



The Arms Trade Treaty Finally an outcome and what next?

SUMMARY *The fruit of years of negotiations and intensive civil society campaigning, the recent agreement of the Arms Trade Treaty (ATT) has been widely presented as a major achievement. Exceptionally it was adopted by resolution of the United Nations General Assembly (UNGA).*

The wide scope of the treaty, which includes small arms and light weapons (SALW) and, to some extent ammunition, alongside the main conventional arms has satisfied most stakeholders. As has its extensive coverage of different forms of arms transfers.

However some regret that loopholes, as well as imprecise wording of several treaty provisions, offer room for states to circumvent core treaty obligations, since they will have exclusive responsibility for interpreting and implementing it.

The major hindrance for the impact of the ATT relates to uncertainty about its global relevance. In particular, Russia, China and India – among the world's main arms traders – abstained from the vote, and do not plan to ratify it in the short term. The United States, number one supplier of conventional weapons, may encounter major difficulties in the treaty ratification, despite its favourable vote.

The EU, which has faced problems in securing its position in the negotiations, has strongly supported the ATT. It expects it to improve the competitiveness of the EU arms industry, which must already submit to binding standards at European level.

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A long process

Following years of work, the [Arms Trade Treaty](#) (ATT) was finally adopted on 2 April 2013 by UNGA [resolution](#), [voted](#) by an overwhelming majority: 155 in favour, with 3 opposed (Iran, North Korea and Syria), and 22 abstentions (including Russia, India, China and Indonesia). The [EU's High Representative](#) for foreign affairs and security policy, Catherine Ashton, declared that the EU "supports the swift entry into force and effective implementation of ATT". It is seen as a step to making the €21.9 billion (2012 figure) conventional arms trade more responsible and transparent.

The context

Unlike weapons of mass destruction and land mines, trade in conventional weapons has not been subject to any legally binding global instrument. The relevant international regulation is made up of a patchwork of UN embargos, transparency agreements, such as the [UN Register of Conventional Arms](#), as well as voluntary codes of conduct and regional agreements. The ATT process, launched formally in 2006, was intended to close this gap.

The process

After six years of consultations, mandated by several UN resolutions, the negotiating conference in [July 2012](#) that was supposed to finalise the treaty failed to overcome



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inter-state divergence and procedural disagreement. That failure left a bitter taste, in particular among civil society campaigners. The consensus intended to be the means for the ATT's adoption again could not be reached in March 2013. That left the second choice method for adoption, a UNGA resolution.

Main features of the new treaty

The ATT introduces specific and legally binding measures to regulate international trade in conventional arms, with the explicit **purpose** of:

- contributing to peace and security,
- reducing human suffering, and
- promoting inter-state cooperation, transparency and state responsibility.

According to the ATT, each signatory country has to evaluate, through its national control system before authorisation is given for any transaction, whether the arms may be used in a way contrary to the purpose of the treaty. The treaty establishes clear conditions to guide national assessments. Three of these (art. 6) if encountered, imply **strict prohibition** on allowing a transfer:

- UN arms embargo,
- violation of international agreements relating to illicit trafficking, and
- knowledge of risk of genocide, crimes against humanity and war crimes.

If such prohibition does not apply, the **assessment procedure** must still evaluate to what extent the arms transfer would:

- undermine/improve peace and security,
- be used in serious violations of human rights and international humanitarian law,
- facilitate terrorist acts, or
- be used in transnational organised crime.

The treaty includes some **transparency** measures, in the form of:

- Reporting on national laws and administrative procedures, in the framework of establishing national control systems,
- Annual reporting of authorised exports and imports of conventional arms.

The ATT secretariat will receive and distribute reports, and assist states in effective implementation of the treaty. It will do so through facilitating cooperation between state parties in fields such as institutional capacity building, legal advice and technical, material and financial assistance.

