

The Arms Trade Treaty: A Step Forward in Small Arms Control?

On 2 April 2013, the UN General Assembly adopted the Arms Trade Treaty (ATT),¹ an international instrument designed to regulate the transfer of conventional arms, including small arms and light weapons. The ATT is a significant addition to the existing arsenal of international and regional efforts to address the problems associated with irresponsible arms transfers and small arms proliferation.

The inclusion of small arms and light weapons and ammunition in an ATT was a priority for many states during the negotiations. As the international community celebrates the adoption of the ATT, an important question emerges: what does the ATT mean for small arms control?

This paper explores the relationship between the ATT and international instruments in this area, including synergies and inconsistencies. It also examines the ATT's relevance to and potential impact on the existing commitments and emerging norms in the area of small arms control and, specifically, international transfers.

What is the current landscape?

At the international level, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (the Firearms Protocol), the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and

Light Weapons in All Its Aspects (PoA), and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (ITI) have all contributed to the development of a normative framework on small arms control (see Table 1). Indeed, the preamble of the ATT notes the 'contribution made' by these three instruments (UNGA, 2013, preamble). In addition, regional agreements supplement commitments in this area.

Where is the overlap between the ATT and existing instruments ?

The ATT overlaps with existing instruments in several important ways: it covers some of the same types of arms and some of the same types of transactions and activities. Furthermore, there are overlaps in terms of implementation activities.

Scope: arms

While the PoA and the ITI only clearly cover small arms and light weapons, and the Firearms Protocol only covers firearms, ammunition, and parts and components, the ATT covers the full range of conventional weapons as well as ammunition and parts and components (UNGA, 2013, arts. 2(1)(h), 3, 4). The ATT thus fills one of the gaps of the PoA, which does not clearly cover ammunition.

Table 1. Overview of international instruments covering small arms

International instrument	Date adopted	Legal status		Scope		
		Legally binding	Non-legally binding	Small arms and light weapons	Ammunition	Parts and components
Firearms Protocol	8 June 2001	✓		✓*	✓	✓
PoA	20 July 2001		✓	✓	**	**
ITI	8 December 2005		✓	✓		
ATT	2 April 2013	✓		✓	✓***	✓***

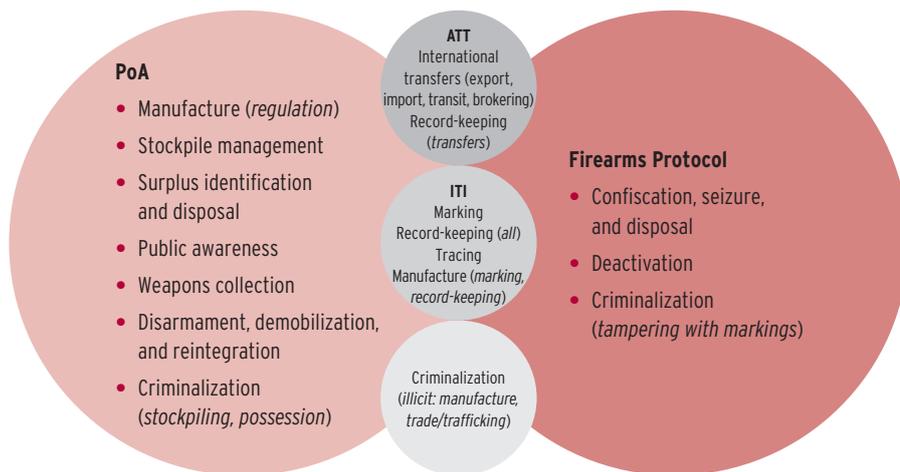
Notes:

* The Firearms Protocol covers all small arms but applies to only a narrow range of light weapons—specifically, those using cartridge-based ammunition that can be moved or carried by one person (McDonald, 2005, p. 126).

** The PoA contains no definition of 'small arms and light weapons', creating uncertainty as to whether provisions that are not clearly limited to the weapons themselves, in particular those on marking (UNGA, 2001a, para. 11.7), apply to small arms ammunition and parts and components. The ammunition question has been the source of political controversy, with some states arguing that the PoA applies to ammunition and others refuting this assertion.

