



SAFERWORLD
PREVENTING VIOLENT CONFLICT. BUILDING SAFER LIVES



ATT update

MARCH 2014 · ISSUE NO 6

The Arms Trade Treaty (ATT) was adopted by the United Nations General Assembly (UNGA) on 2 April 2013. In less than a year, 118 states have signed and 13 have ratified the Treaty.¹ Haiti, Malawi and Niger are the most recent states to have signed the Treaty whilst Albania, Norway, Panama and Macedonia have most recently ratified.

The ATT will enter into force 90 days after the deposit of the 50th instrument of ratification. It is thus hoped that the ATT will soon begin to fulfil its object and purpose – namely to contribute to international and regional peace, security and stability, to reduce human suffering, and to promote co-operation, transparency and responsible action by states in the field of conventional arms transfer controls.

Since the last issue of Saferworld's *ATT Update* (issue 5) was published in December 2013, some additional initiatives by governments and regional governmental organisations, notably the European Council (EC), the Caribbean Community (CARICOM) and the Pacific Island states, have taken place to encourage states to sign, ratify and implement the Treaty. On 16 December 2013, the EC passed a Council Decision declaring the European Union's (EU) intention to support ATT implementation activities through the development and strengthening of export controls in countries that lack the capacity to implement the ATT. The German Federal Office for Economics and Export Control (BAFA) has been named as the lead agency for implementing this programme of work. Two of its key responsibilities will be to act in response to requests for assistance and carry out needs assessments.

On 2 March 2014, the Council adopted a decision authorising member states to ratify, in the interests of the EU, the ATT, with respect to those matters falling under the exclusive competence of the Union. At least 15 EU Member States



© DANIEL BERTOLI/SAFERWORLD

(Bulgaria, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Malta, Slovakia, Slovenia, and Spain) are expected to jointly ratify the ATT on 2 April 2014, one year after the adoption of the Treaty.

The New Zealand Ministry of Foreign Affairs hosted the 'Arms Trade Treaty: Pacific Model Legislation Workshop' from 2–4 December 2013 in Auckland, New Zealand. The aim of the workshop was to review and discuss the draft model law on the ATT being prepared by the New Zealand Government for Pacific States with the assistance of the Small Arms Survey. The workshop was attended by representatives from Pacific Island countries and the Pacific Islands Forum Secretariat. A final version of the draft model law will be endorsed and adopted by the Forum Regional Security Committee (FRSC) in June 2014.

On 17–18 February 2014 a CARICOM Workshop on the Implementation of the Arms Trade Treaty was held in Port of Spain, Trinidad and Tobago with support

from Oxfam and the Caribbean Coalition for Development and the Reduction of Armed Violence (CDRAV). The purpose of this meeting was to review ATT implementation efforts on the part of CARICOM states and to explore legislative, regulatory, and practical measures – including support from civil society – that could be directed towards supporting ATT implementation efforts in the Caribbean. The meeting was attended by government diplomats and practitioners from across the Caribbean and by representatives of regional and international organisations and civil society.

In recent months, there have also been a number of civil society-led initiatives in support of the ATT. Between 20–21 November 2013 Saferworld organised the first meeting of the informal Expert Group on ATT Implementation (EGAI). The aim of the EGAI is to provide space for government experts along with representatives from civil society to discuss and clarify ATT implementation issues with a view to arriving at common

continued



continued

understandings, thereby supporting and promoting consistent and robust implementation of the ATT. The EGAI will be particularly important in the period leading up to and immediately following Entry into Force of the ATT, when the Treaty infrastructure – the Conference of States Parties (CSP) and the Secretariat – are yet to be established or are in their infancy. The first meeting of the EGAI was held in London and was attended by over 30 representatives of ATT signatory and ratifier states together with leading civil society experts. A range of issues were discussed including developments relating to signature and ratification of the ATT, the practical implications of key Treaty Articles and progress towards establishing the Secretariat and CSP.

