

INTRODUCTION

The Arms Trade Treaty (ATT) which was adopted by overwhelming vote in April 2013, and subsequently entered into force a little over 18 months later, has the potential for positive humanitarian impact, through regulation of the international arms trade. The geographic spread of its States Parties² bears further testament to the wide global support the Treaty has achieved. However, the effectiveness of this new global treaty, the first of its kind to attempt to regulate the trade in conventional arms and ammunition, will depend now on how well it is implemented.

The central role played by civil society through the global Control Arms Coalition has been acknowledged as crucial to the success of the ATT's adoption and relatively rapid entry into force, as well as in ensuring that the humanitarian imperative was embedded into the core of the Treaty. Civil Society experts also provided a great deal of information, analysis and perspective during the deliberations, prompting the UN Secretary-General to recognise the contributions made by NGOs in his June 2013 statement when the Treaty opened for signature.

The Control Arms Coalition has a continuing important role to play in the future of the ATT. One key initiative is the ATT Monitor, an independent analysis and information tool designed to provide objective information on the implementation of the Treaty.

THE ATT MONITOR: AUTHORITATIVE AND CREDIBLE ANALYSIS

The main objectives of the ATT Monitor are to independently track the impact of the Treaty, and to provide unbiased, credible and verifiable information on implementation and universalisation activities.³ To do this, the ATT Monitor will produce credible qualitative and quantitative research and analysis, and explore emerging trends and practices that have an impact on the effectiveness of the Treaty and its provisions.

Over time, the ATT Monitor will evolve not only to assess data directly provided by States (through their annual transfer reports), but also to develop bespoke datasets and methodologies that enable holistic analysis of practices and trends. These datasets will be regularly updated to reflect the most current information that is publicly available.

The ATT Monitor will consistently aim to add to the knowledge base on arms control efforts. To this end, it will avoid duplication of work done by the many existing and credible bodies in fields relevant to the ATT, including those addressing conventional arms transfers, human rights, international humanitarian law, organised crime and other ATT-relevant sectors.

Rather, the ATT Monitor will engage existing sources of expertise and synthesise them into easily accessible web and print material as a 'first-stop' source of information and analysis on the ATT for policymakers, civil society advocates, the media and the public.



THE TREATY ITSELF HAS OPENED A DOOR OF HOPE TO MILLIONS OF WOMEN, MEN AND CHILDREN WHO LIVE IN DEPRIVATION AND FEAR BECAUSE OF THE POORLY CONTROLLED INTERNATIONAL ARMS TRADE AND THE PROLIFERATION OF DEADLY WEAPONS... WITH THE ATT, THE WORLD HAS DECIDED TO FINALLY PUT AN END TO THE "FREE-FOR-ALL" NATURE OF INTERNATIONAL WEAPONS TRANSFERS

UN SECRETARY-GENERAL BAN KI MOON¹

¹ | Ki-Moon, Ban. 2013. Secretary-General's remarks at Special Event Marking the Opening of the Arms Trade Treaty for Signature. United Nations. 3 June 2013 <http://www.un.org/sg/statements/index.asp?nid=6869>

² | The ATT had 69 States Parties as of 10 July 2015, of which 10 are from Africa, eight are from Latin America, 12 are from the Caribbean, 35 are from Europe (including non EU countries), one is from Asia, three are from the Pacific, none from the Middle East, and none from South Asia

³ | Activities with the aim of encouraging non-States Parties to accede to the ATT are referred to as universalisation activities

Three specific activities will be central to the ATT Monitor:

1. Synthesising information that can be used to advance the ATT's implementation and universalisation goals in a user-friendly and accessible format
2. Promoting the sharing of credible information on, and analysis of, the ATT's implementation and universalisation
3. Identifying key challenges in advancing global acceptance of the ATT's norms and its full implementation, and proposing steps to ensure that these challenges are addressed.

From these activities, the ATT Monitor will generate three specific outputs:

- **THE ANNUAL ATT MONITOR REPORT:** Intended to be launched every year at the Conference of States Parties, the report will include analytical chapters on key issues affecting the impact of the Treaty. In future years, there will also be analysis of States Parties' efforts towards Treaty compliance, as well as analysis and critical reflection on the application of the Treaty rules on arms transfers, through spotlight and comparative case studies. A final element of the annual reports will be analysis of data gathered to reflect implementation, adherence and universalisation activities.
- **CASE STUDIES:** These are a dynamic feature of the ATT Monitor project, and will be developed and released throughout the year. They will focus on arms transfers of concern, emerging and best practice in specific thematic areas, and critical analysis of issues relevant to the ATT.
- **A WEB-PLATFORM:** This will contain the most up-to-date information on arms transfers and ATT universalisation and implementation.

