



December 23, 2016

## The Arms Trade Treaty

On December 9, 2016, President Barack Obama transmitted the Arms Trade Treaty (ATT) to the Senate. The United States signed the ATT, which is a multilateral treaty of unlimited duration, on September 25, 2013. The treaty's objectives are to "[e]stablish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms ..." and to "[p]revent and eradicate the illicit trade in conventional arms and prevent their diversion." (Unless otherwise noted, all quotes in this product are taken from the treaty text or the article-by-article analysis submitted by Secretary of State John Kerry to the Senate).

### Background

Although governments and non-governmental advocates has discussed concepts similar to the ATT for decades, a 2004 speech by the UK Foreign Secretary is widely credited with providing critical support for the treaty. In December 2006, the UN General Assembly (UNGA) requested the UN Secretary-General to form a group of governmental experts to

examine ... the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms

and provide a report to the UNGA. Citing the group's report, the UNGA decided in December 2009 to convene a conference that would "elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms."

After the first meeting of this conference, which took place in July 2012, was unable to reach consensus on a treaty text, the General Assembly decided in December 2012 to convene another conference in March 2013. A draft submitted to the 2012 conference by the conference president served as the basis for the discussion. On March 28, 2013, the conference president determined that there was no consensus on a revised treaty text and reported this fact to the UNGA.

An April 2013 UNGA vote approved the treaty in its negotiated form. Only Iran, North Korea, and Syria voted against the treaty; notable abstentions included Russia, China, and India. The ATT opened for signature on June 3, 2013, and entered into force on December 24, 2014. As of November 28, 2016, 130 states had signed the treaty, which has 87 states-parties. The United States participated in the drafting of the ATT and voted for it in the UNGA.

The United States has an extensive system for controlling the transfers of defense articles and dual-use items and the ATT would likely require no significant changes to U.S.

policy, regulations, or law. According to the President's transmittal message, U.S. "national control systems and practices to regulate the international transfer of conventional arms already meet or exceed" ATT requirements.

### Scope

The ATT regulates trade in conventional weapons between and among countries. It does not affect sales or trade in weapons among private citizens within a country. The treaty obligates states-parties engaged in the international arms trade to establish effective national control systems to review, authorize, and document the import, export, brokering, transit, and transshipment of conventional weapons, and ammunition. Such control systems are also to cover weapons "parts and components" when transferred in a form that provides the capability to assemble a complete weapon. The ATT does not cover exports of replacement parts.

The ATT covers the following weapons:

- battle tanks,
- armored combat vehicles,
- large-caliber artillery systems,
- combat aircraft,
- attack helicopters,
- warships,
- missiles and missile launchers, and
- small arms and light weapons.

States-parties' definitions of the first seven categories of weapons must, at a minimum, include items covered by the descriptions in the UN Register of Conventional Arms. For the last category, such definitions "shall not cover less than the descriptions used in relevant" UN instruments when the ATT entered into force. These instruments, according to the United States, are the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, and the UN Register of Conventional Arms.

### Key Provisions

#### Prohibited Transfers

The ATT prohibits states-parties from approving treaty-covered transfers in cases when the state "has knowledge"

when reviewing the proposed transfer that the exported items would be used in the

commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a party.

The treaty also prohibits states-parties from approving treaty-covered transfers to any country that violates a UN Security Council Resolution adopted under Chapter VII of the UN Charter. In addition, the ATT prohibits transfers which would violate the exporting state'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.

Regarding arms transfers not prohibited by the above criteria, the ATT obligates states-parties to adopt pre-export review processes which “assess the potential” that the exported items “would contribute to or undermine peace and security” or “could be used” to “commit or facilitate” human rights violations, international humanitarian law violations, or acts of terrorism or transnational crime. The treaty prohibits states-parties from authorizing such exports if, after conducting the aforementioned review and “considering available mitigating measures,” the government “determines that there is an overriding risk of any” of these consequences. According to the United States, governments would “balance” such risks “against the potential that the conventional arms or items would contribute to peace and security.”

The ATT also requires the aforementioned pre-export reviews to “take into account the risk” that exported items could be “used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.” But the treaty does not appear to prohibit the export of weapons in cases where this particular risk is present.

### **Diversion**

The ATT also requires states-parties to “take measures to prevent” the diversion of covered arms and ammunition, to mitigate risks of diversion by cooperating and exchanging information, and to “take appropriate measures” if the government detects diversion. The treaty encourages states-parties to “share relevant information with one another on effective measures to address diversion.” The ATT does not define “diversion,” but, according to the United States, “is understood to mean the illicit or unlawful rerouting or redirection of a transfer of conventional arms, contrary to a State Party's own national control laws.” Finally, the ATT encourages cooperation between States Parties in the

development of implementing legislation, institutional capacity-building, and other pertinent areas.

### **Reporting Requirement**

The ATT also requires that states-parties submit annual reports to a treaty-established Secretariat regarding authorized or actual exports and imports of treaty-specified items. States-parties may include the same information in these reports, which may “exclude commercially sensitive or national security information,” that they would submit pursuant to other “relevant United Nations frameworks,” the treaty states. The Secretariat's role is largely confined to disseminating treaty-related reports and lists of national points of contact, facilitating and matching offers of assistance, and organizing Conferences of States Parties. The second such conference took place in August 2016.

### **Cooperation among States-Parties**

The ATT provides for various measures of cooperation among states-parties. For example, the treaty requires states-parties to “cooperate with each other...to effectively implement” the ATT, as well as “afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant” to the treaty. The ATT also provides mechanisms for states-parties to offer and request assistance for such matters as managing weapons stockpiles, developing legislation, and institutional capacity-building. Each state-party “in a position to do so shall provide such assistance, upon request.”

### **Amendments**

An ATT party may propose amendments to the treaty six years after entry into force. After that, states-parties may consider amendments every three years. Amendments will be adopted by a three-quarters majority vote of states-parties at the next appropriate states-parties' conference “[i]f all efforts at consensus have been exhausted.” A party may withdraw from the ATT 90 days after notifying the depository if its withdrawal.

### **U.S. “Understandings”**

Secretary of State Kerry has recommended that the United States include several “understandings” in its instrument of ratification stating U.S. interpretations of various treaty provisions. These understandings include providing the definition of “diversion” described above, declaring that the ATT term “transfer” “applies exclusively to the international trade in the conventional arms and items covered by the Treaty,” and asserting that the ATT covers “both ammunition and munitions fired, launched, or delivered by” the weapons covered by the treaty.

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