



ICRC

## ADVISORY SERVICE

### ON INTERNATIONAL HUMANITARIAN LAW

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# 2013 Arms Trade Treaty

The Arms Trade Treaty (ATT) regulates international transfers of conventional arms, as well as their ammunition, parts and components, with a view to reducing human suffering. The ATT makes arms transfer decisions subject to humanitarian concerns by forbidding transfers when there is a defined level of risk that war crimes or serious violations of international human rights law will be committed. The ATT was adopted on 2 April 2013 and opened for signature on 3 June 2013. It will enter into force when 50 States have adhered to it.

#### What is the object and purpose of the ATT?

The object of the ATT is to establish the highest possible common international standards for regulating the international trade in conventional arms, to prevent and eradicate the illicit trade in conventional arms, and to prevent the diversion of such arms. This, in turn, is for the purpose of contributing to regional and international peace, security and stability, reducing human suffering, and promoting cooperation, transparency and responsible action by States Parties (Article 1).

#### To what arms does the ATT apply?

It applies, at a minimum, to the following categories of conventional arms: battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers and small arms and light weapons (Article 2(1)). States are encouraged to voluntarily apply the treaty to an even broader range of conventional arms (Article 5(3)).

The ATT also partly applies to ammunition/munitions that are fired, launched, or delivered by the conventional arms covered in the treaty (Article 3), and to the parts and components that are in a form that makes it possible to assemble the conventional arms covered in

the treaty (Article 4). Only the core obligations of the ATT (found in Articles 6 and 7 on transfer prohibitions and export criteria respectively) apply to ammunition/munitions and parts and components.

#### To what transactions does the ATT apply?

The ATT applies to the activities of the international trade comprising export, import, transit, transshipment and brokering, which are referred to in the treaty as 'transfer' (Article 2(2)).

#### What arms transfer criteria does the ATT impose?

##### A. Transfer prohibitions

It prohibits transfers of arms, ammunition/munitions and parts and components where the transfer would violate obligations in measures adopted under Chapter VII of the Charter of the United Nations, "in particular arms embargoes" (Article 6(1)). The ATT also prohibits transfers of such weapons and items where the transfer would violate a State Party'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" (Article 6(2)).

Transfers of arms, ammunition/munitions and parts and

components are also prohibited if the State Party has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the four Geneva Conventions, 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 (Article 6(3)).

For instance, if an ATT State Party were also party to the Statute of the International Criminal Court or to Protocol I of 8 June 1977 additional to the Geneva Conventions, it would be required to take into consideration a wider range of war crimes than an ATT State Party that is not party to these instruments.

##### B. Criteria for export

If an export has not been prohibited under Article 6, then each State Party must assess whether the arms, ammunition/munitions or parts and components would contribute to or undermine peace and security, and whether there is a "potential" that they could be used to commit or facilitate a serious violation of international humanitarian law, a serious violation of international human rights law, an act constituting an offence under international instruments relating to terrorism to which the State is a Party, or an act constituting an offence under international instruments relating to transnational organized crime to

which the State is a Party (Article 7(1)).

In this assessment, each State Party must also take into account the risk of the conventional arms or items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children (Article 7(4)).

With regard to the consequences identified in Article 7(1), the State Party must also consider whether there are risk mitigation measures that could be undertaken (Article 7(2)).

If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the adverse consequences in Article 7(1), it must not authorize the export (Article 7(3)).

It is important to note that the treaty encourages a State Party to reassess its authorization if it becomes aware of relevant new information (Article 7(7)).

As Article 7 relates only to exports, the activities of import, transit, trans-shipment and brokering are not subject to such an assessment or to any of the criteria set out in this provision.

### **What must States do to become party to the ATT?**

To become a party to the ATT, a State must adhere to it and the treaty must then enter into force for that State. For the first 50 States that ratify, accept or approve it, the ATT will enter into force 90 days after the deposit of the 50th instrument of ratification, acceptance, or approval. For any State that submits its instrument of ratification, acceptance, approval or accession after this moment, the ATT will enter into force 90 days after the date of submission (Article 22).

### **What must States do to implement the ATT?**

Each State Party must implement the ATT in a consistent, objective and non-discriminatory manner, bearing in mind the principles referred to in the treaty (Article 5(1)).

Each State Party must establish and maintain a national control system to implement the treaty, including by

taking measures to regulate the export, import, transit, trans-shipment of, and brokering activities related to, conventional arms, and to regulate the exports of related ammunition and parts and components (Articles 5(2), 8, 9 and 10).

As part of its national control system, each State Party must establish and maintain a national control list of the weapons and items covered. This list will be made available to other States Parties (Article 5(2) and (4)).

In addition, so as to have an effective and transparent control system, each State Party must designate competent national authorities (Article 5(5)). States Parties must also designate one or more national points of contact to exchange information on matters related to the treaty's implementation (Article 5(6)).

The ATT gives each State Party the discretion to determine the form, structure and legislative underpinning of its national control system. In practice, implementation will require a series of legislative, administrative and practical measures, and an assessment of whether new measures are necessary to comply with ATT obligations. For instance, States will need to ensure that their domestic laws include ATT-compliant administrative and criminal penalties as well as implementing regulations. States will need to ensure that they have an ATT-compliant licensing process and authorities with the required technical expertise.

An exporting State Party must seek to prevent diversion of the conventional arms it has transferred. States involved in export, transit, trans-shipment, and import must cooperate and exchange information in order to mitigate the risk of diversion of conventional arms covered under the ATT. States Parties must take appropriate measures to address such diversion if detected, and are encouraged to share information on effective measures taken to address diversion of transferred conventional arms (Article 11).

States Parties must maintain national records of export authorizations or actual exports of conventional arms (but not of ammunition or parts and components). The ATT provides recommendations on the types of information to be recorded and

requires that the records be kept for at least 10 years (Article 12).

States Parties must also report on the implementation measures they have undertaken. A State Party must submit, within a year after the treaty's entry into force, an initial report on implementation measures (such as national laws, control lists and administrative measures). After that, States must report on any new implementation measures undertaken "when appropriate." States Parties must also report annually on authorized or actual exports and imports of conventional arms (but not of ammunition/munitions or parts and components). All reports will be shared with other States Parties (Article 13).

A conference of States Parties must be convened no later than one year after the ATT's entry into force. The conference will, among other things, review the implementation of the treaty, and consider amendments to it as well as issues related to its interpretation (Article 17).

### **What support is available for adherence and implementation?**

The status of signatures and ratifications is available online: <http://www.un.org/disarmament/ATT/>. The United Nations has published a ratification guide describing the procedures that States must follow in order to sign, ratify, accept, approve, or accede to the ATT. The guide also contains model instruments of adherence for States to deposit with the Secretary-General of the United Nations. The guide is available in English, French and Spanish on the same website.

The ICRC is ready to assist States in implementing the Treaty, within the limits of its mandate and expertise in international humanitarian law. It will do so through its Advisory Service on International Humanitarian Law, which can provide guidance to governments on incorporating the ATT's requirements in domestic legislation. The ICRC has also put out publications to assist States in understanding the treaty's requirements and in adopting effective implementation measures.

A number of other organizations are also developing important tools to help States implement the ATT.