*** Only certain ATT provisions apply to ammunition and parts and components.

Figure 1. **International instruments: scope regarding transactions**²



Scope: transactions

Although the PoA and the Firearms Protocol are narrow in terms of the types of arms they cover, they include a broad range of control measures and activities. In contrast, the ATT covers a broader range of conventional arms but only deals with one main aspect of the control system—international transfers (including export, import, transit or transshipment, and brokering) (see Figure 1). Notably, the Firearms Protocol does not apply to state-to-state transactions or state transfers where national security interests would be prejudiced (UNGA, 2001b, art. 4.2). The ATT, however, contains no such exclusion, and applies to all transfers as defined by the treaty, thus filling one of the gaps of the Firearms Protocol (UNGA, 2013, art. 2.2).

Implementation

In addition to shared elements of scope, the instruments contain similar or complementary commitments. Some of the ATT commitments closely mimic existing commitments on international transfers (see Table 2). For example, the Firearms Protocol, the PoA, and the ATT all include provisions for regulating the export, import, transit or transshipment, and brokering of arms, as well as commitments to keep records of arms transfers.

In some instances, ATT provisions also help to create benchmarks and elaborate on commitments that lack specificity. For example, the PoA requires states to assess export authorizations in accordance with existing responsibilities under relevant international law, but it does not specify what considera-

tions should be applied—other than the risk of diversion into the illegal trade (UNGA, 2001a, para. II.11). The ATT identifies some of these ‘existing responsibilities’ and provides a list of the criteria states parties must consider when assessing export authorizations (UNGA, 2013, art. 7.1). The ATT occasionally goes further than existing instruments, for example by including express prohibitions on the transfer of small arms, ammunition, and parts and components in certain circumstances (art. 6).

However, while many ATT provisions complement and even expand on existing commitments, some are inconsistent and others actually dilute established commitments and emerging norms in this area. For example, the ATT provisions on import and transit are littered with qualifying language, whereby states are only required to take measures to regulate imports ‘where necessary’ (UNGA, 2013, art. 8.2); to take measures to regulate transit ‘where necessary and feasible’ (art. 9). Such qualifiers are not present in the Firearms Protocol, which is also legally binding.

Furthermore, under the ATT each state party is to take measures to regulate brokering ‘pursuant to its national laws’ (UNGA, 2013, art. 10); this provision implies that states need not do more than is already being done pursuant to existing national law. Indeed, the ATT merely suggests that such measures *may* include registration or brokering authorizations, whereas under the PoA, brokering controls *should* include measures such as registration, licensing, or authorization of brokering transactions *as well as* appropriate

penalties for illicit brokering (UNGA, 2001a, para. II.14). The language and framing of the ATT brokering provisions are reminiscent of those in the Firearms Protocol (UNGA, 2001b, art. 15). Either way, states now have at least³ three reference points for regulating brokers, each slightly different from the others.

A final example of one of the inconsistencies between the instruments relates to record-keeping. The ITI requires states to keep records of all small arms within their territory ‘indefinitely’ (to the extent possible), but, at a minimum, records of import and export must be kept for at least 20 years (UNGA, 2005, para. 12). The ATT, however, requires states to keep records of export authorizations or actual exports but only *encourages* them to keep records of small arms that are imported⁴ or that transit their territories. Moreover, under the ATT records need only be kept for a minimum of ten years (UNGA, 2013, art. 12), which is consistent with the Firearms Protocol (UNGA, 2001b, art. 7).

What impact could the ATT have on small arms control?

The ATT has contributed several missing pieces to the framework of controls governing the international transfer of small arms, namely express prohibitions on certain types of transfers and specific criteria that must be applied to export licensing decisions. The ATT reinforces certain national-level commitments, such as the requirement to establish control systems governing export authorizations, and makes them *legally* binding obligations, which should ostensibly improve states’ adherence to and implementation of their commitments.⁵ In the context of regulating the *export* of small arms, therefore, the ATT takes small arms transfer controls several steps forward.