The vision for the ATT Monitor is that it will engage with data submitted by States, and provide a critical and analytical lens. However, this data will not physically exist until the first anniversary of the Treaty's entry into force (24 December 2015), while data from States on transfers will not be available before 31 May 2016.

This means that this first edition of the ATT Monitor does not include analysis of official State-submitted data. Instead, it engages with some of the broader issues around the ATT, namely interpretation of legal and procedural obligations, examining existing methodologies for implementation activities, and exploring processes for data gathering and triangulation.

KEY THEMES FROM THE 2015 ATT MONITOR

The first chapter includes an in-depth examination of legal obligations on importers and exporters. Chapter 1.1 focuses on exporters' legal obligations, specifically on Export and Export Assessments (Article 7) and the key legal issues for exporting States to consider before reaching a decision on a transfer. Chapter 1.2 illustrates the process of reaching decisions on transfers to a hypothetical country, while exploring in detail how and where information is available to aid decision-making. Chapter 1.3 examines importer obligations (Article 8) by exploring elements and examples of existing State systems, and reflecting on challenges and opportunities that present themselves to existing and prospective States Parties.

The second chapter examines the infrastructure and systems found in a sample range of countries. Chapter 2.1 illustrates the different ways States Parties can effectively meet the institutional, regulatory and legislative obligations outlined in the Treaty. It profiles the approaches taken by six States from different trading categories: exporters, importers and transit or transshipment countries. Chapter 2.2 considers the ATT Baseline Assessment Project (ATT-BAP). It examines some of the key lessons that have emerged and what the findings of the BAP actually mean for the ATT.

The third chapter looks at reporting activities by UN Member States as per their obligations to other relevant disarmament and arms control initiatives. This includes a dataset that covers all UN Member States (all signatories and States Parties, as well as those States yet to join the ATT). It bases its analysis on secondary data from the UN Register on Conventional Arms, the UN Comtrade database and publicly available national reports on arms transfers.

The fourth and final chapter examines some of the existing multilateral financing mechanisms that have been established to further implementation and universalisation activities. It recognises that assistance comes in many forms, and that focusing on funding sometimes means bypassing other efforts to build capacity. Its goal is to illustrate how assistance activities are helping to strengthen the overall impact of the Treaty. It also outlines representative financial support mechanisms currently helping states and civil society to implement the ATT.

MAKING THE ATT WORK

The international campaign for the ATT achieved widespread support because at its heart, there is a simple and unavoidable premise – that for too long, international arms transfers have flowed into some of the world's conflict zones, and into the hands of human rights abusers. The humanitarian consequences of an arms trade out of control can no longer be ignored.

The ATT adopted by governments on 2 April 2013 embedded this humanitarian imperative into its core. It also effectively enshrined into international law a common minimum standard which commits all States Parties to ensuring a consistent degree of responsibility and oversight in arms transfers. Each State Party is also encouraged to implement additional and higher standards. This is important – it will enable States Parties to address rapidly changing strategic and geopolitical realities, and allows them the operational flexibility to keep pace with improving international standards and emerging best practices.

The true positive impact of the Treaty will now be found in action on the ground towards implementation. Effective and full implementation of the ATT and the establishment of new international norms will be the true arbiters in gauging the real-life humanitarian and human security impacts.

THE ATT MONITOR'S ROLE IN TREATY IMPLEMENTATION

The ATT Monitor has been created to provide civil society monitoring on the effectiveness of Treaty implementation. In order to meet this mandate, the ATT Monitor must establish a vision and clear parameters, which are outlined in this inaugural edition. Part of that task is to determine the thresholds for 'effective' implementation and adherence, based on what the Treaty text obliges States to do.

Numerous points within the Treaty text contain a degree of ambiguity about the benchmark or threshold States must meet. For instance, there is little guidance in international practice and analysis on how to measure 'overriding risk' – which is part of the export assessment States Parties must undertake in order to implement Article 7. In such circumstances, the ATT Monitor will develop a clear methodology to assess these ambiguities. Therefore, to address the issue of 'overriding', Chapter 1.1 of this edition analyses some of the legal interpretations of 'overriding' risk, and explores, for example, how interpretative declarations made by some States Parties can help clarify the ambiguities.

The Object and Purpose of the Treaty (Article 1), which clearly states the goal ('object') of the Treaty, and the reason why the Treaty exists in the first place ('purpose') is an important starting point in assessing the effectiveness of ATT implementation.

Article 1 reads:

"The object of this Treaty is to:

- Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms;
- Prevent and eradicate the illicit trade in conventional arms and prevent their diversion;

for the purpose of:

- Contributing to international and regional peace, security and stability;
- Reducing human suffering;
- Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties."⁴

The Object and Purpose of the ATT illustrate the driving force behind the Treaty. They put each of the Articles into context, and guide the implementation efforts of States Parties. They are among the key elements the ATT Monitor will use to carry out its analysis in this and future editions.

