

I. The Arms Trade Treaty

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The 2014 Arms Trade Treaty (ATT) is the first international legally binding agreement to establish standards for regulating the trade in conventional arms and preventing the illicit trade in weapons.¹ The 2001 United Nations Firearms Protocol is also legally binding but only relates to controls on the trade in firearms.² The ATT sets out controls on the trade in all conventional arms covered by the UN Register of Conventional Arms (UNROCA) as well as small arms and light weapons, with central provisions also applicable to ammunition and parts and components.³ The process of negotiating the ATT under the auspices of the UN began in 2006 and concluded in 2013.⁴ The final UN conference on the ATT, held in March 2013, ended without achieving consensus on the treaty text. Nonetheless, the ATT was adopted following a vote in the UN General Assembly on 2 April 2013 and opened for signature on 3 June 2013.⁵ Article 22 of the ATT stipulates that the treaty shall enter into force 90 days after the 50th state deposits its instrument of ratification. On 25 September 2014 a group of eight states deposited their instruments of ratification of the ATT, bringing the total number of ratifying states to 53.⁶ As a result, the ATT entered into force on 24 December 2014, 19 months after it opened for signature. By 31 December 2014, 130 states had signed the ATT and 61 had ratified it.⁷ In

¹ For a summary and other details of the Arms Trade Treaty (ATT) see annex A, section I, in this volume.

² UN General Assembly Resolution 55/255 of 31 May 2001, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol), adopted 31 May 2001, entered into force 3 July 2005, *United Nations Treaty Series*, vol. 2326 (2007), <<http://www.unodc.org/unodc/en/treaties/index.html>>. This instrument is discussed in more detail in chapter 14, section II, in this volume.

³ United Nations Office for Disarmament Affairs (UNODA), United Nations Register of Conventional Arms (UNROCA), <<http://www.un.org/disarmament/convarms/Register>>. Each year all United Nations member states are requested to report, on a voluntary basis, information to the UNROCA on their exports and imports of 7 categories of major conventional weapons. They are also invited to provide information on transfers of small arms and light weapons. For more information on the UNROCA see chapter 10 in this volume.

⁴ For background to the United Nations process see Holtom P., 'The Arms Trade Treaty', *SIPRI Yearbook 2014*; Holtom, P. and Bromley, M., 'Arms trade treaty negotiations', *SIPRI Yearbook 2013*; and Holtom, P. and Wezeman, S. T., 'Towards an arms trade treaty?', *SIPRI Yearbook 2007*.

⁵ The resolution to adopt the treaty was by a recorded vote of 154 in favour and 3 against with 23 abstentions. United Nations Office for Disarmament Affairs (UNODA), 'Following lengthy process which began in the 1990s, General Assembly today passes Arms Trade Treaty', UNODA update, 2 Apr. 2013, <<http://www.un.org/disarmament/update/20130402>>.

⁶ These states were Argentina, the Bahamas, Bosnia and Herzegovina, Czech Republic, Portugal, Saint Lucia, Senegal and Uruguay.

⁷ Arms Trade Treaty (note 1).

comparison, the UN Firearms Protocol required 40 ratifications to enter into force and this took four years to achieve.⁸

The speed with which the ATT achieved 50 ratifications and entered into force reflects the instrument's high profile and strong support from a broad coalition of states, particularly in Europe, Africa and the Americas, as well as non-governmental organizations (NGOs) and sections of the European defence industry. Under the ATT, states are required to: (a) put in place effective mechanisms for controlling transfers of conventional arms; (b) apply certain criteria when deciding whether to permit arms exports; and (c) comply with associated reporting requirements. However, in all cases the text contains a lack of specificity and a range of caveats that leave key obligations in many areas open to differing national interpretation.⁹ Moreover, several important arms exporters, such as China and Russia, and arms importers, including India and Saudi Arabia, have not signed the treaty. As of 31 December 2014, the states that had signed the ATT accounted for 66 per cent of global arms exports and 41 per cent of global arms imports during 2010–14, while the states that had ratified it accounted for 27 per cent of global arms exports and 15 per cent of global arms imports over the same period.¹⁰

