



ATT Update

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Introduction

On Wednesday 24 December 2014 the Arms Trade Treaty (ATT) entered into force, providing states that are party to the Treaty with the opportunity to demonstrate transparency and responsibility in conventional arms control to an unprecedented international standard. The enshrinement of the ATT into international law is a major stepping stone towards the reduction of irresponsible arms transfers that support instability, corruption and human rights violations. With effective implementation the ATT could help to protect civilians by limiting the flow of arms to terrorists, rebel forces and other problematic non-state actors as well as irresponsible governments who would use these arms to exacerbate armed conflicts and/or commit atrocities. Accordingly the ATT commits to improving clarity regarding the identity of the end users of the arms, and will ensure that future arms transfer decisions made by States Parties include an assessment of the risk that the arms would be used in genocide, crimes against humanity, gender-based violence or other breaches of international law.

The ATT came into force in accordance with Article 22 which stipulates that this should come about 90 days after the date of the 50th ratification. The ATT first opened for signature on 3 June 2013, making it one of the most rapid approval processes for a multilateral treaty. By the time of its entry into force the Treaty had been signed by a total of 130 states and ratified by 61, including half of the world's 10 most prominent arms exporters: the UK, France, Germany, Spain and Italy.¹ In the days leading up to the Treaty's entry-into-force, the impending deadline sparked a flurry of activity. In December 2014 alone a further seven countries (Andorra, Cameroon, Israel, San Marino, São Tomé and Príncipe, Singapore, and Zimbabwe) became signatories while a further seven countries (Liechtenstein, Lithuania, Netherlands, Poland, Serbia, South Africa, Saint Kitts and Nevis)

ratified the Treaty.²

For States Parties, that is, those countries that have ratified the Treaty, efforts are now focused on successful implementation. Preparations for the first Conference of States Parties (CSP) are underway, with the first formal preparatory meeting scheduled in Trinidad and Tobago in February 2015. This meeting is likely to discuss the rules of procedure, financing mechanisms and structure of the Secretariat for the ATT. It will build upon earlier informal consultations for the ATT's first CSP, which took place in Mexico City from 8-9 September and Berlin from 27-28 November 2014.

There are, however, a number of countries that expressed an interest in the ATT but decided against signing it before its entry-into-force. As from 24 December 2014 the two-step option of signing before ratifying the Treaty is no longer an option for these countries which must now complete both steps at once, by acceding to the Treaty, if they wish to formally engage. China is one such country. In this issue of the ATT Update, Saferworld's Small Arms and Transfer Controls Adviser, Elizabeth Kirkham, reflects on China's decision not to sign the ATT. The second article takes the form of a question and answer session, focusing on China's engagement with the ATT, with a range of Chinese experts on arms control and the subsequent reaction from Saferworld.

China and the ATT: Prospects for future engagement

Elizabeth Kirkham

In the 90 days leading up to entry-into-force of the ATT, experts from governments and non-government organisations around the world watched and waited with keen interest in the hope that the People's Republic of China would cement its position as a key ATT supporter and interlocutor by signing the Treaty. Unfortunately China did not sign; however, this is

¹ <http://www.amnesty.org/en/news/global-arms-trade-treaty-enters-force-2014-12-22>

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https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsq_no=XXVI-8&chapter=26&lang=en

hardly the end of the story: there are still opportunities for China to engage in this key international process in the coming months and years.

It is generally considered that China played an important and constructive role in the ATT negotiations. Having exercised a cautious approach in the preparatory phase, China engaged in a positive manner with the discussions at the July 2012 Diplomatic Conference and dropped its opposition to the inclusion of small arms and light weapons in the scope of the Treaty. At the conclusion of the Final Diplomatic Conference in March 2013 China did not raise any objections to the final draft Treaty text that had been set before the Conference by the President, Ambassador Peter Woolcott. This gave rise to a general perception that, fundamentally, China had accepted the existence of the ATT – both in principle and in substance.

