

I. The Arms Trade Treaty

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The Arms Trade Treaty (ATT) was adopted via a United Nations General Assembly vote in April 2013 and entered into force on 24 December 2014. The ATT is the first legally binding international agreement to establish standards regulating the trade in conventional arms and preventing their illicit trade.¹ As of 31 January 2016, 80 states had ratified or acceded to the ATT and a further 50 had signed the treaty. Most of the states that have ratified or acceded to the ATT are from Europe or Latin America and the Caribbean. Of the 54 African states, 38 have signed the treaty but only 18 have ratified it.² However, the proportion of both signatories and states parties is lowest in Asia. Of the 28 states in Central Asia, East Asia and South Asia, only 10 are signatories and only Japan is a state party.

At the first Conference of States Parties (CSP1), held in Cancun, Mexico on 24–27 August 2015, 119 states attended: 67 as states parties, 41 as signatories and 11 as observers. Under the ATT, CSP1 was required to adopt, by consensus, rules of procedure for itself and future CSPs. However, it was widely agreed that CSP1 would also need to make progress on a number of additional issues crucial to the practical relevance of the treaty. These included financing mechanisms for future CSPs, the location, role and financing mechanisms of the Permanent Secretariat, and templates for states parties to use when submitting reports under the ATT. To facilitate reaching agreement in these areas, CSP1 was preceded by a series of formal and informal preparatory meetings in Mexico, Germany, Trinidad and Tobago, Austria and Switzerland. While CSP1 made progress in all areas, a number of issues were left unresolved. In order to address these points, states parties agreed to hold an ‘extraordinary meeting’ on 29 February 2016. Any issues not dealt with there will have to wait until CSP2, which will be held in Geneva, Switzerland on 22–26 August 2016 under the chairmanship of Ambassador Emmanuel Imohe of Nigeria.³

¹ While the 2001 UN Firearms Protocol is also legally binding, it only covers controls on the trade in firearms. United Nations, General Assembly Resolution 55/255, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (UN Firearms Protocol), adopted 31 May 2001, entered into force 3 July 2005.

² The 18 African states that have ratified the Arms Trade Treaty (ATT) are Burkina Faso, the Central African Republic, Chad, Côte d’Ivoire, Ghana, Guinea, Lesotho, Liberia, Mali, Mauritania, Mauritius, Niger, Nigeria, Senegal, Seychelles, Sierra Leone, South Africa and Togo.

³ ATT Secretariat, ‘Second Conference of States Parties’, [n.d.].

Rules of procedure and funding for future CSPs

Despite being a potential source of division, the rules of procedure were adopted by consensus at the beginning of CSP1, clearing the way for substantive discussions on other issues. There are strong differences of opinion among states—which were apparent during the ATT negotiating process—about whether arms control-related decision-making processes should be based on consensus or majority voting.⁴ On matters of both substance and finance, the rules of procedure note that states will strive for consensus but, if all efforts fail, a two-thirds majority can take a decision.⁵ Non-governmental organizations (NGOs), observer states and industry representatives have been afforded speaking rights at CSPs. States also adopted—by consensus—mechanisms for financing future CSPs. States parties will make ‘assessed contributions’ to cover the costs of future CSPs or any subsidiary bodies it may establish. Signatory and observer states that attend a CSP or subsidiary body will pay an attendance fee, which is also based on an assessed contribution.⁶

The location, head, role and funding of the ATT Secretariat

One of the most hotly contested issues in the run-up to CSP1 was the location of the ATT’s Permanent Secretariat. Offers to host the Secretariat had been made by Austria, in Vienna; Switzerland, in Geneva; and Trinidad and Tobago, in Port of Spain. At CSP1, Switzerland narrowly defeated Trinidad and Tobago in a secret poll of states parties. It was also agreed that the ATT Secretariat should be ‘adequately staffed’ with ‘necessary expertise’ in a ‘minimized structure’. Switzerland will pay the Secretariat’s rent for four years and the UN Development Programme (UNDP) will provide administrative support until it is fully established.⁷

At CSP1, Dumisani Dladla from South Africa was selected to head the Secretariat until CSP2 but, as of 31 January 2016, had yet to take up his position. A ‘full scale merit-based selection process’ will be launched in 2016 to select a long-term head, to be agreed at CSP2.⁸ A management committee on finan-

⁴ See Bromley, M., Cooper, N. and Holtom, P., ‘The UN Arms Trade Treaty: arms export controls, the human security agenda and the lessons of history’, *International Affairs*, vol. 88, no. 5 (Oct. 2012), pp. 1029–48.

