

## I. The Arms Trade Treaty

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The 2013 Arms Trade Treaty (ATT) is the first legally binding international agreement to establish standards regulating the trade in conventional arms and preventing illicit arms transfers.<sup>1</sup> Since its entry into force in December 2014, much of the focus of states parties and interested sections of civil society has been on the bureaucratic modalities of establishing a working secretariat and other aspects of treaty architecture. By the end of 2016, the ATT Secretariat had been established and the parties had agreed templates for the initial report on steps taken to implement the treaty and the annual report on arms imports and exports. During 2017 attention increasingly shifted to treaty universalization and the issue of how to measure and ensure effective implementation by states parties. Both issues are likely to prove challenging.

As of 31 December 2017, 94 states were party to the ATT. An additional 41 states had signed but not yet ratified the treaty. In 2017 three states became party to the ATT—Honduras, Kazakhstan and Palestine—down from 12 in 2016. Representation is particularly low in the Middle East and Asia, while leading arms exporting countries such as China, Russia and the United States are yet to become party to the treaty and seem unlikely to do so in the near future. Meanwhile, discussions about treaty implementation have the potential to generate schisms—particularly between states parties and the community of non-governmental organizations (NGOs) that championed the treaty—about how this should be assessed and ensured.

The third conference of states parties (CSP3) was held in Geneva on 11–15 September 2017, with Ambassador Klaus Korhonen of Finland as president. It was attended by 79 of the 92 states parties—roughly the same proportion as for CSP2—along with 23 states signatories, 4 observer states, and 24 regional and international organizations, NGOs and industry associations.<sup>2</sup> Discussions were broadly divided into six areas: treaty implementation; transparency and reporting; the work of the ATT Secretariat; preparations for CSP4; treaty universalization; and international assistance.<sup>3</sup> This section summarizes the key aspects of discussions in these areas, while

<sup>1</sup> For a summary and other details of the Arms Trade Treaty see annex A, section I, in this volume. The 2001 UN Firearms Protocol is also legally binding but 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.

<sup>2</sup> Arms Trade Treaty, 3rd Conference of States Parties, 'Final report', ATT/CSP3/2017/SEC/184/Conf.FinRep.Rev1, 15 Sep. 2017.

<sup>3</sup> Arms Trade Treaty, 3rd Conference of States Parties, 'CSP3 provisional annotated programme of work', ATT/CSP3/2017/SEC/152/Conf.AnnPoW, 13 July 2017.

making broader points about the future prospects of the ATT. For treaty universalization and international assistance, this includes a more detailed focus on Asia, where ATT participation has been particularly low.

### **Treaty implementation**

As was the case at CSP2, there was a clear division at CSP3 between the states parties and most of the NGOs present about which issues should be included in the discussion about the implementation of the ATT. In particular, many of the NGOs wished to engage in a debate about whether certain arms exports of states parties—and particularly arms transfers to Saudi Arabia for use in the conflict in Yemen—were in line with treaty requirements.<sup>4</sup> However, the majority of states present were keen to avoid what they saw as potentially sensitive and contentious discussions of particular cases and focus instead on how national legislative and regulatory instruments should be adjusted in order to allow for effective treaty implementation. States parties agreed to turn the existing ad hoc working group on effective treaty implementation into a standing working group and endorsed the group's draft list of priority areas of discussion in the run-up to CSP4.<sup>5</sup> The list includes national control systems, export assessment procedures, transit and trans-shipment controls, diversion, and record-keeping.<sup>6</sup> The list of topics appears to leave little room for discussions about particular arms exports and further underlines the limited interest in this topic among the majority of states parties.

Nonetheless, there were small indications that future CSPs might become forums where controversial arms transfers could be discussed and normative standards developed and applied. In particular, at CSP3 a group of states from the Americas called on all ATT states parties—in the light of their obligations under articles 6 and 7 of the treaty and the conduct of the Government of Venezuela during the ongoing crisis in the country—to abstain from all arms transfers to Venezuela.<sup>7</sup> Venezuela has not signed or acceded to the treaty. The European Union (EU) subsequently imposed an arms embargo on Venezuela (see section II), but it is unclear if this decision was influenced by events at CSP3. States have made similar calls for restraint

<sup>4</sup> Isbister, R., 'Much ado about nothing? Reflections on the third ATT conference of states parties', *Saferworld*, 20 Sep. 2017.