However, with respect to other transactions, namely import, transit, and brokering, the political compromises required to reach agreement have left the ATT with a series of provisions that are, in many cases, weaker than existing commitments on small arms transfers agreed more than a decade ago. Worse still, the ATT has taken

Table 2. **Overview of commitments on international transfers of small arms***

Theme	Firearms Protocol	PoA	ATT
Export	<ul style="list-style-type: none"> Each state party shall establish or maintain an effective system of export licensing or authorization (art. 10.1). 	<ul style="list-style-type: none"> Put in place adequate LRAP to exercise effective control over export (paras. II.2, II.12). Establish an effective system of export licensing or authorization (para. II.11). 	<ul style="list-style-type: none"> Establish and maintain a national control system, including a national control list (art. 5.2). Establish and maintain national control systems to regulate export of ammunition/munitions (art. 3) and parts and components (art. 4).
	<ul style="list-style-type: none"> No provisions in the Firearms Protocol expressly prohibiting the export of firearms in specified circumstances. 	<ul style="list-style-type: none"> No provisions in the PoA expressly prohibiting the export of small arms in specified circumstances; however, UN member states have undertaken to take appropriate measures, including legal and administrative ones, against activities that violate arms embargoes (para. II.15). 	<ul style="list-style-type: none"> A state shall not authorize transfers that would: violate UN Security Council and UN Charter obligations (especially arms embargoes) (art. 6.1); violate obligations under international agreements it is party to (art. 6.2); or be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions, attacks directed against civilians, or other war crimes (art. 6.3).
	<ul style="list-style-type: none"> There are no provisions in the Firearms Protocol expressly requiring states parties to conduct a risk assessment as part of an export licensing decision. 	<ul style="list-style-type: none"> Assess export applications according to strict national regulations and procedures that are consistent with international law and that take into account the risk of diversion (para. II.11). 	<ul style="list-style-type: none"> Assess the potential that weapons: would contribute to or undermine peace and security; could be used to breach international humanitarian law, international human rights law, international conventions, or protocols relating to terrorism or transnational organized crime (art. 7.1). Deny the export if there is an overriding risk of any of these (art. 7.3).
	<ul style="list-style-type: none"> Verify: (a) importing states have issued import licences or authorizations; and (b) written notice that transit states do not object (art. 10.2). Documentation must include: place and date of issuance, date of expiration, country of export, country of import, final recipient, description and quantity of the items, and transit countries (if relevant) (art. 10.3). Ensure (within available means) that the authenticity of documents can be verified or validated (art. 10.5). 	<ul style="list-style-type: none"> Ensure the use of authenticated end-user certificates and effective legal and enforcement measures (para. II.12). 	<ul style="list-style-type: none"> Ensure all authorizations for export are detailed and issued prior to export (art. 7.5). The importing state shall ensure that relevant information—such as end-use or end-user documentation—is provided, upon request, pursuant to its national law, to assist the exporting state party (art. 8.1). Make available all information about the authorization, upon request, to the importing, transit, and transshipment states parties (art. 7.6).
Import	<ul style="list-style-type: none"> Each state party shall establish or maintain an effective system of import licensing or authorization (art. 10.1). 	<ul style="list-style-type: none"> Put in place adequate LRAP to exercise effective control over import (para. II.2). Establish an effective system of import licensing or authorization (para. II.11). 	<ul style="list-style-type: none"> The importing state shall take measures to regulate, where necessary, imports under its jurisdiction, such as through import systems (art. 8.2).
	<ul style="list-style-type: none"> The importing state party shall, upon request, inform the exporting state party of the receipt of the dispatched shipment (art. 10.4). 	<ul style="list-style-type: none"> Other than stipulating that an import licence or authorization is required, there are no provisions in the PoA expressly calling on states to provide certain documentation or exchange information on small arms imports. 	<ul style="list-style-type: none"> The importing state shall ensure that relevant information—such as end-use or end-user documentation—is provided, upon request, pursuant to its national law, to assist the exporting state party (art. 8.1). The importing state may request information from the exporting state regarding export authorizations (art. 8.3).
Transit and transshipment	<ul style="list-style-type: none"> Establish or maintain effective measures on international transit (art. 10.1). 	<ul style="list-style-type: none"> Put in place adequate LRAP to exercise effective control over transit (paras. II.2 and 12). Establish measures on international transit (para. II.11). 	<ul style="list-style-type: none"> Take appropriate measures to regulate, where necessary and feasible, the transit or transshipment through its territory (art. 9).
	<ul style="list-style-type: none"> The information in the import licence must be provided to the transit states in advance (art. 10.3). 	<ul style="list-style-type: none"> Ensure the use of authenticated end-user certificates and effective legal and enforcement measures (para. II.12). 	<ul style="list-style-type: none"> No specific reference to end-use or other documentation in the context of regulating the transit of arms.
Retransfer	<ul style="list-style-type: none"> No specific provisions on retransfer or re-export of items, but presumably the export provisions are intended to apply to their re-export. 	<ul style="list-style-type: none"> Put in place adequate LRAP to exercise effective control over retransfer (para. II.12). Notify the original exporting states before the retransfer of weapons (para. II.13). 	<ul style="list-style-type: none"> No specific provisions with respect to the retransfer or re-export of arms, but presumably the export provisions are intended to apply to their re-export.
Brokering	<ul style="list-style-type: none"> Consider regulating brokers by establishing a system that requires: registration; licensing or authorization of brokering; and/or disclosure of brokers on documentation (art. 15). 	<ul style="list-style-type: none"> Develop legislation and administrative procedures on brokering, including: registration, licensing or authorization of brokering transactions, and appropriate penalties for illicit brokering (para. II.14). 	<ul style="list-style-type: none"> Each state party shall take measures, pursuant to its national laws, to regulate brokering taking place within its jurisdiction, such as registration or brokering authorizations (art. 10).