In order to help states understand the obligations of the ATT and to ensure effective implementation of the Treaty, in late 2013 the Stimson Center, in collaboration with the University of Coventry (UK) launched the Arms Trade Treaty-Baseline Assessment Project (ATT-BAP). The aim of the ATT-BAP is to give clear guidance on the obligations contained in the ATT for States Parties and, in so doing, to increase understanding of measures that can be taken to ensure that states are in a position to ratify the ATT and ensure effective implementation of the Treaty. It also aims to assist the delivery of targeted international assistance and provide indicators for future measurement of the Treaty's impact. By completing the Survey and Checklist, each State Party will be able to clearly identify: what it already does to implement the Treaty; what it needs to do to implement the Treaty; and what type of assistance it requires to implement the Treaty. For more information see www.armstrade.info

In January 2014, the Control Arms coalition convened a two-day meeting of experts in Geneva as part of a process of establishing an ATT Monitor. The meeting brought together over 30 experts from government, the United Nations, civil society and research institutes to review a draft proposal developed by Control Arms consultants in recent months. The proposal, which builds upon consultations with more than 40 key actors, considers all major aspects of a future Monitor and the two-day meeting was highly productive in helping Control Arms to better clarify

and identify these key issues. There was a clear consensus on the need for a civil society Monitor on ATT universalisation and implementation, and also an understanding of its importance in improving transparency and accountability. Control Arms is now taking forward the Monitoring project with the goal of launching an initial report at the first Conference of States Parties. Also in Geneva, on 7 February, the Geneva Forum and the Geneva Centre for Security Policy (GCSP) hosted a Needs Assessment Workshop as the first activity of the Arms Trade Treaty Network.

There was a clear consensus on the need for a civil society Monitor on ATT universalisation and implementation, and also an understanding of its importance in improving transparency and accountability.

A seminar in Beijing on 'The Arms Trade Treaty: Towards Entry into Force and Future Implementation' was co-hosted by the China Arms Control and Disarmament Association (CACDA) and Saferworld on 27 February 2014. 40 participants, including Chinese think tanks and scholars, foreign diplomats and representatives from international organisations based in Beijing, as well as international civil society experts, attended the seminar. Various initiatives at international, regional and bi-lateral levels to assist with the implementation of the Treaty were introduced by countries represented, including EU countries, the US, East African countries and China. A discussion was also held on how countries could contribute to its effective implementation once the Treaty enters into force.

With a number of ratifications expected in the coming months, entry into force is widely expected to take place by the end of this year. The adoption of the Treaty last year was only the beginning. The true success of the Treaty will depend on it being signed, ratified, and then implemented in a progressive way.

With a number of ratifications expected in the coming months, entry into force is widely expected to take place by the end of this year.

This issue of the *ATT Update* contains contributions from two scholars from the Shanghai Institutes for International Studies (SIIS), China. Dr Zhang Chun suggests that although China has concerns relating to procedural justice *vis-à-vis* the adoption of the ATT, the country attaches great importance to the substance of the Treaty. This is the fundamental reason why China has been supportive of the negotiation process and, the author argues, points to China's possible signature of the ATT in the near future. Dr Wu Chunsi lays out four specific areas in which the international community can cooperate with China to encourage the country to be more engaged in the next steps of the ATT process. This issue of the *ATT Update* has also included a Q&A session contributed by Saferworld's Small Arms and Transfer Controls Advisor, Elizabeth Kirkham. She addresses some of the key concerns relating to the legal and procedural aspects of the ATT signature and ratification.

SUBSTANTIVE JUSTICE OR PROCEDURAL JUSTICE? PROSPECTS FOR CHINA'S APPROVAL OF THE ARMS TRADE TREATY

DR ZHANG CHUN

On 2 April 2013, an Arms Trade Treaty (ATT) was approved at the United Nations General Assembly (UNGA) with 155 votes for, 22 abstentions, and three votes against – “the first-ever global Treaty regulating the conventional arms trade”.² The Treaty, which opened for signature on 3 June 2013, will come into force 90 days after the 50th country's ratification. Currently, 118 countries have signed the Treaty, with 13 ratifications. We should note, however, that those countries that ratified are not major global powers – Nigeria, Mexico, and Norway are among the most influential. The international community is expecting more countries to sign and ratify the Treaty as a means of promoting global control over the conventional arms trade.