BENCHMARKS FOR EFFECTIVE IMPLEMENTATION

Some critics have argued that the ATT establishes standards that are currently below the existing standards for a number of export control regimes around the world (for example, regional agreements like the Economic Community of West African States (ECOWAS) Convention or the European Union (EU) Common Position, or national control systems like those found in most Wassenaar Arrangement members). States have stressed that the ATT is intended to establish the 'floor' – the minimum common standards that all States Parties have to ascribe to. It is worth recognising that this minimum standard, once applied globally, does in fact significantly improve current practice. In addition, there is considerable scope and space within the ATT for States Parties to establish higher standards within their own legal and administrative frameworks.



**PERSONNEL FROM THE
UN OPERATION IN COTE
D'IVOIRE CONDUCT ARMS
EMBARGO INSPECTIONS OF
GOVERNMENT FORCES IN
WESTERN COTE D'IVOIRE**

CREDIT: © UN PHOTO / KY CHUNG

⁴ | Arms Trade Treaty, Article 1 (adopted 2 April 2013, entered into force 24 December 2014) _UNTS_(ATT) Art 1, <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>



FOR THE ATT TO BE IMPLEMENTED EFFECTIVELY, STATES PARTIES SHOULD ENSURE THAT THEIR LEGAL, ADMINISTRATIVE, INSTITUTIONAL AND PROCEDURAL EFFORTS CONTRIBUTE TO REALISING THE OBJECT AND PURPOSE OF THE TREATY

For the ATT to be implemented effectively, States Parties should ensure that their legal, administrative, institutional and procedural efforts contribute to realising the Object and Purpose of the Treaty. There are numerous guidance notes and analytical tools available to strengthen implementation efforts while remaining true to the purpose of the Treaty. These tools include the legal and procedural considerations of how to understand and implement the obligations enshrined in Article 7 of the Treaty – both of which are deliberated at length in Chapters 1.1 and 1.2 of this edition. These tools are likely to ensure the development of a common vision that has the highest degree of impact and effectiveness. Such an approach will enable States Parties to establish systems and procedures that advance the Treaty's humanitarian objective of reducing human suffering.

The degree to which commitments and obligations enshrined in the Treaty are interpreted in a robust manner will be crucial for the future success of the Treaty in several ways. For example, under the definitions found in Articles 2, 3, 4 and 5.2 (which deal with the scope of the Treaty), weapons such as grenades appear to be outside a rigid literal interpretation of the definitions of the Treaty.⁵ However, most States Parties have control systems that are very broad in their definitions and therefore already include items like grenades in their control lists. This includes most members of the Wassenaar Arrangement, the EU Common Position and its associated military list, the US government's International Traffic in Arms Regulations, and others.

Another rationale for robust implementation is to maximise the Treaty's positive impact on crisis situations. This is important not just for procedural, institutional and administrative reasons, but for real implications on the ground, in precisely those conflict situations which weighed so heavily during the Treaty negotiations (for example, Libya, South Sudan and Syria).

In some of these cases, the UN Security Council has been unable to reach agreement on arms embargoes. As a result, the decision to transfer arms was left to individual states, greatly increasing the risk of arms moving through the loopholes that existed between the patchwork of regional or other multilateral agreements established to guide in the decision-making process. These include, but are not limited to, the EU Common Position, the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, the ECOWAS Convention, the Nairobi Protocol, and the Southern African Development Community Firearms and Ammunition Protocol.

In such circumstances, as the ATT Monitor case study on South Sudan has illustrated, the need for effective implementation of the ATT is vital. Uncontrolled flows of arms and ammunition into conflict zones like South Sudan have destabilised efforts to broker peace, resulting in humanitarian crises which the global community has struggled to cope with.

⁵ | Doermann, K. 2013. 'Adoption of a Global Arms Trade Treaty: Challenges Ahead', International Committee of the Red Cross, Geneva, 6 April 2013; pg. 4, accessed 10 July 2015; <http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/160413summary.pdf>



KEY FINDINGS FROM ATT MONITOR CASE STUDY #1: ARMS TRANSFERS TO SOUTH SUDAN

The ATT Monitor Case Study on arms transfers to South Sudan has illustrated in devastating detail the consequences of minimal or lax common standards on arms transfers to situations of conflict.

There is credible evidence to show that weapons transfers have continued throughout the current crisis, ignoring repeated risks of both misuse and diversion. Some shipments have included ammunition produced as recently as July 2014.⁶ The vast majority of these transfers have not been reported publicly (through the UN Register, UN Comtrade or national reports).

