rocket control systems etc.) to Iraq in violation of the 1990 Resolution n.661 of the UN Security Council that imposed an embargo on any military supplies to Iraq. Then President Leonid Kuchma rebuked any accusations, claiming they were part of an international plot to discredit Ukraine as a reliable and rule-abiding trade partner. Yet, the next year the so-called Kuchmagate — a leak of wiretaps of President Kuchma organized by his former security officer Mykola Mel'nychenko — revealed authentic recordings of eavesdropped talks between the President and Valery Malyev, the director of "Ukrspetsekспорт", one of the major Ukrainian military export companies. On the records, Kuchma and Malyev talk about supplies of specific weapons to Iraq, and the President gives order on how to proceed with the sale. A parliamentary investigation into the illegal export of weapons to Iraq stopped abruptly when Malyev died in an obscure car crash just four days after the parliamentary commission had got hold of the original "Mel'nychenko tapes".

In 2008, another Ukrainian president — Viktor Yushchenko — was accused of illegally profiting of the sales of arms to Georgia, then at war with Russia. According to a report by a special parliamentary commission, Ukraine sold USD 2 billion-worth of weapons to Georgia, while only USD 200 million of

official revenues was received. The difference between the two sums, it was alleged, constituted Yushchenko's profit.

A more recent evidence of Ukraine's involvement in controversial supplies of armaments include 2008/9 cargo of 33 Soviet-era T-72 tanks destined to Kenya and commissioned by Kenyan Ministry of Defense allegedly on behalf of at the time unrecognized South Sudan. The cargo ship *MV Faina* was captured by Somali pirates who then declared they possessed documentary proofs that the tanks were bought by South Sudan. Kenyan high army officials denied the statement, declaring that Kenyan Armored Corps had been trained to use T-72 tanks.



Figure 1. Ukraine-supplied T-72 in South Sudan. Photo: Amnesty Int.

At the time the destination of the cargo remained unconfirmed. However, in a 2012 briefing² “South Sudan: Overshadowed Conflict” Amnesty International reported evidence of the use by Sudan People Liberation Army of T-72 tanks to indiscriminately shell militias and civilians in urban settings: “at least 75 such tanks were delivered in three shipments from Ukraine via Kenya destined for the government of South Sudan, alongside a large quantity of other artillery, small arms and light weapons. This is the first confirmed use of these tanks in South Sudan.” Amnesty International stressed the clandestine character of the supply of machinery, as well as the fact tanks had been used in conflict.

²<http://www.amnesty.org/en/library/asset/AFR65/002/2012/en/67d8e84c-e990-42de-9a99->

Ukraine was also accused of arming belligerents in the most rampant civil wars of the last years — in Libya (supplying weapons to Libyan government) and Syria (providing the rebels with ammunition through Saudi Arabian middlemen).

Despite numerous instances of alleged involvement of Ukraine in controversial transfers of arms, no international action against the country has ever been taken. One of the reasons is that it is extremely difficult to collect undisputable evidence of the participation of high state officials in arms deals. Another is that illegal arms trade, just like in the *MV Faina* case, is often disguised as legal arms transfers with use of offshore facilities, false end-user certificates, re-export etc.

Toothless regulations?

In 2002, Ukrainian parliament passed a bill “On the state control over international transfers of military and double use goods”. The bill created a system of arms trade control subordinated to a special export control body, yet very loosely integrated and without a strict hierarchy. After 2010, with major changes in the structure of the Government, several large arms exporters were integrated into a state company “Ukrspetsekспорт”, almost monopolistically dealing with transfers of military goods to foreign buyers. At the same time, the 2002 law envisioned a set of special cases when the state can grant licenses for military exports to private actors. Licensing non-state operators of arms export is now believed to be the main channel of illicit trade of military items.

The problem, however, lays not so much in the regulatory framework, as in its enforcement. Despite the much boasted national regulations emerging in response to the murky arms trade affairs of the 1990s, throughout the 2000s Ukraine has figured in various scandals, gaining the reputation of a rather indiscriminate arms exporter. Insufficient control of end-user certificates, acceptance of false documents, corrupt arrangements within the government, bribing foreign defense officials responsible for contracting with Ukrainian suppliers, and re-export of arms has plagued Ukrainian arms business. So far, the national control system has functioned both as a legitimizing instrument for the trade in weapons, and as a formal shield for informal operations. Much of the illicit arms trade is disguised as legal transfer of arms. Given this, the question is: What could be the impact of the ATT on the international trade in arms, given that national control systems are toothless, or even complicit, with

illicit arms trade? How will the ATT take control of trade operations that are truly global, and controlled not only by national exporters/importers of arms, but also by middlemen, informal chains of re-export, offshore trusts channeling arms trade money of oblique provenance?

These questions await their answers. Unless the new international system envisions enforceable sanctions and truly international levers of control, ATT will not be a functional solution to the discontents of the trade in weapons that affects millions in conflict areas of conflict. The ultimate problem, however, might be neither the market regulation, nor its enforcement, but the trade itself. As Ann Feltham stressed in her OpenDemocracy article commenting on UN negotiations over ATT, “To make a real difference we need governments [...] to stop promoting and supporting the arms companies. We need the trade to become as morally unacceptable as the slave trade.”

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