Preparations for the First Conference of States Parties

According to Article 17(1) of the ATT, the First Conference of States Parties (CSP1) must be held within a year of the treaty entering into force. It is due to take place on 24–27 August 2015.¹¹ Mexico's offer to host the event has been approved.¹² Informal consultations were held in Mexico City on 8–9 September and Berlin on 27–28 November 2014. Preparatory meetings are planned for Port of Spain on 23–24 February 2015 and Geneva on 6–8 July 2015. A third round of informal consultations is planned for Vienna on 20–21 April.¹³ Jorge Lomónaco, Mexico's Permanent Representative to the UN's office in Geneva and to other international organizations,

⁸ UN Firearms Protocol (note 2).

⁹ See Parker, S., 'The Arms Trade Treaty: A step forward in small arms control?', *Small Arms Survey, Research Notes*, no. 30 (June 2013).

¹⁰ Figures taken from the SIPRI Arms Transfers Database, <<http://www.sipri.org/databases/armstransfers>>. The difference between the 2 sets of figures is due to the fact that a number of significant arms exporters have signed but not yet ratified the ATT, most notably Israel, South Korea, Ukraine and the USA. This is also the case for a number of significant arms importers, such as Bangladesh, Brazil, Chile, Colombia, Greece, Israel, Singapore, South Korea, Turkey, United Arab Emirates and the USA.

¹¹ United Nations Office for Disarmament Affairs (UNODA), <<http://www.un.org/disarmament/ATT/csp1>>.

¹² Stohl, R., 'First formal Arms Trade Treaty preparatory meeting held in Port Of Spain, Trinidad', *Stimson Center*, 2 Mar. 2015, <<http://www.stimson.org/spotlight/first-formal-arms-trade-treaty-preparatory-meeting-held-in-port-of-spain-trinidad>>.

¹³ United Nations Office for Disarmament Affairs (UNODA) (note 11).

was appointed chair of the preparatory process and of CSP1. Mexico is also responsible for the Provisional Secretariat of the ATT.¹⁴ Attendance at the Mexico City and Berlin meetings was limited to states that had signed the ATT and NGOs that had played a role in promoting it. This helped foster an atmosphere free of the more heated debates that marked parts of the ATT negotiating process.

Article 17 of the ATT lists a number of topics for states parties to consider at conferences of the states parties. It also specifies that states parties shall adopt by consensus at CSP1 the rules of procedure for future conferences. Other important issues for states parties to tackle at CSP1 are: (a) the financing mechanisms for meetings and work under the ATT; (b) the location and role of the Permanent Secretariat tasked with overseeing the treaty's implementation; and (c) the development of templates for states to use when reporting on treaty implementation.¹⁵ Experience from other treaties indicates that delaying decisions on these issues—particularly those related to funding mechanisms—can be detrimental. For example, the 2008 Convention on Cluster Munitions entered into force in 2010 but states are still trying to agree a funding model for the treaty's Implementation Support Unit.¹⁶

To expedite the discussion process on the above key issues, facilitators were appointed at the informal consultation in Berlin to collect and coordinate states' views in each area.¹⁷ States also established a 'Friends of the Chair' committee composed of the host countries of the informal consultations and preparatory meetings.

Rules of procedure

Debates about rules of procedure were a recurring theme throughout the ATT negotiating process. At the start of the process, states agreed that decisions would be adopted 'by consensus', allowing Iran, the Democratic People's Republic of Korea (DPRK, North Korea) and Syria to veto adoption of the treaty text. However, the text generated a high level of support

¹⁴ The ATT states that pending the creation of the ATT Secretariat, a 'Provisional Secretariat' shall convene CSP1 and 'be responsible for the administrative functions covered under this Treaty', pending the outcome of CSP1.

