



**ATT
MONITOR
REPORT
2015**

EXECUTIVE SUMMARY

COVER PHOTO:

**20 MM ROUNDS BEING INSPECTED
AT BAGRAM AIR FIELD, AFGHANISTAN,
23 MARCH 2011**

CREDIT: STAFF SGT. SHEILA DEVERA
© U.S. DEPARTMENT OF DEFENSE

© 2015 ATT Monitor.
Control Arms Secretariat, 355 Lexington Ave,
3rd Floor, New York, NY, 10017, USA.
www.armstreatymonitor.org

Attribution: Please cite the work as follows:
Control Arms Secretariat, 2015.
ATT Monitor 2015, New York, 25 August 2015

All photos within this publication are provided courtesy of Al Jazeera, Conflict Armament Research, the Royal Norwegian Ministry of Defence, Oxfam International, the United Kingdom Ministry of Defence, the United Nations, and the United States Department of Defense. All imagery is copyrighted by its provider and has been used in good faith in compliance with all Creative Commons, Crown Copyright, DoDI 5410.20 or other terms of use.

EXECUTIVE SUMMARY

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 to radically change the international arms trade. 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 ATT Monitor is a new project of the Control Arms Secretariat, which aims to track the implementation and impact of the Treaty through independent research and analysis. It will provide unbiased, credible and verifiable information on implementation and universalisation activities. To avoid duplication, it synthesises existing sources of expertise into a 'first-stop' information source for policymakers, civil society, the media and the public.

How the Treaty is interpreted and applied in its earliest years will be vital to its long-term effectiveness. Numerous points within the text contain some ambiguity about the thresholds States should meet. This first ATT Monitor report offers analysis and tools that enable readers to best understand these benchmarks for effective Treaty implementation.

To make the links between the Treaty text and day-to-day application, the 2015 ATT Monitor examines several articles in more detail:

- Article 6 covers circumstances in which a transfer of arms is prohibited
- Article 7 addresses the risk assessment States Parties must undertake before authorising exports
- Article 8 sets out obligations for importing States
- Article 11 obliges States Parties to prevent the diversion of legitimate arms transfers.

All are key to successful Treaty implementation, but may sometimes be open to different practical interpretation.

LEGAL APPLICATION

Article 6 prohibits transfers in violation of UN Security Council decisions or international treaties to which a State is party, or if it is known that the arms would be used to commit crimes such as genocide or war crimes. If a transfer is not prohibited, Article 7 obliges exporting States to undertake a thorough risk assessment before authorising an arms transfer. This includes current and future risk, and involves six steps. States are required to determine whether a transfer would: contribute to peace and security, or be used to commit or facilitate a serious violation of international humanitarian or human rights law; serious acts of gender-based violence or violence against women and children¹, or an offence under international instruments relating to terrorism or transnational organised crime. By drawing on international law, the ATT Monitor offers States a framework through which to assess the potential risk of an arms transfer in each of these six steps.

An exporting State must next consider whether there are any mitigating measures that it or the importing State could undertake to reduce the risks identified. States must then determine whether there remains an 'overriding risk' of any of the negative consequences listed in Article 7 (as described above).

¹ | As the first international treaty to specifically connect gender-based violence with the international arms trade, the ATT will necessarily set critical precedents in this area

While the ATT does not define 'overriding risk', a number of legal interpretations are emerging from interpretive declarations submitted with ATT ratifications. One such interpretation equates the term to mean 'clear' or 'substantial'. Based on this threshold, if an exporting State Party determines that an 'overriding risk' remains, the proposed export must not be authorised.

PRACTICAL APPLICATION

To ensure robust implementation of the ATT, States Parties must strive for consistency in its interpretation and application. But how might this work in practical terms? The application of Articles 6, 7 and 11 to a series of proposed arms transfers to a hypothetical country illustrates how arms transfers can be evaluated by potential exporting States.

The country of 'Canteron' presents concerns on several levels, from internal unrest, repression and corruption to warring neighbours and regional instability. In such a country, ATT Articles 6, 7 and 11 would require careful analysis of multiple factors, including (among others) respect for international law by the recipient entity, limits to fundamental freedoms, human rights violations by law enforcement, and regional conflict and sectarian violence.

Such analysis means careful consideration of both the nature of the recipient and the nature of the equipment to be transferred. It involves consulting a variety of sources, both public and confidential, especially where significant doubts exist, and the exercise of judgement in potentially very fluid and tense contexts. It also obliges States Parties to consider not only current risks, but also the likelihood of items being misused in future.



**BOXES OF 5.56MM CALIBRE
AMMUNITION**

CREDIT: © SGT BRIAN GAMBLE / MOD

THE ROLE OF IMPORTERS

The ATT also contains important obligations for arms importers. Both exporting and importing States must work together if the ATT is to fulfil its humanitarian purpose. Article 8 obliges importing States to ensure they can provide information to and assist an exporting State in its export assessment. Such measures may include end-use or end-user documentation. If an importing State fails to comply, an exporting State should refuse the export licence.