China sold more than US\$30 million worth of arms and ammunition to South Sudan in 2014, which included some 27 million rounds of small-calibre ammunition and sizeable quantities of rocket-propelled grenades, anti-personnel grenades, anti-tank missiles, assault rifles and pistols.⁷ The Chinese authorities have since rectified the situation; in September 2014 they announced that all arms transfers to South Sudan would cease until further notice.⁸

Between 2012 and 2014, the Sudan People's Liberation Army (SPLA) procured 20 'Cougar' and 30 'Typhoon' type Armoured Personnel Carriers worth US\$9 million from the Canadian-owned manufacturer Streit Group at its United Arab Emirates production facilities.⁹

The case study concludes that had the ATT been in effect since the start of the South Sudanese conflict, the vast majority of arms transfers into the country would have been in violation of the Treaty's standards. If properly implemented, the ATT will have tangible and real impacts on arms flows into crisis situations like South Sudan. It will bolster the peace process and improve the lives of the hundreds of thousands of people who are suffering and displaced within their own country.

⁶ | Gridneff, I. 2014. China Halts Arms Sales to South Sudan after Norinco Shipment. Bloomberg, 30 September 2014, accessed 10 July 2015; <http://www.bloomberg.com/news/articles/2014-09-29/china-halts-weapons-sales-to-south-sudan-after-norinco-shipment>

⁷ | Ibid

⁸ | Anderson, M. 2015. Obama urged to press for ban on arms sales to South Sudan combatants. *The Guardian*, 9 January 2015, accessed 10 July 2015; <http://www.theguardian.com/global-development/2015/jan/09/obama-urged-un-resolution-ban-arms-sales-south-sudan>

⁹ | Binnie, J. 2014. AAD: Streit outlines key customers. IHS *Jane's Defence Weekly*, 18 September 2014, accessed 10 July 2015; <http://www.janes.com/article/43448/aad-streit-outlines-key-customers>

INDICATORS OF SUCCESS FOR THE ATT

It is worth taking stock of a number of elements that will be crucial to the ultimate success of the ATT in changing the status quo. The discussion below is by no means exhaustive, and Articles such as Prohibition (Article 6) and Diversion (Article 11) – which are not covered in depth by this year's edition of the ATT Monitor – are of immense significance to overall effective control of the arms trade.

As well as establishing the minimum requirements for risk assessments related to arms transfers (Article 7), the ATT has also established – for the first time in arms control systems – a risk indicator on gender-based violence and violence against women and children. There is little existing practice or precedence around these subjects in the world of arms control to help guide the decision-making process for licensing officers. However, much experience and expertise can be found in other relevant government institutions that are mandated to protect human rights, and women's rights in particular. More analysis of this can be found in Chapters 1.1 and 1.2.

The Treaty also addresses the legal obligations of importers (Article 8), on transit and transshipment (Article 9), on brokering (Article 10) and on enforcement (Article 14). Whereas only a limited number of countries are exporters of arms and ammunition, nearly every country is an importer of these items, so the importance of obligations for importers and transit and transshipment countries should not be underestimated. More analysis on the obligations of importers can be found in Chapter 1.3.

Another key element that will determine the future success of the Treaty is the obligation to report on all implementation activities that States Parties have undertaken to become treaty compliant. As such, States Parties will have to submit reports that take stock of institutional, legislative, procedural and human resource initiatives that align country systems and institutions with Treaty obligations. This should not be a difficult exercise for more than half the States Parties to the ATT – they already have some degree of comprehensive control system in place. But for a number of current and future States Parties, this will be a comprehensive challenge. Some of these challenges are explored in greater detail in Article 2.1, where the experiences of small importers, small transit or transshipment states, and small and emerging exporters are explored.

Taking stock of current systems through voluntary initiatives like the recent ATT Baseline Assessment Project is another key area that will determine future success. The ATT-BAP survey enables respondents to review current institutional and legislative frameworks, and eventually identify where gaps exist that will impact Treaty compliance. Chapter 2.2 elaborates on some of these institutional and legislative challenges, and provides a snap-shot of the status of national systems of survey respondents. Following on from this analysis, Chapter 4 looks specifically at financial assistance that has been made available to States and civil society to undertake implementation and capacity-building activities intended to strengthen Treaty compliance.

Related to this, the Treaty also obliges all States Parties to submit annual reports of their transactions, as laid out in the article on Reporting (Article 13). This is one of the strongest features of the ATT, given that all other relevant reporting mechanisms are voluntary, and States are not required to report every year. As the vast majority of current States Parties already provide annual reports that are publicly accessible, there is a growing expectation that annual State Party reports should also be made publicly available. More analysis of reporting trends can be found in Chapter 3 of this edition.

LOOKING AHEAD

In order for the Treaty to live up to its humanitarian mandate, effective implementation at this early phase will be key. The Goals and Objectives of the ATT offer clear guidance to ensure that implementation efforts move in the direction of the Treaty's vision. Successful implementation of the Treaty will ultimately be measured by the lives saved as a result of meaningful compliance.