It should be noted, however, that China's failure to sign the ATT when the opportunity to do so existed (prior to the Treaty entering into force) is consistent with its decision not to vote in favour of adoption of the ATT by the UN General Assembly (UNGA) on 2 April 2013. At the time of the UNGA vote on the ATT it was suggested that China's abstention was due to its objection, in principle, to adopting international treaties by means of a vote, rather than through consensus agreement. However, there is some precedent for China supporting a decision by vote *in extremis*: following the failure of the Conference on Disarmament to reach consensus agreement, China was one of 158 States that voted in favour of a UNGA Resolution on the adoption of the Comprehensive Test Ban Treaty on 10 September 1996.

There are a number of possible explanations for China not signing the ATT. While it is difficult to say exactly what considerations lie behind this decision, the reasons are likely to be complex and based on a variety of factors and influences – both domestic and international. One explanation could rest with China's emergence, in recent years, as a major arms exporter. According to the SIPRI Arms Transfers Database, China was the 4th largest arms exporter for the period 2009-2013, accounting for 6 per cent of global arms deliveries. China will certainly be concerned to maintain this position and may have been nervous of placing its arms export policy under the additional international scrutiny that might have followed any decision to sign the ATT.

Secondly, while China has made significant progress in developing and updating its export controls, the normative basis of China's controls remains limited in comparison to the criteria set out in the ATT. The criteria whereby the Chinese Government assesses proposed arms exports includes consideration of China's international obligations including compliance with non-proliferation commitments, whether the recipient is under a UN arms embargo or supports terrorist activities, and the effectiveness of the

recipient's export control system.³ Accordingly there is no specific requirement to consider the impact of an arms transfer on international human rights law or international humanitarian law, or whether an arms transfer could fuel transnational organised crime, gender-based violence or violence against women and children. These humanitarian principles are at the heart of the ATT and a possible reluctance on the part of China to accept their relevance in the context of international arms transfer control could be a factor in the decision not to sign the ATT.

It is worth noting, however, that State Signatories to any Treaty are not bound to implement its provisions in full; rather they are required to refrain from acts that would defeat the object and purpose of the Treaty. This is set out in Article 1 of the ATT, which includes establishing the highest common international standards in arms transfer control and preventing illicit trafficking in order to: support international peace, security and stability; reduce human suffering; and increase transparency and responsibility in the global arms trade. Accordingly, States that have signed the ATT have effectively made a political statement of support for the spirit and aims of the Treaty without being legally obliged to implement it to the letter.

Finally China's decision not to sign the ATT may well have been shaped by the reluctance of other global and regional powers to support the ATT. Throughout the UN ATT negotiation process, Russia's position was such that its early signature was never seriously anticipated. India's potential support for the Treaty was compromised by a few specific sticking points on issues such as how defence cooperation agreements were addressed in the Treaty which meant that India was never on any list of 'likely signatories'. On the other hand, the swift signature of the ATT by the United States must have given the Chinese authorities pause for thought; however, clearly this was not sufficient to overcome China's other reservations on the matter.

Nevertheless, that China has not signed the ATT does not mean that its potential to engage with the Treaty has ended. Hopefully at some point in the future China will decide that it can and should become a State Party to the ATT and will accede to the Treaty. Even if China does not accede to the ATT in the near term, China should still seek to engage with the ATT process. If it is decided by the ATT States Parties that non-signatory States should be allowed to attend the Conference of States Parties (CSP), China would be well-advised to take advantage of this opportunity so as to gain a better understanding and appreciation of how the Treaty will

³ Saferworld, 'Expanding and sustaining dialogue between China and the Wassenaar Arrangement' (January 2015). Please also see: Wu Jinhui, "Military Products: China's Export Control Mechanism and Practices", 10 June 2014, presented at an international seminar on 'Contributing to International Security and Stability: Strengthening Dialogue between China and the Wassenaar Arrangement' in Vienna, Austria.

work in practice and how it can positively impact on international peace and security. Should observers be invited to make statements at the CSP, China should also embrace this opportunity and share its perspective with the States Parties, signatories and other observers. Through such an open and frank exchange of views it is to be hoped that some of the myths and misperceptions surrounding the ATT can be debunked, thus adding impetus to the effort towards achieving a universal Treaty.