⁵ ATT Secretariat, ‘Arms Trade Treaty, First Conference of the States Parties, Cancun, Mexico, 24–27 August, 2015, Final Report’, 27 Aug. 2015.

⁶ ATT Secretariat (note 5). Attendance fees will be based on an adjusted version of the United Nations scale of assessment, which uses a number of different factors such as gross national income and size of population to determine different states’ contributions to the UN’s budget. See ‘Member states’ assessed share of the UN budget’, Global Policy Forum, [n.d.].

⁷ ‘Geneva to host Arms Trade Treaty secretariat’, Swiss Info, 27 Aug. 2015; and ATT Secretariat (note 5).

⁸ ATT Secretariat (note 5).

cial oversight was established and charged with acting as an ‘interim bridge’ for administrative measures until Dladla takes up his position. In addition, a directive was adopted that outlines states parties’ expectations of how the Secretariat will operate.⁹ A funding mechanism for the Secretariat was also established and an agreement reached on a provisional budget. However, a number of issues relating to the role and functioning of the Secretariat were left unresolved, including its structure and the number of staff positions, meaning that the provisional budget will need to be revised.¹⁰ These outstanding issues will be addressed during the extraordinary meeting in February 2016.

Reporting on treaty implementation and arms transfers

Under Article 13(1) of the ATT, each state party is obliged to provide the Secretariat with a report detailing the ‘measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures’. States must also provide the ATT Secretariat with an annual report ‘for the preceding calendar year concerning authorized or actual exports and imports of conventional arms’. The ATT does not explicitly state that either of these reports will be made public, noting only that they ‘shall be made available, and distributed to States Parties by the Secretariat’.

Experience from other arms control and export control instruments indicates that the quality of states parties’ initial and annual reports would be improved by the adoption of agreed reporting templates.¹¹ Provisional reporting templates for both the initial report and the annual report were presented to states parties and discussed at CSP1, but no agreement was reached on their adoption. Instead, the final report of CSP1 notes that states parties decided to ‘take note . . . of the reporting templates’ and to ‘establish an informal working group on reporting’ to continue work on their development.¹² Both templates include a mix of ‘mandatory’ elements, which relate to the binding elements of the ATT, and ‘voluntary’ elements, which relate to its non-binding elements. The difficulty with adopting the templates was linked to differences of opinion about which aspects of the ATT are binding and which are non-binding. The lack of clarity in many areas of the ATT increases the scope for such differences.

The provisional template for the annual report is similar in appearance to the UN Register of Conventional Arms (UNROCA) reporting template—

⁹ ATT Secretariat (note 5).

¹⁰ ATT Secretariat, ‘Communique II: recent developments and progress of work’, 8 Dec. 2015.

¹¹ Holtom, P. and Bromley, M., *Implementing an Arms Trade Treaty: Lessons on Reporting and Monitoring from Existing Mechanisms*, SIPRI Policy Paper no. 28 (SIPRI: Stockholm, July 2011).

¹² ATT Secretariat (note 5).

which would allow states to submit their ATT report to UNROCA—but contains a number of differences.¹³ In both templates states have to give express permission for their submissions to be made publicly available.

The initial report has to be submitted within one year of the ATT's entry into force for the state party. The 61 states parties when the treaty entered into force were due to submit their initial reports by 23 December 2015. As of 31 January 2016, 36 states had submitted reports and made them public.¹⁴ Despite not being obligatory, 80 per cent of the states that had submitted their initial reports and made them public used the provisional template for the initial report. The deadline for the first annual report is 31 May 2016.