Since the ATT negotiations started, China has been supportive of the negotiation process, expecting all parties to reach – by consensus – an effective Treaty agreement regulating the conventional arms trade. Given the special nature of the arms trade, China favoured a Treaty reached by consensus, due to the understanding that only treaties accepted by all members of the international community can guarantee common approval and effective implementation. Unfortunately, at the final negotiating conference that took place between 18 and 28 March 2013, countries failed to reach a consensus. As such, some countries urged that the ATT draft be submitted to the UNGA for vote and thereby be approved by majority rule rather than consensus.

Chinese officials believe such a practice not only violates the principle of consensus but also risks setting a bad example for future multilateral arms control negotiations by seriously breaching procedural justice. This is the reason why China finally abstained from voting in favour of the Treaty. As Ambassador Wang Min, China's Deputy Permanent Representative to the

UN, pointed out in his explanatory statement following the vote on the ATT draft resolution by the UN General Assembly, China supports the draft Treaty but disagrees with the voting method. He emphasised that this practice should not set a precedent for future arms control Treaty negotiations.³ In other words, China's position towards the Treaty is: substantive justice cannot be delivered at the expense of procedural justice.

It should be noted that China's emphasis on procedural justice is situated within broader security policy concerns.

It should be noted that China's emphasis on procedural justice is situated within broader security policy concerns. One of the most important considerations relates to arms sales by the United States to Taiwan, which is a longstanding and unresolved point of contention in China-US relations. If majority voting becomes the norm in international relations, then China may effectively lose its veto power on issues of great concern to the security of the country, such as arms sales to Taiwan.

It is important to emphasise that China supports the substance of the ATT; this is the fundamental reason why China, despite ongoing US arms sales to Taiwan, consistently and actively supported the negotiation process. China clearly realises that despite the country's impressive material and economic growth, it still has a long way to go before it becomes a global moral, institutional, and strategic leader. It is important for China to look beyond its immediate economic interests and consider the effect of supporting the Treaty on its reputation, voice, and power

in international affairs. China understands the importance for its global standing of signing and ratifying the ATT.

China understands the importance for its global standing of signing and ratifying the ATT.

It is likely that China will sign the ATT in the near future. As the Chinese Ambassador for Disarmament Affairs, H. E. Mr. Wu Haitao stated at the General Debate of the First Committee of the 68th Session of the UNGA on 8 October 2013, “China attaches great importance to the humanitarian concerns caused by illicit trade in conventional arms. China strictly abides by the domestic arms export laws and regulations and relevant UNSC resolutions, and does not transfer weapons to conflict regions or non-state actors. China took part in the negotiation process of the Arms Trade Treaty in an active and constructive manner. China will remain engaged with all parties on the follow-up work of this Treaty and make joint efforts to build a regulated and reasonable international arms trade order.”⁴

In conclusion, China remains committed to the substance of the ATT. Yet concerns remain vis-a-vis the procedure by which the Treaty was approved, with some within China fearing that the principle of vote by majority could become a precedent for future international treaties

PROMOTING THE REGULATION OF CONVENTIONAL WEAPONS IN CHINA

DR WU CHUNSI

The Arms Trade Treaty (ATT) was adopted by the United Nations General Assembly (UNGA) on 2 April 2013 with 155 votes in favour, three votes against, and 22 abstentions. This is good news for the maintenance of international peace and stability and conducive to the protection of human security. Easy access to and widespread use of conventional arms can have a destructive impact on people's safety and well-being, as well as on national stability and social order. The severity of this impact should not be underestimated. The achievement of the United Nations (UN) in agreeing rules for regulating the conventional arms trade, which was the result of six years of negotiation efforts, is without doubt positive.