The significance of these import measures will be determined by the effectiveness with which States interpret them. The development of universal norms and standards for end-use and end-user certificates, as well as certification to verify deliveries and mechanisms to ensure agreed norms are complied with, will be crucial. Similarly, the accuracy and completeness of States' reporting will help ensure the effectiveness of the ATT's import provisions.

SNAP-SHOT COUNTRY SURVEYS

To profile current ATT implementation, the ATT Monitor offers a snap-shot survey of six States Parties, from two different regions (for comparative purposes) and with different trade perspectives. Norway and Serbia are exporters of conventional arms, while Mexico aspires to grow its trade in high-tech industries related to the defence sector. The Bahamas is primarily an arms importer, and Malta and Panama – located on key trading routes – are used for transit and transshipment. These States reflect the common challenges faced by most small and medium-sized countries which are in the process of reforming national laws and systems to become compliant with the Treaty. Their experiences offer a 'real world' analysis of the types of challenges and opportunities most States Parties are likely to face.

The study assesses whether each State has the legal and institutional framework to address its Treaty obligations. It draws primarily on open-source data available online, first seeking data directly correlating to ATT implementation, then reviewing existing legal and institutional frameworks.

All six States were found to have systems in place that cater, or could cater, to the ATT obligations, although few rested on regulations enacted specifically in response to the Treaty. Several offer approaches that could guide other countries.

The study reveals how hard it can be to discern the mechanisms States use to implement the ATT. Some parts of the Treaty appear easy to adapt to, for instance, establishing a comprehensive scope of products and activities, or detailed procedures for licensing and reporting. Other concepts, such as risk mitigation, are more complicated and require more established common practices to be developed.

Most importantly, the study highlights the value of building on existing resources. For the ATT to work, the tools States use to implement it need real-life applicability.

ESTABLISHING THE BASELINE

To help States understand their ATT obligations and promote effective implementation, the Arms Trade Treaty-Baseline Assessment Project (ATT-BAP) was established. This project aims to guide States on issues to address before ratification and on implementation measures. It enables them to identify areas requiring assistance, and establishes a baseline against which to monitor ATT implementation.

The ATT-BAP database provides an at-a-glance assessment of current ATT implementation. As of 10 July 2015, 60 surveys were voluntarily completed, which included 49 of the 69 States Parties to the ATT. Analysis of the survey results revealed a number of trends relevant to the future of the ATT. The surveys found that a majority of State respondents have national control lists that cover conventional arms exports, imports, transit or transshipment, and brokering. Forty-three respondents stated that they always conduct a risk assessment prior to authorisation of an arms export. That said, 47 States noted that they assessed for violations of international humanitarian and human rights law, and 44 States assessed the risk that weapons transferred would be used to commit acts of gender-based violence. Findings such as these enable not only effective measurement of Treaty compliance, but also help prioritise assistance and cooperation activities.

REPORTING ON PROGRESS

States' own reporting is central to efforts to monitor ATT implementation. The Treaty obliges all States Parties to submit annual reports of their transactions (Article 13). This is a notable strength of the ATT, given that all other relevant reporting mechanisms are voluntary and do not require annual reporting.

Building on its earlier report entitled 'First Findings', the ATT Monitor assesses States' reporting activities when the ATT came into force. It expands the dataset to include all 193 UN Member States and shows which States reported conventional arms imports or exports during 2009-13 using three reporting mechanisms: The UN Register of Conventional Arms, the UN Commodity Statistics Database (Comtrade) and national reports.

Of these 193 States, 159 (82 per cent) publicly reported on their arms imports or exports via at least one of the three mechanisms. This indicates existing acceptance of public reporting. However, States' reporting was often patchy, with several reporting in some but not all years, or information sometimes being withheld. A clear benefit of the Arms Trade Treaty will be to improve the consistency and quality of public reporting on the arms trade.

PROVIDING IMPLEMENTATION ASSISTANCE

To help States implement the Treaty to full effect, the ATT also provides for each State Party in a position to do so to assist others, on request. This covers legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Examples include stockpile management, disarmament, demobilisation and model legislation.

This year, the ATT Monitor focuses specifically on financial assistance for acceding to and implementing the ATT. Such assistance has been prominent to date, particularly from three multilateral mechanisms:

- UN Trust Facility Supporting Cooperation on Arms Regulation² (UNSCAR)
- UN Development Programme (UNDP)
- European Union (EU) ATT Outreach Project.

With an ever-increasing number of projects offering assistance, States and implementing agencies must be as transparent as possible in publishing information about their assistance activities. They must also consider best practice and lessons across the whole assistance spectrum. Improved transparency and coordination will reduce project duplication and facilitate the matching of requests and offers of assistance, helping ensure the full potential and goals of the ATT are met.

CONCLUSION

States, the UN and civil society have all celebrated that the ATT has been negotiated and adopted, and has entered into force. In order for it to live up to its humanitarian mandate, full and effective implementation at this early phase will be key. This, alongside the establishment of new international norms, is what will decide the Treaty's true impact on human lives worldwide.



² | UNSCAR also promotes implementation of the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA)