<sup>5</sup> Arms Trade Treaty, 3rd Conference of States Parties (note 2).

<sup>6</sup> Arms Trade Treaty, Ad Hoc Working Group on Effective Treaty Implementation, 'Co-chairs' draft report to CSP3', ATT/CSP3.WGETI/2017/CHAIR/158/Conf.Rep, 31 July 2017.

<sup>7</sup> These states were Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Panama, Paraguay and Peru. At the time statement was issued Brazil, Canada, Chile and Colombia had signed but not ratified the ATT. Arms Trade Treaty, 3rd Conference of States Parties, 'Intervención de los países que suscribieron la Declaración de Lima en ocasión de la Tercera Conferencia de los Estados Partes del Tratado sobre el Comercio de Armas [Statement of the countries that signed the Declaration of Lima at the Third Conference of States Parties to the Arms Trade Treaty]', 11 Sep. 2017.

in arms exports to particular destinations in meetings of the United Nations Security Council.<sup>8</sup> The declaration on Venezuela demonstrates that the ATT has created a new forum for states that are not members of the UN Security Council to make such calls, as well as a new set of normative standards to reference. However, it is unclear whether the ATT can continue to serve this function if the goal of universalization is achieved since it may be hard for states parties to ‘name and shame’ another state party to the ATT in an ATT forum.

The sessions dealing with treaty implementation also included a discussion of the relationship between the ATT and the Sustainable Development Goals (SDGs), in particularly Goal 16.4, which commits states to reducing illicit flows of arms. The inclusion of the SDGs on the agenda of CSP3 followed a pattern set by the 2016 biennial meeting of states on the UN Programme of Action (UNPOA) on small arms and light weapons. The outcome document of that meeting highlights that effective implementation of the UNPOA can help to achieve the SDGs and that measuring UNPOA implementation can act as a proxy for measuring the achievement of the SDGs.<sup>9</sup> The final report of CSP3 highlights the links between implementation of the ATT and achievement of the SDGs and commits the three intersessional working groups (on effective treaty implementation, on transparency and reporting, and on treaty universalization) to further explore synergies between the ATT and the SDGs.<sup>10</sup> One key implication of making this link—drawn by a number of states and NGOs—is that it can help to convince states to sign and ratify the ATT.<sup>11</sup> However, many of the states that are key targets of treaty universalization outreach efforts—particularly those in Asia—appear to be mainly concerned with the short-term national security implications of treaty accession and may not be swayed by arguments about the more long-term benefits for sustainable development (see below).

### **Transparency and reporting, the ATT Secretariat and the fourth conference of states parties**

One key hope for the ATT was that its requirements on reporting would increase the levels of transparency of both arms transfer controls and arms transfers. Each state party is obliged to provide the ATT Secretariat with an initial report detailing the ‘measures undertaken in order to implement this

<sup>8</sup> E.g. in 2017 the USA called in the UN Security Council for states to halt arms exports to Myanmar. Haley, N., ‘Remarks at a UN Security Council briefing on the situation in Burma’, US Permanent Representative to the United Nations, New York, 28 Sep. 2017.

<sup>9</sup> See Davis, I. et al., ‘Humanitarian arms control regimes: Key developments in 2016’, *SIPRI Yearbook 2017*, pp. 566–69.

<sup>10</sup> Arms Trade Treaty, 3rd Conference of States Parties (note 2).

<sup>11</sup> See Spano, L. and Alpers, P., *Reinvigorating the Narrative: The Broader Benefits of the Arms Trade Treaty* (Centre for Armed Violence Reduction: Sydney, Sep. 2017).