The long-term health of the ATT

The decisions taken at CSP1 create the institutional arrangements for the work of the CSP and ATT Secretariat and thereby contribute to the long-term functioning of the treaty. At the final preparatory meeting in Geneva in July there had been a sense that some or all of these issues would either not be resolved or generate serious disagreement. However, the future success of the ATT will depend on a range of broader issues that, of necessity, were not the subject of discussion at CSP1—in particular: (a) bringing more states into the ATT; (b) ensuring that states apply the treaty effectively; and (c) providing states with implementation assistance.

There is significant scope to expand the range of signatories and states parties, particularly in Africa and Asia. There are also several important arms exporters, particularly China and Russia, and arms importers, including India and Saudi Arabia, that have yet to sign the ATT. Russia did not attend CSP1 and stated in May 2015 that it will not sign the treaty.¹⁵ China attended CSP1 as an observer but restated its position that adopting the ATT via a vote at the UN General Assembly had been a mistake.¹⁶ The change in government in Canada in October 2015 may lead the state, the 13th largest arms exporter for the period 2011–15, to join the ATT.¹⁷ The outgoing Con-

¹³ E.g. the ATT template includes a section asking states to specify their definitions of the terms 'export' and 'import'; includes a column asking states to indicate if the information entered for each weapon category refers to authorized or actual exports or imports; and gives states the option of providing information on the value of imports and exports of each weapon category. ATT Secretariat, 'The Arms Trade Treaty provisional template: annual report in accordance with Article 13(3), exports and imports of conventional arms covered under Article 2(1)', ATT/CSP1/2015/WP.4/Rev.2, 27 Aug. 2015.

¹⁴ For more information on reporting and deadlines, see <<http://www.thearmstradetreaty.org/index.php/en/resources/reporting>>.

¹⁵ Agence France-Presse, 'Russia will not sign 'weak' Arms Trade Treaty', Defense News, 17 May 2015.

¹⁶ Birkeland, T. and Pytlak, A., 'Control arms daily summary of CSP1', *ATT Monitor*, vol. 8, no. 3 (Aug. 2015), p. 7.

¹⁷ SIPRI Arms Transfers Database, <<http://www.sipri.org/databases/armstransfers/>>.

servative government of Steven Harper opposed the ATT but the incoming Liberal government of Justin Trudeau has made acceding to the treaty one of its foreign policy priorities.¹⁸

States' implementation of the ATT will be measured by how they comply with the treaty's reporting requirements and the extent to which they align their arms export practices with the standards laid down in the treaty. Since CSP1, questions have been asked about a number of states parties' arms exports and the extent to which they are in line with the requirements of the ATT. In particular, Spain, the United Kingdom and the United States, among other signatories and states parties, have been criticized by NGOs and parliamentarians for licensing the export of arms to Saudi Arabia despite evidence of the involvement of its forces in violations of international humanitarian law in the ongoing conflict in Yemen.¹⁹

Effective implementation assistance will be a requirement for broad and effective implementation of the ATT. This in turn would require sustained commitment on the part of both donor and partner states. The ATT covers a range of different issues that have the potential to prevent armed violence and reduce conflict, not only transfer controls but also stockpile management and border controls. Assistance programmes have been launched by the EU, among others, but there are still substantial gaps to be filled at this time of tight finances.²⁰

¹⁸ Berthiaume, L., 'Europeans privately urged Canada to sign arms treaty', *Ottawa Citizen*, 1 Oct. 2015; and Prime Minister of Canada, 'Minister of Foreign Affairs mandate letter', 22 Nov. 2015.

¹⁹ Doward, J. and Dare T., 'Saudi arms sales are in breach of international law, Britain is told', *The Observer*, 9 Jan. 2016; and 'NGOs oppose the export by Navantia to Saudi Arabia of five corvettes as it breaches International law', FundiPau, [n.d.]. For more information on arms supplies to Saudi Arabia, see chapter 15, sections I and II, in this volume.

²⁰ Bromley, M. and Arabia, C., 'ATT-related outreach assistance in sub-Saharan Africa: identifying gaps and improving coordination', SIPRI Background Paper, Feb. 2016.