NGOs' evaluations

Most NGOs active in the area of arms trade (with some notable [exceptions](#)) have warmly welcomed the adoption of the treaty, for which they had actively [campaigned](#) for years, as a good basis for regulating the conventional arms trade. However, while some points are seen as major achievements, a number of weaknesses have also been pointed out.¹

Scope

The comprehensive scope of the treaty was one of the main demands of most NGOs. The ATT establishes provisions on the export, import, transit, trans-shipment and brokering of arms transfers. However it excludes gifts and loans, which some NGOs had demanded be included.² It is nevertheless considered to be a success that the treaty contains no exemption clause for weapons transfers labelled as part of a "national defence cooperation agreement". That, it had been [feared](#), would leave many current and future transfers outside the scope of an ATT. Although the ATT's article 26(2) states that the treaty cannot be used as grounds to void existing defence cooperation agreements, in case of conflicting provisions, the ATT will prevail.³

Types of arms covered

NGOs are pleased that all major types of conventional arms,⁴ such as tanks and missiles are covered by the ATT. It also includes small arms and light weapons (SALW). They regret that ammunition is not listed among them in article 2, even if some special provision for this is foreseen, as well as for [parts and components](#), in articles 3 and 4. However, even if prohibitions and the

assessment procedure apply to them, other major parts of the treaty, such as transparency measures and measures to prevent diversion, do not apply to ammunition or parts and components.⁵

Anti-diversion provisions

Campaigners welcome article 11, which puts the obligation on states to take measures to prevent the diversion of all arms listed in article 2.

Criteria for transfer prohibition/ authorisation

The inclusion of gender-based violence, as a consideration to be taken into account in the assessment procedure, is viewed as an important achievement, even if stronger provisions would have been preferred.⁶

Some [commentators](#) regret that the treaty leaves too big a margin of interpretation to states, and that the criteria should have been more precisely defined. Some criteria proposed by NGOs, such as socioeconomic development, internal repression or corruption have also been left out.

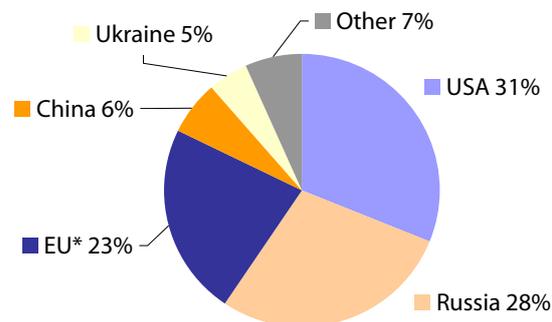
Standpoints of main arms traders

Arms transfers: key traders

The economic crisis appears not to have affected the global arms trade: according to the Stockholm International Peace Research Institute ([SIPRI](#)), the volume of international transfers of conventional weapons in the period 2008-2012 was 17% higher than in the 2003-2007 period. The increase of imports in recent years applies especially to Asia, the Americas and Africa, with Europe and Middle East on the contrary noting a clear decrease.

The five main suppliers account for 93% of the global arms trade (see figure 1). The US and Russia top the ranks, together with the EU (with Germany, France and the UK the biggest suppliers there), but China has recently emerged as a rising supplier.

Figure 1. Top five exporters of conventional weapons (2012)

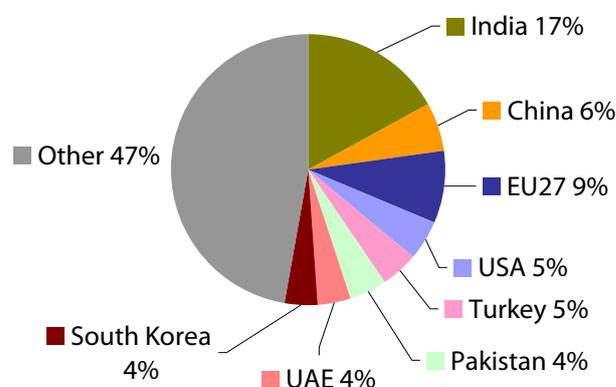


EU*: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Netherlands, Poland, Portugal, Romania, Spain, Sweden, UK

Data source: [SIPRI](#)

China is also, after India and the EU, the third biggest recipient of conventional arms transfers (see figure 2). Pakistan, South Korea, Singapore and Turkey are among the top ten importers. Indian and Chinese imports come predominantly from Russia (79% and 69% respectively).

Figure 2: Top importers of conventional weapons (2012)



Data source: [SIPRI](#)

Key traders' positions in negotiations and beyond

United States (US)

In April 2013, the US voted in favour of the ATT, but its positions are subject to deep internal splits which influenced the ATT negotiation process. That also makes some [commentators](#) doubt that the US will ratify the ATT soon.