**Table 10.1.** Arms Trade Treaty ratifications, accessions and signatories by region, as of 31 December 2017

Region	No. of states	No. of parties	No. of signatories	No. of non-signatories
Africa	53	22	17	14
Americas	35	23	6	6
Asia	29	3	7	19
Europe	48 <sup>a</sup>	41	2	5
Middle East	16 <sup>b</sup>	1	5	10
Oceania	14	4	4	6
<b>Total</b>	<b>195</b>	<b>94</b>	<b>41</b>	<b>60</b>

*Note:* The treaty was open for signature until it entered into force in Dec. 2014. A state may no longer sign it. An existing state signatory may accept, approve or ratify the treaty to become a state party. A non-signatory state must directly accede to the treaty in order to become a state party.

<sup>a</sup> This figure includes the Holy See.

<sup>b</sup> This figure includes Palestine.

*Source:* United Nations, Treaty Collection.

Treaty'.<sup>12</sup> States parties must also provide the Secretariat with an annual report 'for the preceding calendar year concerning authorized or actual exports and imports of conventional arms'.<sup>13</sup> However, although reporting levels have been high, they have been far from universal. As of 3 March 2018, 62 of the 91 state parties (68 per cent) that were due to submit an initial report on their implementation of the ATT had done so.<sup>14</sup> Moreover, as of the same date, only 49 of the 75 states parties (65 per cent) that were due to submit an annual report on their arms imports and exports during 2016 by May 2017 had done so.<sup>15</sup>

Another area in which states parties are failing to fully meet their obligations is that of financial contributions. All states parties to the ATT are required to make an annual assessed financial contribution to cover the costs of organizing the CSPs and the work of the ATT Secretariat. However, a significant number of states are failing to pay their bills. As of 5 February 2018, only 58 of the 86 assessed states parties (67 per cent) and 14 of the 30 assessed states signatories (47 per cent) had paid their contributions for 2017, totalling 86 per cent of the annual budget. Taken with the shortfall in contributions to the 2015–16 budget, the ATT had accumulated a deficit of

<sup>12</sup> Arms Trade Treaty (note 1), Article 13(1).

<sup>13</sup> Arms Trade Treaty (ATT), opened for signature 3 June 2013, entered into force 24 Dec. 2014, Article 13(3). 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'.

<sup>14</sup> Arms Trade Treaty Secretariat, 'Reporting', 3 Mar. 2018.

<sup>15</sup> Arms Trade Treaty Secretariat (note 14). Greece also submitted a report despite not being required to do so. For a more detailed description of the content of states reports on arms imports and exports see chapter 5, section 2, in this volume.

\$270 760.<sup>16</sup> The final report of CSP3 noted that states parties expressed ‘deep concern’ about the unpaid contributions as well as the possible impact ‘of a potential shortage of funds for the organization of any future meetings’.<sup>17</sup>

Other key decisions were made at CSP3 regarding the format and functioning of CSP4 and the plan of work for the interim period. Ambassador Nobushige Takamizawa of Japan was appointed as president of CSP4, which is scheduled to take place in Tokyo on 20–24 August 2018.<sup>18</sup> Following decisions made at CSP3, the working groups on effective treaty implementation, on transparency and reporting, and on treaty universalization are now all standing bodies with ambitious programmes of work in the run-up to CSP4. However, discussions about the future activities of the working groups also generated one of the few areas of genuine disagreement among states parties at CSP3. In particular, states struggled to agree rules that would govern the circumstances in which working group meetings could be closed to observers—such as NGOs—or states signatories.<sup>19</sup> In the end, the final report of CSP3 notes that the rules for when meetings would be closed ‘will be considered during the informal preparatory process for [CSP4] with a view to resolving this at [CSP4]’.<sup>20</sup>

### **Treaty universalization and international assistance: A focus on Asia**

There is a geographic imbalance in states’ levels of engagement with the ATT process and this seems likely to persist for the foreseeable future. In particular, rates of signature, accession and ratification remain far higher in Europe, Africa and the Americas than in Asia and the Middle East (see table 10.1). Universalization remains one of the key challenges for the ATT and was a key focus of discussions at CSP3. As well as agreeing to turn the existing ad hoc working group on treaty universalization into a standing working group, states parties explored a range of potential initiatives aimed at increasing the number of parties to the Treaty.<sup>21</sup>

Since the entry into force of the ATT, the low rate of participation among states in Asia has been a particular cause for concern. With the exception of the Middle East, Asia has the lowest level of both signatories and states parties. Of the 29 states in Asia, only three were party to the ATT as of 31 December 2017: Japan, Kazakhstan and South Korea.<sup>22</sup> A further seven

<sup>16</sup> Arms Trade Treaty Secretariat, ‘Status of Contributions to ATT Budgets as at 05 February 2018’.