¹⁵ For further discussion of these points see Bauer, S., Beijer, P. and Bromley, M., 'The Arms Trade Treaty: challenges for the First Conference of States Parties', SIPRI Insights on Peace and Security no. 2014/2, Sep. 2014, <http://books.sipri.org/product_info?c_product_id=481>.

¹⁶ For a summary and other details of the Convention on Cluster Munitions see annex A, section I, in this volume. Convention on Cluster Munitions, 'Non-paper submitted by the coordinators on general status and operation of the Convention on the subject of resource mobilization for the financing of the future ISU', [n.d.], <<http://www.clusterconvention.org/meetings/intersessional-meetings/april-2014/>>.

¹⁷ France was appointed facilitator for secretariat-related issues, Ghana for financing issues, Sweden for reporting and Mexico for rules of procedure. Centre for Peace, Security and Armed Violence Prevention, 'Summary report of the second round of informal consultations held in Berlin on 27–28 November 2014', [n.d.], <<http://cps-avip.org/resources>>.

during the negotiating process and was subsequently adopted through a vote in the General Assembly (see above). Discussions in Mexico City and Berlin indicate that states will be able to agree rules of procedure during CSP1 that reflect this mix of striving for consensus while retaining the option of majority voting. This is likely to result in a formulation based around Article 20 of the ATT, which establishes a decision-making process for the adoption of amendments to the treaty. Specifically, Article 20(3) provides that the parties shall make ‘every effort to achieve consensus on each amendment’. If these efforts fail, amendments can be adopted by a three-quarters majority. This rule takes account of the lessons learned from other treaties, in particular the landmine and cluster munitions treaties, where amendments are adopted by a two-thirds majority, and the 1996 Comprehensive Nuclear-Test-Ban Treaty, where amendments can be blocked by a single negative vote.¹⁸ A related issue for states parties to resolve is whether changes to the rules of procedure and budgetary decisions should be taken by consensus.

One aspect of CSP rules of procedure where agreement may be difficult concerns the level of involvement afforded to civil society organizations that oppose the ATT and states that are not signatories to the treaty. The ATT mentions the terms ‘civil society’ and ‘industry’ but neither defines them, nor outlines the role they should play at CSPs or preparatory meetings. Both Mexico and Germany decided to invite to the first and second informal consultations only civil society organizations that have supported the ATT. Some states, such as Finland, France, the United Kingdom and the United States, are keen to expand the process to allow a wider range of organizations to attend—including defence industry bodies and civil society organizations that are opposed to the ATT such as the US National Rifle Association. The USA refused to attend the Berlin event, citing the restrictions on which civil society groups were invited.¹⁹ There are also differences of opinion about whether states that have neither signed nor ratified the ATT should be able to attend—and what level of participation they would have—and what speaking rights should be afforded to NGOs. These issues are important, since it is assumed that the procedures established during the preparatory process will apply during CSPs.²⁰

A related issue to be addressed in advance of CSP1 is the voting rights of states that have ratified the treaty prior to CSP1, but not within the time-

¹⁸ For a summary and other details of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (APM Convention); the Convention on Cluster Munitions; and the Comprehensive Nuclear-Test-Ban Treaty (CTBT) see annex A, section I, in this volume.

¹⁹ Brosco, D., ‘The day the Obama administration holstered its gun’, *Foreign Policy*, 13 Feb. 2015.

²⁰ Stohl, R., ‘Spotlight: Arms Trade Treaty implementation moves forward in Berlin’, Stimson Center, 3 Dec. 2014, <<http://www.stimson.org/spotlight/arms-trade-treaty-implementation-moves-forward-in-berlin>>.

frame required under the ATT. For a state party to be fully ratified in time for CSP1, accession must have occurred 90 days before the conference. The ATT entered into force earlier than anticipated, and it was therefore difficult to predict the exact date of CSP1 when some states began their accession process. The 90-day deadline may be difficult to meet in some circumstances. How this issue will be resolved remains to be seen.

