

Summary Analysis of the Arms Trade Treaty

The Arms Trade Treaty (ATT), adopted by overwhelming vote by the UN on 2 April 2013, is the first international Treaty aimed at regulating international transfers of conventional arms. The Treaty, though imperfect, sets an important basis for global action to control the conventional arms trade. It creates a new global norm against which states' practice will be measured, by other states and by international civil society.

1. What does the Arms Trade Treaty do?

The ATT is the first international instrument to establish legally binding obligations on States to ensure responsible and effective controls on all types of international transfers of conventional arms, ammunition and parts and components. The items explicitly named in the Treaty are:

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| (i) Battle tanks; | (v) Attack helicopters; | (ix) Ammunition; and |
| (ii) Armoured combat vehicles; | (vi) Warships; | (x) Parts and Components |
| (iii) Large-calibre artillery systems; | (vii) Missiles and missile launchers; | |
| (iv) Combat aircraft; | (viii) Small arms and light weapons; | |

However the Treaty goes further, in that it encourages States parties to “apply the provisions of this Treaty to the broadest range of conventional arms”. This reflects widespread practice among arms exporting States of controlling a comprehensive range of military equipment for export. In practice this means that States should apply the Treaty’s provisions to items such as training and transport aircraft, non-combat armoured vehicles, anti-tank landmines, hand-grenades, other weaponised explosives and drones, and include them in the national control systems and lists that are required by the ATT.

The ATT includes explicit prohibitions against States authorising arms transfers under certain circumstances, including where there is knowledge that the arms would be used to perpetrate war crimes, genocide, attacks against civilians, and other grave breaches of the Geneva Conventions.

Where the prohibitions do not apply, in considering whether or not to authorise an arms export States must conduct a comprehensive risk assessment and consider possible risk mitigation measures. The assessment explicitly requires States to examine whether there is a risk: of serious violations of international human rights or humanitarian law; of contravening conventions relating to terrorism and organised crime (which include corruption); or of facilitating gender-based violence or violence against children.

The Treaty also addresses the risk of diversion of arms, and outlines a number of possible actions that can be taken to address this problem, including denying export authorisation. While the diversion controls in the Treaty do not explicitly refer to ammunition – a result of difficult compromises between negotiating parties – most States Parties are expected in practice to apply all the Treaty’s provisions to the full range of conventional arms, ammunition, parts and components in their national control systems.

Another positive element of this Treaty is the requirement that States Parties submit annual reports on international transfers and national implementation activities. The Treaty text also provides for reports to be made publicly available, thereby improving transparency in the global arms trade.

Fifty States must ratify the Treaty before it enters into force, which is widely expected to happen within two to three years. In addition, the Treaty’s amendment provisions increase the likelihood

that it will remain relevant into the future. States Parties may introduce amendments six years after the Treaty enters into force and then every three years subsequently. These can be adopted by a three-quarters majority of States Parties. A Conference of States Parties will be established, with a mandate to review implementation by States Parties and define the work of the ATT Secretariat. The establishment of a trust fund is also mandated to help countries with ratification and implementation responsibilities.

2. How the risk assessment will work

The ATT requires States Parties to assess whether a proposed export of conventional arms, ammunition, or parts and components would contribute to or undermine peace and security; or could be used in facilitating serious violations of international human rights or humanitarian law, terrorism, organised crime, or serious acts of gender based violence or serious violence against women and children. States Parties must also take account of the risk that arms might be diverted.

States are required to refuse authorisation where this assessment concludes there is an “overriding risk” of the negative consequences listed. Given that humanitarian considerations have been the principal driving force behind the adoption of an ATT, this points towards refusing authorisation if the risks of an undesirable outcome are judged to go beyond a specified threshold, for example where there is a substantial or clear risk.

3. How the Treaty will be enforced and monitored

The Treaty will be enforced at national level by States Parties who are required to “take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty”. To this end, States will require a range of legislative, administrative and practical provisions and capacities. Based on existing good practice, these measures should include: (a) National legislation or other measures to implement the Treaty; (b) Law enforcement and judicial mechanisms to enforce relevant legislation; (c) Criminal or civil penalties to address breaches of relevant legislation; and (d) Reserving the power to inspect and/or seize shipments that are suspected of violating the Treaty. The ATT also requires states to co-operate on implementation and enforcement including through information sharing regarding illicit activities and actors, by providing mutual assistance in investigations, prosecutions and judicial proceedings and by co-operating in tackling corruption.

Monitoring of Treaty implementation will be undertaken both by States Parties and civil society. The effectiveness of these efforts will be determined, to a large extent, by the quality and quantity of information that States Parties produce under the reporting and transparency provisions of the ATT. For its part, civil society will closely monitor implementation of the Treaty, and press their national governments to produce and to make public the most comprehensive national reports possible.

The Conference of States Parties is the forum formally responsible for monitoring implementation of the ATT. This body has a broad mandate to review implementation of the Treaty, to consider issues arising from the interpretation of the Treaty, and to consider and adopt recommendations regarding its implementation and operation. Once the ATT comes into force, this body will play a critical role not only in reviewing and promoting implementation but also in further developing the treaty so that it can better achieve its objectives. This forum should establish early precedent whereby national reports on Treaty implementation are reviewed and debated allowing States Parties to raise questions, including in relation to specific arms transfers.

The ATT also provides for settlement of disputes among States Parties regarding interpretation or application of the Treaty through negotiations, mediation, conciliation, judicial settlement or other peaceful means, by mutual consent.