The Treaty opened for signature on 3 June 2013. Though China played a constructive role in the ATT negotiations, it abstained at the UNGA vote and has not yet signed the Treaty. This article suggests several areas in which the international community – whether international non-governmental organisations (NGOs) or regional organisations working on conventional arms control issues or progressive states involved in the UN ATT process – can cooperate with China to encourage the country to be more engaged in the next steps of the ATT process.

There are those within the Chinese policy community who have been following the ATT process very closely from the outset and to whom the common global challenges that the Treaty aims to address are obvious. One obstacle to China's deeper engagement in the next stages of the Treaty relates to the fact that there are those within the Chinese policy community whose first encounter with the Treaty was when it was taken to the UNGA, where China, Russia, and India, along with 19 other states, all chose to abstain. Lacking at this time a deeper understanding of the background to the Treaty and the negotiation process, some – this author included – took this to mean that the substance of the ATT ran counter to the

interests of these abstaining countries.

In response to this lack of understanding, it is incumbent upon Chinese scholars and policy actors to better educate themselves on the background, process, and the next steps of the Treaty. Yet the international community also has a role to play in easing the concerns of Chinese scholars and policy actors who are sceptical of the benefits of the ATT. International NGOs working on this issue can play a role in this process by, for example, providing more Chinese-language analysis on the Treaty. Topics could include the reasons why certain states chose to abstain, the role that conflict-affected states played in the negotiation process, and how the Treaty can be in China's interest – for example, by helping to reduce security threats to the country. This will help the Chinese policy community to better understand the universal benefits of the Treaty as well as the benefits for China.

A second obstacle relates to China's internal capacity. In order to ensure that China can best be prepared to adopt and implement the Treaty, sufficient time needs to be spent on adjusting China's current regulations and practices surrounding the conventional arms trade. To address this, significant joint efforts will have to be made on the part of various government departments and interest groups in China. Again, the international community also has a role to play in this regard. Best practices can be shared with officials from China's Ministry of Foreign Affairs, the Ministry of Commerce, and the General Administration of Customs, as well as military and industry representatives and international legal experts working on the Treaty's implementation; this will assist China to make any internal changes that will be needed in order to comply with the Treaty's obligations.

A third obstacle relates to the relatively low profile of conventional arms control within China's academic community. As compared with analysis on weapons of mass destruction, for example, the

conventional arms trade is currently of low concern among Chinese academics. As yet, limited analysis has been done on this topic by Chinese scholars. University students with a background in international or public security usually do not have access to courses, or debates, on conventional arms control within Chinese universities.

In response, efforts should be made by Chinese scholars to conduct more analysis on the threats associated with the illicit and irresponsible trade in conventional arms. Chinese universities should consider introducing courses focusing on conventional arms control to students majoring in security studies. One role that the international community can play in this regard is through international experts on conventional arms offering to deliver lectures and seminars within China on this subject.

Lastly, among top-level officials from the Chinese Government, the ATT as yet does not receive sufficient consideration. Here the international community has a particularly important role to play: raising the profile of conventional arms control in relevant international fora is crucial. In this way, whether at world summits or high-profile regional conferences, more opportunities will be created to influence prominent Chinese officials on the importance of the ATT. International donors could also consider increasing funding for NGOs who are currently working on this issue.

In conclusion, the General Assembly's approval of the ATT last year was a significant event in conventional arms control, but more needs to be done to turn the ATT obligations on paper into concrete change on the ground. In this context, there are many areas in which China and the international community can work together to better ensure that China is actively engaged in the next steps of the ATT process, and thus ensure that it plays its full part in helping to deliver the security improvements to which the ATT aspires.

QUESTIONS & ANSWERS

LEGAL AND PROCEDURAL POINTS IN RELATION TO THE ARMS TRADE TREATY (ATT) SIGNATURE AND RATIFICATION

Q. When does the ATT enter into force

A. The ATT will enter into force 90 days after the deposit of the 50th instrument of ratification; with a number of ratifications expected in the coming months, entry into force is widely expected to take place by the end of 2014.

