

SECTION 1

THE SCOPE OF THE ARMS TRADE TREATY



Photo: Australian Federal Police

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WHAT IS THE PURPOSE OF THE ATT?

This section provides an overview of what constitutes 'conventional arms' covered within the scope of the treaty. The section will then clarify how the ATT defines a 'transfer'. These are important points of clarification because they demonstrate that the ATT is concerned with international trade and is not a disarmament treaty, nor does it interfere with a state's sovereign right to regulate domestic firearm ownership and use. To begin with, however, this section provides an overview of the ATT's object and purpose. This will direct the reader's interests to more detailed examinations of the treaty's provisions offered in later sections of this brief.

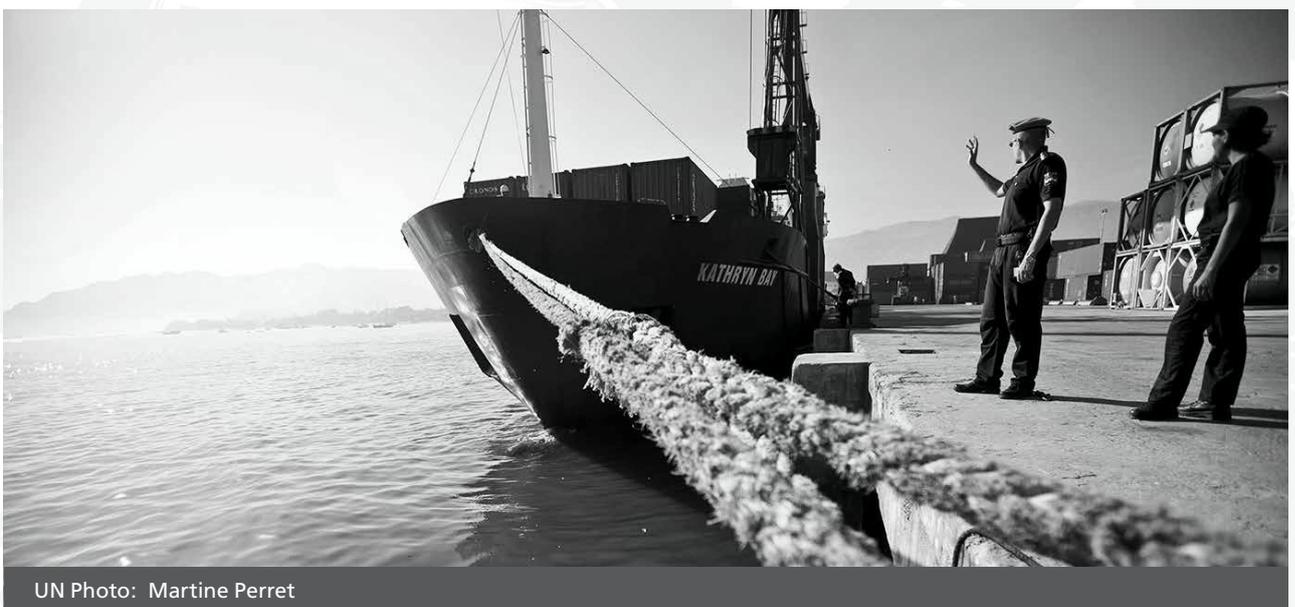
Before the ATT came into force, there were no agreed standards on the international trade in conventional arms.¹ As a result, the global trade in conventional arms remained poorly regulated.² The need for the ATT was first identified by UN Member States because poorly regulated conventional arms were imposing devastating impacts on security and socio-political, economic and humanitarian conditions around the world.

With the adoption of the ATT, this is changing. The treaty now requires States Parties, as responsible members of the international system, to encourage conduct that reinforces and establishes norms for secure international arms transfers. The treaty is founded on the principles of the Charter of the United Nations.³ ATT States Parties commit themselves to 'promot[ing] the establishment and maintenance of international peace and security'.⁴ Collective security is best achieved if states cooperate to establish norms that reinforce peace and security, human rights, and development.⁵

The ATT promotes and coordinates the 'responsibility of all States, in accordance with their respective international obligations, to effectively regulate the international trade in conventional arms, and to prevent their diversion'.⁶

*'Given the widespread death, destruction and political destabilization caused by small arms and light weapons, CARICOM Member States are of the firm opinion that there is an urgent need for strict transfer controls which would contribute to political stability and to peace and security in countries throughout the world.'*⁷

HE Ambassador Philip Sealy, Permanent Representative of the Republic of Trinidad and Tobago to the United Nations on behalf of CARICOM Member States (2006)



UN Photo: Martine Perret

Object and purpose of the Treaty

The object of the ATT is to prevent and eradicate the diversion of legal arms into the illicit arms trade or their diversion to unauthorised end-uses and end-users. This is done by establishing 'the highest possible common international standards for regulating or improving the regulation' of conventional arms transfers.⁸

The purpose of the ATT is to contribute to international and regional peace, security and stability; to reduce human suffering, and to promote cooperation, transparency and responsible action by States Parties in the international trade of conventional arms.⁹

The benefit of preventing and eradicating illicit trade in conventional arms is that it diminishes the destructive ability of organised criminals, terrorist organisations or end-users who commit crimes of atrocity and grave breaches of the Geneva Convention. The treaty also requires States Parties to assess the risk of each transfer and to determine whether it would contribute to, or undermine, peace and security.¹⁰ It does this by asking states to assess the likelihood that conventional arms could be used to commit or facilitate serious violations of IHL and international human rights law (IHRL) as well as commit or facilitate gender-based violence.¹¹

*'Conventional weapons, especially small arms, outside state control, do not just maim and kill, but enable rape, theft, extortion, terrorism and insurgency. Moreover, they present a means for the commission of genocide, war crimes, ethnic cleansing and crimes against humanity, which the international community committed to protecting populations from under the responsibility to protect principle at the 2005 UN World Summit. The framework provided by the ATT for prevention and eradication of the illicit trade and diversion of these weapons can help us protect populations against these atrocity crimes.'*¹²

HE John Quinn, Australian Permanent Representative to the United Nations, Geneva, and Ambassador for Disarmament, Arms Trade Treaty Second Conference of States Parties (2016)

What does the Treaty cover?