<sup>17</sup> Arms Trade Treaty, 3rd Conference of States Parties (note 2).

<sup>18</sup> Arms Trade Treaty, 3rd Conference of States Parties (note 2).

<sup>19</sup> Isbister (note 4).

<sup>20</sup> Arms Trade Treaty, 3rd Conference of States Parties (note 2).

<sup>21</sup> Arms Trade Treaty, 3rd Conference of States Parties (note 2).

<sup>22</sup> Kazakhstan acceded to the ATT in Dec. 2017 and the treaty will thus only enter into force for it in Mar. 2018.

Asian states—Bangladesh, Cambodia, Malaysia, Mongolia, the Philippines, Singapore and Thailand—signed the treaty but had yet to ratify it by the end of 2017. In their official statements at CSP3, Malaysia, the Philippines and Singapore all indicated that they are likely to ratify the treaty soon, but challenges in a variety of areas remain in all three states.<sup>23</sup>

The low level of acceptance of the ATT in Asia is widely recognized and has been a focus of diplomatic attention and effort in recent years. In March 2017, Ambassador Korhonen, president of CSP3, visited China, Indonesia and Thailand in order to promote the universalization of the ATT in Asia.<sup>24</sup> In the run-up to CSP4, increased attention is likely to be paid to Asia, especially with Japan assuming the presidency of this session.

In addition, a range of legal, technical and material assistance projects as well as capacity building and training efforts have been carried out in Asia. These include substantial outreach projects such as the EU Partner-to-Partner (EUP2P) outreach project, a new round of which was approved in 2017, and the regional and national workshops implemented by the UN Regional Centre for Peace and Disarmament in Asia and the Pacific (UNRCPD) and others.<sup>25</sup> However, of the 17 projects that the ATT Secretariat approved for funding by its voluntary trust fund (VTF) in 2017, only 1 is being implemented by an Asian state—the Philippines.<sup>26</sup> In contrast to Africa, Latin America and the Caribbean, significant work has also been carried out in Asia on dual-use export controls outreach and assistance, among others by the EU and the USA. Future capacity building work for the ATT could potentially build more on such existing capabilities in related areas and create synergies between the respective capacity-building projects.

Proponents of the ATT argue that Asia faces a range of significant security-related challenges of the type that the treaty is intended to alleviate. In particular, amid a range of continued and re-emerging tensions, many states in Asia—and particularly South East Asia—are increasing their arms imports and strengthening their national defence capabilities.<sup>27</sup> For example, Indonesia, the Philippines and Viet Nam have all significantly increased their arms imports in recent years, while Malaysia and Singapore are engaged in

<sup>23</sup> Arms Trade Treaty, 3rd Conference of States Parties, 'Statements'.

<sup>24</sup> Arms Trade Treaty Secretariat, 'Universalization trip China and ASEAN—March 2017'.

<sup>25</sup> For an overview of these activities see the activities database of the Mapping ATT-relevant Cooperation and Assistance Activities Project.

<sup>26</sup> Arms Trade Treaty Secretariat, '1st Voluntary Trust Fund cycle (2017): Overview of projects approved for ATT VTF funding', 8 Nov. 2017. The VTF was established in 2016 to support projects carried out to assist ATT states parties and states signatories as well as 'other States having shown clear and unambiguous political commitment to accede to the ATT'. It is funded by donations from states parties and other entities and is administered by the ATT Secretariat. Arms Trade Treaty, 2nd Conference of States Parties, 'Terms of reference for the ATT Voluntary Trust Fund', ATT/CSP2/2016/WP.3/Rev.1, 24 Aug. 2016.

