

# Bill C-47 and Canadian Accession to the Arms Trade Treaty Civil Society Concerns and Recommendations



Submission by Canadian civil society organizations to the Senate Standing  
Committee on Foreign Affairs and International Trade

November 2018

## **Bill C-47 and Canadian Accession to the Arms Trade Treaty**

### **Civil Society Concerns and Recommendations**

**21 November, 2018**

#### **A: Canada – US military trade will be exempt from the Arms Trade Treaty.**

This means:

##### **The majority of Canada's military exports will remain unregulated.**

Under the existing *Export and Import Permits Act* (EIPA), only a small number of US-destined military goods and technology require export control permits. There is nothing in Bill C-47 that would extend the application of the EIPA to all the rest of Canada's exports of military goods and technology to the USA. This amounts to an exemption of exports, the value of which exceeds the combined worth of arms exports to all other states.

This massive hole in Canadian military export authorization represents the most significant *Arms Trade Treaty* (ATT) obligation that will continue unmet by Bill C-47 or new regulations that may follow. The exemption breaches the ATT's first article, which states that the "object of this Treaty is to establish the highest possible common international standards for regulating ... the international trade in conventional weapons." It also breaches Article 2 (Scope) and Article 5 (General Implementation), both core articles of the ATT. Article 2 states that "this Treaty shall apply to all conventional arms within the [treaty] categories" and Article 5 states that "each State Party shall implement this Treaty in a consistent, objective and non-discriminatory manner."

##### **The majority of Canada's military exports will remain unreported.**

Due to the US export exemption, since they began in 1991 all *Reports on the Export of Military Goods* have omitted data on military exports to the US. This data omission undermines the government's announced commitment to greater Canadian transparency and clearly fails to meet ATT reporting requirements. Nothing in Bill C-47 or in the backgrounder material provided by Global Affairs Canada (GAC) suggests that the government plans to fill this major reporting gap. Again the reporting omission will constitute a breach of the ATT objective to establish the highest possible common international standards.

#### **Proposed Amendment**

To address this problem, the EIPA should be amended to include a provision that any contract or agreement for the export from Canada of military goods and technology included in the Export Control List is expressly subject to the EIPA.

## **B. Bill C-47 does not alter Cabinet exemption powers that could undermine Arms Trade Treaty obligations.**

The regulations section of the EIPA – including that of the amended law under Bill C-47 – grants broad powers to the Cabinet, notably the power to exempt any person, organization, technology or goods from the provisions of the Act. This amounts to a provision that would allow the Cabinet to violate the ATT.

### **Proposed Amendment**

Bill C-47 should include a new provision expressly disallowing such a regulation.

## **C: Crown agencies and corporations may operate under differing systems and standards.**

This is because:

### **Military exports by the Department of National Defence will be regulated under a separate process.**

The Department of National Defence (DND), as a Crown agency, is exempt from the EIPA. Since the Crown is bound by international law, following accession, DND will be bound by ATT obligations when it seeks to export military equipment as surplus sales or aid. When queried on why Bill C-47 does not include DND obligations, GAC officials explained that DND will meet ATT standards via procedures -- including risk assessments -- distinct from GAC export controls. The dual process is thus an invitation to different, possibly contradictory, standards and outcomes. In the past, DND has transferred equipment in contravention of the EIPA. For example, DND provided 2500 surplus assault rifles to the Afghan National Army in 2008 despite Afghanistan's absence from the EIPA Automatic Firearms Country Control List (which lists of the only countries eligible to receive automatic firearms from Canada).

### **The important role of the Canadian Commercial Corporation remains unacknowledged and unchanged.**

The Canadian Commercial Corporation (CCC) is a Crown corporation that plays a central role in exporting Canadian military goods, especially to the United States. The terms of the *Defence Production Sharing Agreement* obligate the CCC to act as prime contractor for US Department of Defense contracts valued above a threshold, currently set at US \$150,000. The CCC also arranges arms exports to other countries, including recent record contracts for the sale of light armoured vehicles (LAVs) to Saudi Arabia. Government responsibility for, and oversight of, the CCC should be made explicit in the EIPA alongside CCC procedural changes to ensure its operations meet ATT obligations.

Recent events suggest that CCC may not adhere even to existing EIPA regulations. For example, media reports confirmed that when the unprecedented LAV deal with General Dynamics Land Systems Canada was announced in February 2014, GAC had not authorized the export permits needed for the vehicle shipments. These were only formally approved by then Foreign Affairs Minister Stéphane Dion in April 2016. The lengthy period between CCC contract signature and export authorization exposed a major, troublesome, and potentially costly fault-line in Canadian export control that needs to be corrected.

The Senate Standing Committee on Human Rights, in its June 2018 report *Promoting Human Rights: Canada's Approach to its Export Sector*, notes that “the entire export controls system needs to give greater weight to consideration of risks related to internationally recognized human rights and international humanitarian law.” Among other recommendations, it calls for “Canadian Crown corporations ... [to] take additional steps to ensure their business practices comply with the United Nations *Guiding Principles on Business and Human Rights*.”

### **Proposed Amendments**

Ensuring that DND and crown agencies comply with the EIPA would be addressed by the earlier recommendation to bring all US-destined exports within the purview of the EIPA – namely, a provision that any contract or agreement for the export from Canada of military goods and technology included in the Export Control List is expressly subject to the EIPA.