Article 2 Scope¹³

- (a) Battle tanks
- (b) Armoured combat vehicles
- (c) Large-calibre artillery systems
- (d) Combat aircraft
- (e) Attack helicopters
- (f) Warships
- (g) Missiles and missile launchers
- (h) Small arms and light weapons.

Article 3 Ammunition/munitions¹⁴

Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2(1), and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such ammunition/munitions.

Article 4 Parts and components¹⁵

Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2(1) and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such parts and components.



UN Photo: Isaac Billy

What constitutes a transfer?

'For the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as "transfer".'¹⁶

The terms 'export', 'import', 'transit', 'trans-shipment' and 'brokering' are not defined, and therefore such definitions are up to the state to interpret. It is worth noting that, for the purposes of the treaty, 'transfer' does not include equipping deployed security personnel or armed forces, provided these forces do not retransfer viable arms, ammunition or parts and components, equip other actors with them, or are negligent in leaving viable arms, ammunition or parts and components in the field of operation.¹⁷ In this context, conventional arms, ammunition and parts and components must remain under the ownership and control of a state's forces.¹⁸

The ATT does not infringe upon sovereign arms control legislation

The Preamble to the ATT clearly states that the scope of the treaty does not infringe upon the sovereign right of a State Party to establish arms control legislation within its jurisdiction.¹⁹ The state retains the exclusive right to legislate civilian ownership, possession and use of arms in accordance with its own legal or constitutional system.²⁰ The arms trade is legitimate and necessary to secure the political, security, economic and commercial interests of states.²¹ Therefore, States Parties retain the right under the treaty to decide which conventional arms are suitable for and appropriate to their security-sector personnel and armed forces in the performance of their duties, and to manufacture and trade in this equipment responsibly.²²

Implementation of the ATT should not be cited as superseding existing agreements in defence cooperation between States Parties.²³ The ATT should not be incompatible with existing or future international agreements, provided that the obligations established in these agreements are consistent with the treaty's purpose of contributing to international and regional peace, security and stability, and of reducing human suffering by promoting responsible trade.²⁴

THE ATT IS NOT A DISARMAMENT TREATY

The purpose of the ATT is to establish the highest possible standards for secure transfers of conventional arms. The ATT promotes 'cooperation, transparency and responsible conduct by States Parties in the international arms trade, in order to build confidence among States Parties'.²⁵ The treaty seeks to regulate international trade. It is not a disarmament treaty and sets no requirements to reduce a state's current stockpile levels. It does not proscribe to States Parties, nor does it interfere in a state's sovereign right to manufacture or procure arms to equip its own security-sector personnel, armed forces and citizens, or to trade in arms responsibly.



UN Photo: Kibae Park

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- 1 ATT, GA Res 67/234B, UNGA 67th Session Agenda Item 94 A/RES/67/234 B (2 April 2013).
- 2 ATT Second Conference of States Parties President 'Promotion of Arms Trade Treaty Universalization' (25 August 2016), Second Conference of States Parties (Geneva, 22–26 August 2016), ATT/CSP2/2016/WP.4/Rev 1, 1. <http://www.thearmstradetreaty.org/images/CSP2_Statements/Treaty_Universalization_Paper-14_July_2016_Rev.1.pdf>.
- 3 United Nations Charter Article 51.
- 4 ATT Preamble; United Nations Charter Article 26.
- 5 ATT Preamble.
- 6 ATT Principles.
- 7 HE Ambassador Philip Sealy, Permanent Representative of the Republic of Trinidad and Tobago to the United Nations on behalf of CARICOM Member States in the General Debate on all Disarmament and International Security Agenda Items in the First Committee (5 October 2006).
- 8 ATT Article 1.
- 9 ATT Article 1.
- 10 ATT Article 7.
- 11 ATT Article 7.
- 12 HE John Quinn 'Opening Statement of Australia', Arms Trade Treaty, Second Conference of States Parties (22–26 August 2016), 4[3]. <http://www.thearmstradetreaty.org/images/CSP2_Statements/Australia_ATT_2CSP_High_Level_Statement_-_final_-_for_website.pdf>.
- 13 See ATT Article 2. For the purposes of this treaty, the activities of the international trade comprise export, import, transit, transshipment and brokering, hereafter referred to as 'transfer'. And this treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party's ownership.
- 14 ATT Article 3.
- 15 ATT Article 4.
- 16 ATT Article 2(2).
- 17 ATT Article 2(3).
- 18 ATT Article 2(3).
- 19 ATT Preamble [4], Principles [1], [4].
- 20 ATT Preamble [4].
- 21 ATT Preamble.
- 22 United Nations Charter Article 51; ATT Principles.
- 23 ATT, Article 26.
- 24 ATT, Articles 1, 26.
- 25 ATT Second Conference of States Parties President (note 37) 1.

REINVIGORATING THE NARRATIVE

THE BROADER BENEFITS OF
THE ARMS TRADE TREATY



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