Questions & Answers

Chinese arms experts provide their views on China's future engagement with the ATT⁴

Biographies

Dr Dai Ying is an independent researcher. She attained her PhD at Tsinghua University in 2011, and is currently based at the University of Texas at Austin. Her research interests span a broad range of arms control issues, but focus in particular on conventional arms control. Her work seeks to better understand how conventional arms control is negotiated by states, and the role civil society plays in the process of these real-world negotiations.

Dr Guo Yang holds a PhD in Public International Law and worked as legal officer for the Department of Treaty and Law, Ministry of Foreign Affairs, PRC from 1998 to 2005. Since 2005, he has worked as Legal/Political Advisor for the Regional Delegation for East Asia of the International Committee of the Red Cross.

Professor Ouyang Liping is a researcher at Institute of Strategic Studies at the China Institute of Contemporary International Relations (CICIR). Her research mainly focuses on international arms control, non-proliferation, and international security. She also supervises graduate students. She has a Master's degree in Law from the University of International Relations.

1. The Arms Trade Treaty came into force on 24 December 2014, yet China is not a signatory. What do you think the implications are for China's future engagement in the ATT process?

Dai Ying: The decision-making process is complicated for China, and so China may need more time to finalise its decision. However, although China didn't sign the ATT, it can still make constructive

contributions towards the process. Looking back at arms control history, China has been very cooperative in the process of banning landmines and cluster bombs even though it has not signed the Mine Ban Treaty or Cluster Munitions Treaty.

Guo Yang: The treaty could serve as a good basis for enhanced international cooperation, which very much depends on a state's political will and its domestic regime on the arms trade. I am always of the opinion that signing or ratifying a treaty is only the first procedural step and that domestication of treaty provisions is the essential action required for a real enforcement or implementation of a treaty.

Ouyang Liping: China is not yet a full member of the ATT, but it has been actively involved in the negotiation process and would not present any substantial resistance to the Treaty. China has made no comments on the ATT text, indicating that it agrees with the principles and contents of the ATT. Since the ATT's entry-into-force represents the will of the vast majority of countries, I think that China will pay close attention to the progress of the ATT, adopt a constructive attitude towards the ATT, and maintain a certain degree of cooperation with and understanding of the ATT.

Saferworld: *It is disappointing that China did not sign the ATT as this would have cemented its position as a key ATT supporter state and guaranteed Chinese participation in the Conference of States Parties. China's approach to the ATT has been a cautious one, overall, and so it is to be hoped that once the ATT institutions and mechanisms are in place and working well, China will be encouraged to accede to the Treaty and play a full part in its operation. In the meantime it would still be in China's interests to continue to develop and modernise its arms transfer control system so as to bring it in line with the provisions of the ATT.*

China has a strong interest in stable international, regional and national environments. More and more, Chinese personnel and businesses are at direct risk of physical and commercial harm through operating in zones of insecurity. Ready access to arms by competing groups in these contexts increases the risks faced by these Chinese actors. The same applies to Chinese peacekeepers, who increasingly find themselves in harm's way from armed groups. China therefore has a growing interest in joining an international regime that prevents international arms transfers that are not subject to effective control by authorised and responsible actors.

⁴ Saferworld invited three Chinese experts to provide their views on China's future engagement with the ATT. These are the personal views of the interviewees and are not representative of their organisations. This is a copyedited version of their responses.

2. How to prevent terrorist groups gaining access to weaponry is a major concern for many states including China. The ATT (under Article 7.1.b.iii and Article 7.3) addresses this question. To what extent do you think the implementation of the ATT will have an impact on strengthening international safeguards against support for terrorist groups?

Dai Ying: The implementation of the ATT will greatly help international society improve legal and management systems and enhance cooperation within anti-terror campaigns. However, there is still room for improvement. For example, the ATT does not ban the transfer of arms to non-state actors. These are arguably potential shortcomings hindering the ATT's fight against terrorism. However, the ATT provides opportunities for signatories to express their concerns on such issues.