<sup>27</sup> Stohl, R. and Holtom, P., 'Assessing ATT implementation in the Asia-Pacific Region', Arms Trade Treaty Baseline Assessment Project, 2017, p. 1.

wide-ranging expansions of their military forces.<sup>28</sup> In such a context, robust and systematic reporting on arms imports, as is required under the ATT, could act as a means of reducing regional tensions. In addition, improved controls on arms transfers and better mechanisms for sharing information on routes of diversion, both of which are mandated under the ATT, could be of significant benefit for the many parts of Asia where arms trafficking is a major concern.

A number of states in Asia have stated that they are wary of the legally binding nature of the ATT and are unwilling to ratify it until they have ensured that their national legislation meets all treaty requirements.<sup>29</sup> However, in many cases, the impediments to ATT accession appear to have less to do with the technical challenges of implementation and more to do with broader political concerns. In particular, many states in the region already have the necessary legal and regulatory instruments in place that meet the standards laid down in the ATT.<sup>30</sup> For some of these states, the level of interest in ratifying the ATT may be diminished by a fear that it would reduce their trade with key arms suppliers to the region—particularly China, Russia and the USA, which are unlikely to become parties to the ATT in the near future. In addition, concerns that increased transparency will reveal national capabilities and weaknesses further adds to states' reluctance to join the ATT. Questions of domestic politics and regional security will continue to affect the political will of Asian states to sign and ratify the ATT.<sup>31</sup>

The limited penetration of the ATT in Asia is also both a reflection and a consequence of the region's low prior engagement with security cooperation, arms control and confidence-building measures. In other parts of the world, regional organizations such as the Economic Community of West African States (ECOWAS), the EU, the Organization of American States (OAS), and the Organization for Security and Co-operation in Europe (OSCE) have established common standards on arms export controls and mechanisms for sharing information on arms exports or imports.<sup>32</sup> These mechanisms represent a willingness to engage in multilateral discussions about sensitive security issues and have also created a familiarity with and mutual confidence in such measures. This is reflected in the correlation between mem-

<sup>28</sup> Wezeman P. D. et al., 'Trends in international arms transfers, 2017', SIPRI Fact Sheet, Mar. 2017; and Heiduk, F., *An Arms Race in Southeast Asia? Changing Arms Dynamics, Regional Security and the Role of European Arms Exports*, SWP Research Paper RP10 (Stiftung Wissenschaft und Politik: Berlin, Aug. 2017), pp. 9–20.

<sup>29</sup> Persi Paoli, G. and Kytomaki, E., *Towards a Universal Arms Trade Treaty: Understanding Barriers and Challenges in South-East Asia* (RAND Corporation: Santa Monica, CA, 2016), pp. 29–31.

<sup>30</sup> Stohl and Holtom (note 27), p. 1.

<sup>31</sup> Weiss, M., 'The Arms Trade Treaty in the Asia-Pacific: Small steps toward improving a difficult relationship', *The Diplomat*, 22 Dec. 2017.

<sup>32</sup> See 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).

bership of these organizations on the one hand and strong support for and high levels of signatures and ratifications of the ATT on the other.<sup>33</sup> Nothing of equivalent ambition has been established by the Association of Southeast Asian Nations (ASEAN) or the other regional and subregional groupings in Asia.<sup>34</sup> This absence likewise reflects a more limited interest among Asian states in the creation of such mechanisms and feeds a general wariness about the implications of new instruments, such as the ATT.<sup>35</sup>

<sup>33</sup> Control Arms, *ATT Monitor Report 2017* (Control Arms Secretariat: New York, 11 Sep. 2017), pp. 9–11.

<sup>34</sup> Some limited mechanisms related to controls on small arms and light weapons have been established by e.g. the Asia-Pacific Economic Cooperation (APEC), the Conference on Interaction and Confidence-building Measures in Asia (CICA) and the Shanghai Cooperation Organisation (SCO). However, the extent to which they are being applied is unclear. See Heiduk (note 28), p. 28.

<sup>35</sup> Weiss (note 31).