The Obama administration, contrary to the preceding Bush administration, actively

[supported](#) the negotiations, on condition that the ATT be unanimously adopted. However on the eve of the 2012 election, pressured by the strong gun lobby, the Obama administration asked for more time to consider the treaty. This has been blamed by many for the failure to reach agreement in July 2012.⁷

The final abandonment of its "red line" of "consensus adoption", accepting a vote in the General Assembly instead, will make it even more difficult for the Obama administration to get it ratified by [the Senate](#). Senators are divided on the issue, despite [reassurances](#) that the ATT will not have any impact on US domestic arms markets, or on US citizens' constitutional rights.

Russia

Responsible for 28% of global arms transfers, Russia's abstention has been presented as a "realistic" move to preserve its interests. In addition, Russia views the ATT as "quite empty" and vague, and regrets in particular that a rule forbidding transfer of arms to non-governmental entities, such as Syrian opposition forces, was not included. Russia is nevertheless satisfied that the ATT leaves the assessment procedure in the jurisdiction of the exporting country, and does not exclude joining the ATT after further analysis of its pros and cons.⁸

The European Union

Applying its own high and binding standards for arms transfer, codified in the form of the [EU common position](#) of 2008, the EU has always been among the main supporters of a strong ATT, which it sees as fostering the competitiveness of the [EU arms industry](#). The EU has been particularly active in promoting the ATT among third countries in the framework of six regional seminars, organised on the basis of Council decisions.⁹

In its [decision](#) of January 2013, the Council decided not only to support the completion of ATT negotiations, but also the

implementation of the new treaty in EU Member States (MS) and third countries.

Despite agreement in favour of the ATT which was carried through to the EU MS's positive vote on the UN resolution, some difficulties arose in the negotiation process and with internal EU coordination.

The first difficulty concerned the **role of the EU** at the ATT conference. Having [observer](#) status in the UN, the EU wanted to become a party to the ATT as a "regional integration organisation", but that was opposed by China in retaliation for the EU arms embargo.¹⁰ This was coupled with internal EU divergences on some thematic issues (such as civilian firearms, modes of control of trade) and on the Commission's participation, alongside the MS, in the negotiation process.¹¹

Second, the issue of the inclusion/exclusion of **intra-EU arms transfers** in the scope of the treaty was the subject of difficult negotiations. Indeed [Directive 2009/43](#) of the EP and the Council establishes an authorisation system for intra-EU defence transfers which allows five exceptions from prior authorisation and which could be seen as incompatible with the ATT. At the end a solution was found to preserve the *acquis communautaire* in the defence market: article 26(1) of ATT contains a [disconnection clause](#) covering this matter.

In its [resolution of 13 June 2012](#) the **European Parliament** strongly backed the adoption of a comprehensive and global ATT. Particular emphasis was put on a broad set of criteria to assess arms transfers, including specific anti-corruption criteria, the impact of a country's socioeconomic development and a record of good governance, that were not finally included in the ATT. The EP also stressed the vital importance of transparency measures and exchange of information between state parties for the effective implementation of the treaty.

India

The Indian government [abstained](#) in the UN vote on the ATT. As the largest arms importer India has difficulty in accepting the general ATT principle that the assessment of the internal situation of third countries is up to the exporting state. The ATT has not fully addressed India's concerns on illegal arms transfers to non-governmental groups. For India exporting countries should not supply arms without strict end-user verification, in order to avoid proliferation to non-state and terrorist groups. The present treaty is also judged deficient in monitoring and verification, which India says should be handled by an international agency.¹²

China

Despite the [positive evolution](#) of its stance on the ATT, China abstained during the UN vote. Indeed, in July 2012, China abandoned its previous position against the inclusion of ammunition and SALW in the ATT and showed more flexibility than in previous meetings. However the failure to adopt the ATT through consensus, thus raising fears of establishing a precedent, is [presented](#) as the main reason for its final abstention. For China only a treaty reached through consensus can achieve universal support and effective implementation, and therefore have China's support.

Ukraine

Ukraine, which ranks high among arms sellers due to the post-Soviet military industrial complex, voted in favour of the ATT.

Indonesia

Indonesia's abstention was explained by the alleged imbalance in the provisions of the treaty between securing the interests of exporting and importing countries. In the [government's view](#), too much power is given to exporters to assess the internal situation of buyer countries. This is seen as detrimental to a country's right to self defence.

Perspectives

Open to signature from 3 June 2013, the ATT will enter into force 90 days after 50 ratifications are completed. It can only be amended (for the first time) at the earliest six years later.

EU Foreign Ministers adopted a [decision](#) authorising MS to sign the ATT during the Council meeting of 27 May.