Guo Yang: Article 7 requires exporting states to assess the risk that arms or notable items (such as ammunition, munitions, parts or components) could be used to commit or facilitate terrorism. This no doubt strengthens anti-terrorism measures that states could take. However, under paragraph 3 of Article 7, the State Party is only obliged not to authorise the export if there exists *overriding risk of those items being used for terrorism*. The 'overriding' threshold seems both ambiguous and quite high, which requires further clarification. Of course, state participation in discussions on arms trade issues would unquestionably influence the implementation and future development of the Treaty.

Ouyang Liping: China has always taken strict control over its domestic guns. There is no gun culture in China and personal gun ownership is illegal. However, following China's opening up, cross-border and transnational organised crimes prevail within the country alongside the 'three evil forces' of separatism, extremism and terrorism. China is increasingly faced with the challenge that terrorists may obtain firearms and use them to conduct activities threatening China's safety and stability. Firearms management requires international cooperation, but it also requires the creation of a stable and harmonious regional and international environment. In this regard, China is firmly in favour of strict arms control and promotion of regional peace and stability as the two sides of one coin. Currently many unstable regions, such as Syria, are breeding grounds for emerging terrorist organisations. Some western countries had actively supported the Syrian rebels, providing arms and

material assistance; they never imagined that the IS would emerge as an enemy to the whole world. It is self-evident where the organisation's firearms came from. The fight against terrorism, the promotion of world peace and economic development, and effective international cooperation on gun control is ultimately the way out.

Saferworld: *The ATT reinforces existing international norms in relation to preventing terrorist acts and underscores the vital importance of not transferring arms that could be used by those involved in such acts. Conventional arms, parts, components and ammunition are included under Article 7 which addresses concerns relating to terrorism, organised crime, human rights, humanitarian law, gender-based violence or violence against women and children. While the inclusion of the term 'overriding' in the export assessment provisions was always controversial, it should be noted that the ATT is to be a 'floor' and not a 'ceiling'; therefore states are at liberty, and are in fact encouraged, to establish a more rigorous standard. They may consider, for example, whether there is a 'substantial' or 'clear' risk of arms contributing to the negative consequences outlined in Article 7. Furthermore, it is expected that over time States Parties will begin to develop a clearer shared sense of how the term 'overriding' can best be understood, a factor that points to the value of China engaging fully with the ATT so as to have the opportunity to participate in developments of this around Treaty interpretation. International cooperation is indeed the only way to effectively tackle the scourge of terrorism; now the ATT has become international law all States Parties are legally obliged to consider the risks that the export of arms could be used to commit terrorist acts. It is to be hoped, moreover, that other states that are not yet party to the ATT will also understand the need to act responsibly.*

3. Many African countries are long-standing supporters of the ATT. They have suffered for many years from the irresponsible and illicit trade in conventional arms and, as a result, see their future security and prosperity as being supported by the ATT. Do you think China's engagement with the Treaty will have an impact upon how the international community views China's commitment to peace and security in Africa?

Dai Ying: Absolutely. Improving the humanitarian situation in African countries is one of the major purposes of the ATT, and this aim is fully supported by China. By working closely with all States Parties to

the ATT, China can share information and discuss differences with the international community about the operationalisation of regulating the international arms trade, especially illicit arms transfers to African countries. This would help international society to better understand China's arms control policy.

Guo Yang: Yes, any state that seriously deals with the proliferation of arms in Africa would contribute to peace and security there whilst establishing its own image as a responsible member of the international community.

Ouyang Liping: Illicit proliferation and smuggling of small arms indeed hinders the economic development of many African countries to some extent, but the proliferation of small arms is the result of ongoing regional turmoil. Therefore, the fundamental solution to the proliferation of small arms is to create a good regional security environment. Although China remains outside the ATT system it has always been, and will continue to be, committed to maintaining peace and security in Africa.

Saferworld: *Despite not signing the ATT it is to be hoped that China will constructively engage with the Treaty regime. However, one of the key premises of the ATT is that responsible regulation of the government-authorized or 'legal' trade in arms is vital to the preservation of peace, security, stability and human rights at national, regional and international levels. Those states that are committed to supporting African states in the pursuit of these goals need to ensure that they are not fuelling the proliferation of arms, and in particular small arms and light weapons, through exports to countries that are experiencing conflict or social unrest or through exports that are then at risk of being diverted.*

4. Support has emerged in many countries from the defence industry and the realisation that the ATT would serve their interests by ensuring a 'level playing field' that would establish common international rules governing the trade in arms. What are the opinions from the defence industry in China on the treaty?