To handle the problem of long delays between contract signing and export permit consideration, a pre-assessment should be undertaken by GAC before the contract is signed to determine whether, in the circumstances then pertaining, an export permit could be granted. This pre-assessment would not pre-judge the outcome of the export permit process after the contract is signed, which would of necessity have to consider all relevant circumstances at that time. Bill C-47 should include an amendment to the EIPA to provide for the pre-assessment process.

### **D: There are important Arms Trade Treaty obligations that await unspecified regulations.**

The government has indicated that some export control changes necessary for Canada to accede to the ATT will be formulated as regulations to follow royal assent of Bill C-47. This means that many details of Canada's implementation of significant treaty obligations are unknown to Parliament as Bill C-47 is reviewed and debated. Specific questions and concerns about this future undetermined process include:

#### **Compliance with “Prohibitions,” including UN arms embargoes**

ATT prohibitions are binding obligations not subject to assessment or review. Yet, neither the current EIPA section on “Prohibitions,” nor the proposed amendments of Bill C-47, addresses Article 6 of the ATT, the core article which defines prohibitions. These include conventional weapons transfers that would violate UN Security Council sanctions, “in particular arms embargoes.” Canada's *United Nations Act* does administer Canadian obligations regarding UN sanctions, but there is no reference to the *United Nations Act* in the EIPA or in Bill C-47.

Similarly, the ATT prohibits arms transfers that “would violate [a State Party's] relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.” Relevant agreements for Canada include the *Anti-Personnel Mine Ban Convention* (the “Ottawa Convention”), the *Convention on Cluster Munitions* (CCM), the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms* (the “Firearms Protocol”), and the *Inter-American Convention against the Illicit Manufacture of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials* (CIFTA). Currently, none of these international

agreements appear in the EIPA, even though the act references several multilateral and bilateral trade treaties. It is not even apparent if or how Canada will address prohibition obligations through proposed regulation.

### **Preventing diversion of military exports**

The diversion of weapons to unauthorized end users or for unauthorized end purposes is a universal concern important enough to rate its own article in the ATT (Article 11). Yet, as with prohibitions, the two EIPA paragraphs referring to diversion do not address ATT provisions, and Bill C-47 contains no amendments to alter this situation. The ATT obligates each State Party to assess the risk of diversion as well as to undertake other measures to reduce and prevent diversion. Although Canada currently considers “the possibility of unauthorized transfer or diversion” within its export control process, diversion is not currently one of the criteria for “close control.”

### **Compliance with reporting standards**

Bill C-47 includes a welcome amendment to the “report to Parliament” section of the EIPA that will require the Minister to provide a report to Parliament on the export of military goods for the preceding year by May 31 of each year. However, the amendment says nothing about reporting on imports (also required by the ATT) or about the details that the parliamentary report will provide. It seems likely that the annual export report will build on the reporting standards the government has used since 1990, but there are at least two reasons why these need close parliamentary and public scrutiny. First, reporting and transparency standards of past reports have varied significantly over the years, subject to seemingly arbitrary changes at times. Second, if handled well, Canada’s export reports could contribute to the “highest possible common international standards” in ATT reporting. Good standards would include, for example, Canada reporting the details of both export authorizations (permits) and actual exports, currently reporting options under the ATT.

### **Compliance with brokering regulations**

Arms brokers arrange and facilitate weapons transfer transactions between buyers and sellers. A transnational problem, illicit arms brokering, especially of small arms and light weapons, is widely acknowledged to contribute significantly to worldwide crime, conflict and serious violations of international human rights and humanitarian law. Bill C-47 will amend the EIPA to include welcome broker and brokering controls to fulfil obligations of the “Brokering Article” of the ATT (Article 10). These include explicit extraterritorial application of the EIPA to Canadian citizens, permanent residents and organizations incorporated in Canada. While Bill C-47 does amend the EIPA to include brokering within Canadian export controls, some important details will await future regulation. For example, Bill C-47 includes a new “Brokering Control List” containing items defined only as “any article that is included in the Export Control List the brokering of which the Governor in Council considers it necessary to control.”

## **Proposal**

To better ensure proposed regulations fulfill ATT obligations, the Committee of the House of Commons charged with studying matters arising in connection with the operation of Bill C-47, in this case the Standing Committee on Foreign Affairs and International Development (FAAE), should establish procedures for mandatory parliamentary review of such regulations in advance of implementation. This could be accomplished through a subcommittee of the FAAE established to review ATT-related regulations as well as other ongoing issues, procedures, legislation, and policies related to Canadian arms exports, ATT obligations such as annual reports, and Canada's role in international arms control agreements.

### **E. Excessive commercial confidentiality is contrary to the public interest.**

With respect to the Saudi arms deal, we are told by the Government of Canada that the contract mandates a level of secrecy that is far beyond the normal bounds of commercial confidentiality. This level of secrecy severely undermines core principles of transparency and accountability, which underpin the ATT.

### **Proposed Amendment**

Bill C-47 should prohibit contractual provisions regarding secrecy beyond the narrowest limits necessary to protect sensitive proprietary and related information.