Role and location of the Permanent Secretariat

States have differing opinions on whether the ATT Secretariat should play an active role, meaning that it would advise on aspects of treaty implementation, or be largely confined to administrative functions.²¹ However, discussions in 2014 mainly focused on whether the secretariat should be linked to the UN system, and in particular where it should be located.²² Offers to host the Permanent Secretariat were made by Austria (in Vienna), Switzerland (in Geneva), and Trinidad and Tobago (in Port of Spain), while Finland, South Africa and Sweden proposed candidates for the Head of Secretariat.²³ The discussions in Mexico City and Berlin failed to produce a clear indication of which location is likely to be selected. There was support for all the options and none of the states concerned indicated that they were willing to withdraw their bids.²⁴ States recognized that Vienna and Geneva are already host to a number of organizations focused on export controls and arms control, respectively. Their function as UN cities means that both also have permanent diplomatic representation from many countries around the world, covering arms- or disarmament-related issues. Several states, in particular in Africa and Latin America, noted that Port of Spain has a strong claim, however, given the impact of the illicit arms trade in the Caribbean, the prominent role played by Trinidad and Tobago in the ATT process and the need to locate more international secretariats in developing countries.

Funding mechanisms

Discussions on funding mechanisms covered the budget for the secretariat, and funding future CSPs as well as other activities required under the treaty. The international financial climate meant the issue of funding mechanisms received significant attention in Mexico City and Berlin. The options on the table were: (a) voluntary contributions; (b) assessed con-

²¹ Irsten, G., 'CSP preparatory committee: Berlin', Reaching Critical Will, Women's International League for Peace and Freedom (WILPF), [n.d.], <<http://www.reachingcriticalwill.org/disarmament-fora/att/csp-prep/berlin>>.

²² Irsten (note 21).

²³ Irsten (note 21); Bauer, Beijer and Bromley (note 15); and Permanent Representation of South Africa to the International Organizations in Vienna, 'Note verbale', document no. A364/14, Vienna, 26 Nov. 2014.

²⁴ Stohl (note 12).

tributions from states parties; or (c) a hybrid model that combines both approaches. Many states were unwilling to take on the long-term financial responsibility associated with assessed contributions, while others were keen to avoid the instability that could result from reliance on voluntary contributions. During the discussions in Mexico City and Berlin it became clear that states were likely to agree a hybrid model of funding for the secretariat. There are a number of possible hybrid models of funding, however, and which option states will choose—or even whether agreement will be possible—is unclear. Significant divisions remain, particularly on whether there should be a cap on contributions and whether there should be a minimum contribution.

Reporting

Under Article 13 of the ATT, each state party is obliged to provide the secretariat with an initial report outlining the ‘measures undertaken in order to implement this Treaty’ as well as annual reports detailing ‘authorized or actual exports and imports of conventional arms’.²⁵ States have recognized the need to develop templates to facilitate reporting. Most work to date has focused on the template for the initial report. Here, states have drawn on the questionnaire developed by the Arms Trade Treaty-Baseline Assessment Project (ATT-BAP).²⁶ The questionnaire aims to help states assess whether they are in a position to sign and ratify the ATT, and identify areas where implementation assistance may be required. When developing the template on transfers, states will need to think about the future relationship between the ATT and the UNROCA. Article 13 notes that ATT reports on arms transfers *may* contain the same information submitted to the UNROCA. Some states have suggested using the UNROCA as the ATT reporting mechanism or replacing it with an ATT reporting mechanism. Given the differences between the two instruments, however, this could prove problematic.²⁷

²⁵ Arms Trade Treaty (note 1).

²⁶ Arms Trade Treaty-Baseline Assessment Project (ATT-BAP), <<http://www.armstrade.info>>.

²⁷ United Nations Office for Disarmament Affairs (UNODA) (note 3). In particular, the UNROCA is a universal instrument while the ATT is only binding on states parties. In addition, states are only ‘invited’ to submit reports on transfers of small arms and light weapons to the UNROCA, while this will be obligatory for ATT reporting. Furthermore, the UNROCA invites states to report on arms acquisitions from national production and military holdings, elements that are not part of ATT reporting.