The **global ambition of the treaty** risks being put seriously in question by the high number of abstentions. Among these are some major players in the arms trade, which are unlikely to ratify the ATT in the short term. Observers stress that once in force, its application, exclusively in states' hands, risks being subjective and sensitive to domestic defence industry interests.¹³

Some note the particular challenge that ATT implementation would carry for African states, highly dependent on arms imports, deficient in administrative capacities, and often presenting problems with their human rights records. It is argued in the short term, before the implementation of ATT, there may be an explosion in the arms trade, including illicit arms, with **stockpiling of major arms** and ammunition by dictators and non-governmental armed groups aimed at securing their provision in advance of future restrictions.¹⁴

After the ATT comes into force, it will be difficult to implement it because of the lack of a common enforcement mechanism, based on a standardised system of authorisation, and no clarity on any end-use of monitoring measures. It leads [some](#) to conclude that the main tangible result of ATT will be to **legitimise the status quo** in the arms trade. According to [others](#), the ATT will have political and legal value, mostly as a **point of reference** to monitor states' conduct.

Further reading

[The UN Arms Trade Treaty: arms export controls, the human security agenda and the lessons of history/](#) Bromley M., Cooper N., Holtom P., September 2012.

[The EU's involvement in negotiating an Arms Trade Treaty/](#) Depauw S., EU non-proliferation consortium, December 2012.

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<http://www.library.ep.ec>
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Endnotes

- ¹ [UN puts human rights at heart of historic Arms Trade Treaty/](#) Amnesty International, 2 April 2012; [Handicap International celebrates the passage of the ATT/](#) press release, 2 April 2013. "The Arms Trade Treaty – What's in, what's not?"/ Pytlak A., Global Campaigns Manger, Control Arms, oral contribution to experts round-table, "The outcome of DipCon 2, The ATT – One step ahead for global arms control?"/, EU Office Friedrich Ebert Stiftung, 9 April 2013, Brussels.
- ² [Getting it right: The pieces that matter for ATT/](#) Oxfam briefing paper, March 2013.
- ³ [Worth the paper? The Arms Trade Treaty/](#) McDonald G., e-International Relations, 17 April 2013.
- ⁴ The formal scope of the treaty defined in article 2 covers: battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, small and light weapons. Article 3 and 4 also include ammunitions/munitions and parts and components, but not all provisions of the treaty apply to those items.
- ⁵ [Les états s'accordent pour réglementer le commerce des armes/](#) Seniors J., Note de GRIP, 4 Avril 2013.
- ⁶ [Gender-based violence in the Arms Trade Treaty/](#) Global Action to Prevent War blog, 8 April 2012; [Gender and Arms Trade Treaty – Make it binding/](#) PeaceWomen, April 2013.
- ⁷ [The US cannot fix the UN Arms Trade Treaty/](#) Bromund T.R, The Heritage Foundation, 13 March 2013.
- ⁸ [The treaty essentially ended up being quite empty. The Russian Ministry of Foreign Affairs on the flaws of ATT adopted by the UN General Assembly/](#) Russia beyond the Headlines, 6 April 2013.
- ⁹ In particular Council decisions in support of the ATT: [Council Decision 2013/43/CFSP](#), [Council Decision 2010/336/CFSP](#) and [2009/42/CFSP](#).
- ¹⁰ [The Arms Trade Treaty, day four: As a new draft arrives, China speaks and the EU begs/](#) Bromund T.R, 22 March 2013. [The EU's involvement in negotiating an Arms Trade Treaty/](#) Depauw S., EU Non-proliferation Consortium, December 2012, p. 14.
- ¹¹ ATT contre TIC: les dessous d'un combat inégal/ Jehin O., Agence Europe Bulletin on CDFP and NATO, No 587, 26 February 2012; [The EU's involvement in negotiating an Arms Trade Treaty/](#) Depauw S., EU Non-Proliferation Consortium, December 2012, p. 2.
- ¹² [India abstains and exposes the Arms Trade Treaty/](#) Kanwal G., Institute for Defence Analysis and Studies, 8 April 2013.
- ¹³ Le traité sur le commerce des armes peut s'appliquer sans préjudice du droit communautaire/ Jehin O., Agence Europe Bulletin on CSDP and NATO, No 596, 4 April 2013.
- ¹⁴ [Making the Arms Trade Treaty work in practice is the real challenge for Africa/](#) Coetzee B., Institute for Security Studies, Pretoria, 7 April 2013.