Dai Ying: The defence industry in China is willing to constructively engage in the discussion and share opinions with all parties for the ATT. For example, the defence industry in China is very interested in the specific content of the ATT, for example, the enforcement requirements and technical standards, which may influence the feasibility of the treaty.

Ouyang Liping: China is a newcomer to the international arms sales market. The market is already dominated by pre-existing arms exporters. China can only conduct a small amount of sales in some marginal areas. Of course, in recent years, China's arms sales have grown quickly, but most of the growth is limited to Pakistan. The ATT's strict control over both firearms and various intermediaries will affect the interests of the global defence industry to some extent; China's defence industry is also likely to be affected. However, the interests of the defence industry must give way to national interest. The defence industry must abide by the law and be engaged only in a legitimate arms trade; any violations should be subject to national punishment. As for the arms sales 'level playing field', I think western countries conduct arms sales and make relevant evaluations with significant political and ideological preferences; therefore the so-called fair competition is only relative. Double standards are still applied when evaluating applications for arms exports.

Saferworld: *While China is currently relatively disengaged from a developing globalisation of supply chains, it is reasonable to assume that this may change over time. This points to China and Chinese industry having an interest in operating similar arms transfer rules to other major arms producers, so as to reduce potential bureaucratic barriers to defence production cooperation, which in turn would encourage full engagement with the evolving ATT regime. It is also possible that by joining the ATT China might initiate a process which could, in time, lead to a shift in the relationship between Chinese and other major producers of defence equipment.*

5. In your opinion, are there any remaining issues, political or technical, that are of China's concern in relation to the ATT, but have not yet been thoroughly explored and discussed?

Dai Ying: Personally, I think that effectively operationalising the enforcement of the ATT may be a major issue. The corresponding details still appear to be missing at the present stage. For example, how to assess the potential humanitarian risk of the arms trade has not been specifically defined so far.

Guo Yang: I personally do not doubt the political will of the Chinese government to address arms trade issues. However, as far as I am aware, I do not believe that the Chinese government has done a thorough compatibility study on the ATT and its domestic laws or regulations. Such a study could

indicate the extent to which the Treaty has been implemented and what needs to be done for domestic implementation. This should be a precondition for any decision-making process related to acceding to the Treaty. The next step could be to support research on Chinese domestic law and regulations on the arms trade and recommend implementation measures for the Treaty within the Chinese context.

Ouyang Liping: China is generally supportive of the ATT. Of course, China has its own concerns, for example, on the issue of whether to sell weapons to non-state actors. Although this is a major concern for China it is willing to compromise. Furthermore, China is very sensitive and adverse to any form of double standards.

Saferworld: *With regard to operationalisation of the humanitarian risk assessment, many States Parties already have significant experience in this regard and it is to be hoped that this experience can be widely shared through information exchanges at the Conferences of States Parties. At the same time, while the ATT leaves the issue of enforcement largely to national discretion, again many States Parties have experience and good practice that they can share with other states.*

As previously mentioned, China also has concerns with regard to the provision of arms to non-state actors, with the question of arms sales to Taiwan by other states principal among these, and on the issue of the operation of non-state armed groups who threaten security and stability in developing countries and sub-regions where China is engaged. While the issue of non-state actors is not specifically addressed in the Treaty, due to difficulties in agreeing on a definition, if the ATT is implemented in spirit and letter by all states then this would create a major barrier to the arming of such entities. But no matter what concerns China may have – be those concerns supplies to non-state actors or enforcement or anything else – China will be much better placed to see these resolved to its satisfaction as a State Party playing a full part in Treaty interpretation, implementation and development than it will be as a non-State Party outside the process.

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.

About Saferworld

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. We work with local people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. Our priority is people – we believe that everyone should be able to lead peaceful, fulfilling lives, free from insecurity and violent conflict.

We are a not-for-profit organisation with programmes in nearly 20 countries and territories across Africa, Asia and Europe.

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