



13 October 2014

SOUTH AFRICA'S OBLIGATIONS UNDER THE ARMS TRADE TREATY – AN OVERVIEW

- *In terms of section 231(2) of the Constitution, an international agreement entered into by the Executive must be ratified by both houses of Parliament in order to become binding on the country.*
- *The Arms Trade Treaty (ATT) was adopted by the United Nations on 2 April 2013 and will enter into force on 24 December 2014.*
- *Cabinet approved the ratification of the ATT in July 2013 and South Africa became a signatory to the Treaty on 25 September 2013.*
- *The Treaty was tabled in Parliament in September 2014 for ratification by Parliament.*
- *The Select Committee on Security and Justice must consider the ATT and recommend to the National Council of Provinces whether or not to ratify the Treaty.*
- *Due to South Africa's existing regulatory arms framework (the National Conventional Arms Control Act 41 of 2002 (as amended in 2008), and the National Arms Control Committee (NGACC)), South Africa will only need to change the time-frame required to keep records of transactions from the current five years to 10 years in order to comply with the Treaty.*
- *The ATT thus places no additional obligations on South Africa, and according to the Department of Defence, it will not undermine South Africa's existing national arms regulation legislation and standards.*

1. INTRODUCTION

The Arms Trade Treaty (ATT) was adopted by the United Nations General Assembly on 2 April 2013, after which it was opened for signature. By September 2014, the ATT had been signed by 121 states (including South Africa) and ratified by 53. South Africa¹ has not yet ratified the ATT. The Treaty will enter into force on 24 December 2014.

2. OBJECTIVES OF THE ATT

The ATT is a multilateral, legally-binding agreement that establishes common standards for the international trade of conventional weapons and seeks to reduce illicit arms. The Treaty aims to reduce human suffering caused by illegal and irresponsible arms transfers, improve regional security and stability, and promote accountability and transparency by state parties regarding the transfers of conventional arms.

The goals of the ATT is aligned with those of the Wassenaar Arrangement (WA), including the promotion of transparency and greater responsibility in transfers of conventional arms.

¹ Arms Trade Treaty.org (2014). Website. <http://www.armstrade.info/countryprofile/south-africa/>. Accessed 9 October 2014.



3. SUMMARY OF TREATY OBLIGATIONS²

The ATT does not control arms and does not place restrictions on the types or quantities of arms that may be bought, sold, or possessed by states. It also does not affect a state's domestic arms control laws or other firearm ownership policies.

3.1 South Africa already complies with the following Treaty obligations due to its existing arms control legislation and controls (through the NCACC):

- **Import / export arms control:** All state parties must adopt basic regulations and approval processes for the flow of weapons across international borders, establish common international standards that must be complied with before arms exports are authorised. States must “establish and maintain a national control system, including a national control list” and “designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms”.
- **Arms transfer:** The ATT prohibits arms transfer authorisations to states in contravention of UN Security Council arms embargoes or under other relevant international obligations, or if the state has knowledge at the time of authorisation that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes.
- **Risk Assessment:** States must assess the potential that exported arms could contribute to or undermine peace and security” or could be used to commit or facilitate serious violations of international humanitarian or human rights law, acts of terrorism, or transnational organised crime. States must consider measures to mitigate the risk of these violations; and, if an “overriding risk” of “negative consequences,” remains, they should not authorise the export of conventional arms³.
- **National control system:** States must establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms listed in Article 2(1) of the ATT; and parts and components that provide the capability to assemble the conventional arms listed therein.
- **Brokering and diversion:** Each state must take appropriate measures, pursuant to its national laws, to (a) regulate brokering taking place under its jurisdiction of conventional arms covered under Article 2(1) of the Treaty and (b) prevent the diversion of conventional arms covered under Article 2(1).
- **Annual Report:** Each state must report annually to the Treaty secretariat about the preceding year's authorised or actual export and imports of conventional arms, but can exclude “commercially sensitive or national security information”.
- **Measures:** States must take measures, where necessary and feasible, to (a) regulate the transit and trans-shipment of conventional arms, and (b) mitigate, co-operate and share information to prevent the diversion of conventional arms to the illicit market or for unauthorised end-use and end-users (Article 11).

² Armscontrol.org (2014). Website, http://www.armscontrol.org/factsheets/arms_trade_treaty. Accessed 9 October 2014.

³ battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, and small arms and light weapons.



- **International co-operation:** State parties must cooperate with other state-parties in order to implement the ATT effectively.
- **National laws and regulations:** States must take appropriate measures to enforce national laws and regulations to implement the treaty.

3.2 Treaty Obligation that South Africa must still comply with:

- **Time-period to keep records of transactions:** Each state must maintain national records for each export authorisation or delivery of conventional arms for at least 10 years.
 - In terms of the National Conventional Arms Control Regulations that came into effect in 2012⁴, the current period for keeping records by any person who holds a permit under the National Conventional Arms Control Act 41 of 2002, is five years.
 - According to the Legal Opinion of the Chief State Law Advisor, the time period will thus need to be amended to give effect to the requirement that records of transactions must be kept for 10 years.

4. THE ATT AND THE WASSENAAR ARRANGEMENT⁵

South Africa is a party to the Wassenaar Arrangement (WA), which is a multilateral co-operation entered into by 41 countries in the town of Wassenaar (The Hague, Netherlands) in 1995. The WA came into operation in 1996 and its aims are to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilising accumulations. Measures and guidelines help states to effectively implement export controls in conventional arms, including WA control lists and best practice documents. Participating states seek, through their national policies, to ensure that transfers of items on the WA List⁶ do not contribute to the development or enhancement of military capabilities which undermine these goals; and are not diverted to support such capabilities. The decision to transfer or deny transfer of any item is the sole responsibility of participating states. All WA measures are taken in accordance with national legislation and policies, and are implemented on the basis of national discretion.

⁴ GG 35183. 20 April 2012. R326. Available at http://www.savi.uct.ac.za/wp-content/uploads/2012/12/NCACC_Regulations_dd_20-04-2012.pdf. Accessed 13 October 2014

⁵ The WA welcomed the adoption of the ATT by the United Nations General Assembly on 2 April 2013. According to the WA the effective implementation of the ATT will contribute to international peace, security and stability, save lives, reduce human suffering, protect human rights, prevent the diversion of conventional arms to the illicit market, combat terrorism, and uphold the legitimate trade in conventional arms.

⁶ The WA-List is a very extensive control list the contents of which was updated on 4 December 2013. It includes criteria and notes relating to: Dual-Use Goods and Technologies, General Technology and General Software, various categories of special materials and Related Equipment, Materials Processing, electronics, Computers, Information Security, Sensors and Lasers, Navigation and Avionics, Marine, Aerospace and Propulsion. It also contains a list of items munitions placed on the "Sensitive List" and the "Very Sensitive List". Available at <http://www.wassenaar.org/controllists/2013/WA-LIST%20%2813%29%201/WA-LIST%20%2813%29%201.pdf>. Accessed 9 October 2014.