LRAP – laws, regulations, and administrative procedures. ■ Provisions apply to small arms and light weapons, their ammunition, parts, and components. ■ Provisions apply only to weapons, but not to ammunition, parts, or components.

Note: * The ITI is not included in Table 2 since it does not contain provisions on international transfers (other than keeping records of transfers).

the international community a step backwards with respect to certain other norms, including the duration of record-keeping, a crucial element in efforts to trace illicit small arms.

What this will mean in practice is unclear. All UN member states have undertaken to fulfil the PoA commitments, including those covering international transfers, and, at this writing, 98 states were parties to the Firearms Protocol. How states that sign and ratify the ATT choose to implement some of its recommendations—as opposed to obligations—in light of existing, firmer commitments they may have under the PoA, the ITI, and Firearms Protocol remains to be seen. But given that the ATT, once in force, will be legally binding and that it was agreed subsequent to the other instruments, states may perceive its overlapping provisions as taking precedence over the earlier instruments. Wherever ATT provisions are *weaker* than their Firearms Protocol, PoA, or ITI equivalents, the discrepancies could lead to an erosion of existing commitments, or of their relevance, and a lowering of emerging benchmarks for small arms control.

Conclusion

In many instances the ATT complements and bolsters existing small arms instruments, but it cannot and should not be viewed as replacing these instruments in their entirety. International transfer controls are but one aspect of the Firearms Protocol and PoA amid a broad range of arms control measures. And for many UN member states, including ones that fought to ensure small arms and light weapons would be included in the ATT, small arms-related problems have less to do with inadequate international transfer controls and more to do with controlling small arms already within their territories. If states mistakenly perceive the ATT as replacing existing instruments or somehow rendering them redundant, their willingness to fulfil the commitments in these other instruments may suffer and states may turn their efforts to implementing the ATT rather than existing instruments. States should be careful not to ignore or overlook national priorities that may

lie elsewhere—such as addressing leakage from state stockpiles or improving marking and record-keeping practices—in the name of ATT compliance. ■

Notes

- 1 At this writing, the ATT had opened for signature on 3 June 2013 and was to come into force once 50 states had ratified it.
- 2 Figure 1 offers only a general idea of the coverage of the different instruments and their relationships. For details, see Table 2.
- 3 States may also have agreed to brokering commitments under regional instruments.
- 4 Although states are only *encouraged* to keep records of imports, they are *required* to submit annual reports on authorized or actual imports (UNGA, 2013, art. 13.3). It is difficult to see how states could submit such reports without keeping records.
- 5 Though states parties to the Firearms Protocol are already legally bound to regulate small arms exports.

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For additional information about international measures, please visit www.smallarmssurvey.org/?international.html.

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