Q. What happens when the Treaty enters into force? Can countries that have not yet signed still sign the ATT?

A. No. Once the Treaty enters into force, signing the Treaty will no longer be an option. At that point, according to Article 21 of the ATT, states can only accede to the Treaty (that is, they can only become State Parties, not State Signatories).

Q. What about the 90-day period following the 50th ratification and before entry into force? Can states still sign the Treaty during this time?

A. Yes, they can, because during that period the Treaty has not yet entered into force. It will enter into force only after the 90-day period following the deposit of the 50th instrument of ratification.

Q. Will State Signatories be allowed to participate in the Conference of States Parties (CSP)? Will they be allowed to vote?

A. All decisions regarding participation in the CSP will be taken by the States Parties to the ATT. However, it is likely that Signatory States will be allowed to participate in the CSP as observers.

Q. What about non-signatories, international organisations and civil society? Would these groups be accorded the same status or would there be some differentiation between them in terms of the nature of their participation?

A. This issue will be addressed by the States Parties to the ATT during the preparatory process that takes place prior to the first CSP. Thus it will be up to the States Parties to decide whether non-Signatory States will be able to attend the meeting and, if so, what rules would govern their participation.

Q. Will being a signatory bring any particular benefits for a state once the Treaty enters into force?

A. Legally speaking, a Signatory State will not have more rights or obligations than those recognised in the Vienna Convention on the Law of Treaties. They will not be able to participate in the decision-making process of the CSP. Nevertheless, they will have access to the work of the CSP and be perceived as a committed and reliable partner for those Parties to the Treaty. This constitutes a benefit.

AUTHOR BIOGRAPHIES

Dr Zhang Chun is the Deputy Director of Department for West Asian and African Studies, and Deputy Editor-in-Chief of *Global Review*, Shanghai Institutes for International Studies (SIIS). His research focuses on China's Africa policy, African International Relations, Northeast Asia studies, and international relations theory.

Dr Wu Chunsi is Associate Researcher and Deputy Director of Department of American Studies, Shanghai Institute for International Studies (SIIS). Her research interests include Chinese-U.S. security relations, arms control, nuclear deterrence, and Northeast Asia security.

Elizabeth Kirkham is Small Arms and Transfer Controls Advisor, having worked on arms and security issues at Saferworld since 1993. Her areas of interest include national, regional and international arms transfer controls and efforts to stem the proliferation and misuse of small arms and light weapons. Elizabeth has produced numerous publications for Saferworld on a wide range of related issues, including: how an international Arms Trade Treaty could be monitored and verified, and priorities for strengthened controls on small arms transfers to prevent diversion.

The information and views set out in this update are those of the author/s and do not necessarily reflect the official views and positions of Saferworld.

ABOUT THE ATT UPDATE

The *ATT Update*, co-published biannually by Saferworld and the School of Political Science at Tongji University, is a platform for Chinese experts, academics and students to exchange their views on efforts to regulate international transfers of conventional arms under the ATT process. We welcome all comments and ideas for future submissions.



SAFERWORLD
PREVENTING VIOLENT CONFLICT. BUILDING SAFER LIVES

Saferworld
The Grayston Centre
28 Charles Square
London N1 6HT, UK

Phone: +44 (0)20 7324 4646

Fax: +44 (0)20 7324 4647

Email: general@saferworld.org.uk

Web: www.saferworld.org.uk

Registered charity no. 1043843

A company limited by guarantee no. 3015948

NOTES

- 1 At the time of publication, Albania, Antigua and Barbuda, Costa Rica, Grenada, Guyana, Iceland, Mali, Mexico, Nigeria, Norway, Panama, the Former Yugoslav Republic of Macedonia and Trinidad and Tobago have ratified the Treaty. <http://disarmament.un.org/treaties/t/att>
- 2 http://news.xinhuanet.com/mil/2013-04/15/c_124581805.htm
- 3 www.chinanews.com/gn/2013/04-03/4699504.shtml
- 4 www.fmprc.gov.cn/mfa_chn/wjtb_602314/zjzg_602420/jks_603668/fywj_603672/t1086011.shtml