

# The Arms Trade Treaty: Did It Effectively Control of the Arms Trade?\*

*Socorro Flores Liera\*\**

The availability and access to arms and ammunition are directly linked to insecurity, violence and conflict in different parts of the world.<sup>1</sup> Where weapons are abundant and readily available, higher rates of homicide are recorded, placing societies at risk and making them vulnerable. As such, disarmament and arms control are, as the U.N. Secretary-General acknowledges, “essential tools for achieving a safer world and a safer future.”<sup>2</sup>

---

\* Spanish-English translation by Alexander Smith.

\*\* Ambassador, Permanent Representative of Mexico to the United Nations Office and International Organizations in Geneva, Switzerland. The views expressed in this article are those of a personal nature.

<sup>1</sup> Studies linking gun availability to violence include: “Firearms and Violent Deaths”, in the Small Arms Survey, at <http://www.smallarmsurvey.org/about-us/highlights/2016/highlight-rn60.html> (date of access: March 9, 2020); and The Global Burden of Disease 2016 Injury Collaborators, “Global Mortality From Firearms, 1990-2016”, in *JAMA*, vol. 320, no. 8, 2018, pp. 792-814, in <https://jamanetwork.com/journals/jama/fullarticle/2698492> (date of access: March 9, 2020). Control Arms refers to the seriousness of this link in Latin America and the Caribbean in Control Arms Secretariat, “Chapter 4: Assessing Arms Diversion in Latin America”, in *ATT Monitor 2018 Report*, New York, August 2018, pp. 101-114, at [https://attmonitor.org/en/wp-content/uploads/2018/08/EN\\_ATT\\_Monitor\\_Report\\_2018\\_ONLINE.pdf](https://attmonitor.org/en/wp-content/uploads/2018/08/EN_ATT_Monitor_Report_2018_ONLINE.pdf) (date of access: March 9, 2020).

<sup>2</sup> António Guterres, “Remarks at the University of Geneva on the Launch of the Disarmament Agenda”, Geneva, May 24, 2018, at <https://www.un.org/sg/en/content/sg/speeches/2018-05-24/launch-disarmament-agenda-remarks> (date of access: March 9, 2020).

It is the responsibility of all States, especially those that produce and trade in arms, to work together and establish adequate controls that will prevent such weapons and their ammunition from getting into the wrong hands, thus leading to more conflict and deaths, as well as more suffering and instability for individuals and governments. Recognition of this responsibility led to, in 2013, within the U.N. framework, the adoption of the Arms Trade Treaty (ATT), the first global instrument regulating trade in conventional arms, which entered into force on December 24, 2014.

The ATT is a control instrument. It aims to regulate and improve international trade in conventional arms through specific mechanisms that promote transparency, confidence, cooperation and accountability to contribute to human safety. It is an instrument on which Mexico places particular importance in its efforts to reduce violence in the country.

This essay highlights the importance of tools provided by the Treaty, in particular those related to preventing diversion of arms, conducting risk assessments, reporting and conferences of States Parties to prevent illicit arms trafficking and its consequences. Meanwhile, it also identifies the challenges that are present in achieving the ambitious objectives of this novel instrument.

## A brief overview of the Arms Trade Treaty

Considering the multilateral standards, the process that concluded with the creation and entry into force of the ATT was undertaken expeditiously between 2009 and 2014. This can only be explained by the recognition of the importance of its objectives. In 2009, the U.N. General Assembly decided to begin working on the Treaty. Between 2010 and 2011 preparatory meetings were held, the negotiation of the text started in June 2012 and in April 2013 it was adopted with the vote of 156 States.<sup>3</sup> The 50 ratifications required for its entry into force were achieved in just over a year, this being the fastest record of participation

<sup>3</sup> At the General Assembly, 154 votes were recorded in favor. Subsequently, Angola—which abstained—and Cape Verde—which had not voted - indicated that they had intended to vote in favor, and their vote was recorded accordingly.

regarding an instrument negotiated within the United Nations. Today there are 105 Parties to this instrument and work is underway, as noted below, to achieve its universality.

Mexico played a leading role in the negotiation and promoted the inclusion of concepts, indispensable for the effectiveness of the Treaty, such as *the prevention of arms diversion*. The Treaty was signed by Mexico on the day it was opened for signature and Mexico was the sixth country to deposit its instrument of ratification.

A key ally in the process has been the civil society, whose activism helped to raise awareness of the challenges that the illegal arms trade represents for the international community and the need for a binding instrument on the issue. Today, civil society continues to be a crucial driving force in promoting effective implementation of the ATT.

The Treaty covers eight categories of conventional weapons, from combat vehicles, aircraft and warships to small arms and light weapons (Article 2, Paragraph 1), as well as their ammunition (Article 3), parts and components (Article 4). Its provisions can be grouped into five types: 1. The establishment of internal controls; 2. Prohibitions, export assessment and prevention of diversion; 3. Transparency; 4. The exchange of information; and 5. International assistance and cooperation.

In general terms, the ATT establishes mechanisms to ensure that States Parties have effective internal import and export control systems to avoid the authorizing of prohibited transfers (Article 6).<sup>4</sup> To achieve this objective, the Treaty established a relevant tool, risk assessment, which states that arms exporters, before authorizing a transfer, must evaluate in an objective, non-discriminatory manner, while considering relevant factors such as the potential for the arms to contribute to undermining peace and security or to be used to commit any of the above-mentioned actions. Exporters must also take measures to mitigate any such danger, in cooperation with the importing State (Article 7).

---

<sup>4</sup> This Article prohibits arms transfers in violation of U.N. Security Council resolutions, other international obligations or where it is known that the arms could be used to commit genocide, crimes against humanity or grave breaches of the Geneva Conventions of 1949 or other war crimes under international agreements.

The importing countries and those through which the arms transit must regulate such transit or inter-transit, as well as the brokering activities carried out under their jurisdiction (Articles 9 and 10). The obligation of States involved in arms transfers to prevent the diversion of arms is closely linked to risk assessment (article 11). We will return to these aspects later.

In the promotion of transparency and accountability, the Treaty establishes the obligation of States Parties to submit an initial report and annual reports on imports and exports; to keep records of exports and transfers to their territory; and to cooperate with other parties through the exchange of information on aspects related to the implementation of the Treaty, lessons learned, actors linked to arms diversion and judicial investigations, among others (Article 15).

To assist States Parties in fulfilling their obligations, the Treaty provides for the establishment of a trust fund.<sup>5</sup>

## The first five years of the Arms Trade Treaty (2015-2019)

In the five years of the ATT, work has been focused on the institutionalization of the machinery provided for in the ATT and on promoting its universality. The highest governing body is the Conference of States Parties (CSP) in which the signatory states and, as observers, the civil society, industry and other stakeholders also participate. Five CSPs have been held—the first one hosted and chaired by Mexico in August 2015—which made it possible to establish the Secretariat, agree on budgets, procedural and financial rules, voluntary formats for State reports, and create the follow-up bodies.

In the exercise of its functions, the CSP relies on a Governing Board, headed by the Chair-in-Office and composed of five representatives of States

---

<sup>5</sup> The ATT Voluntary Trust Fund (VTF) was established in 2016 by the Second Conference of States Part to support countries that require assistance in the national implementation of their obligations under the Treaty. The VTF is funded by voluntary contributions from states and private sector donors. Among the activities it funds are legal assistance for the development of laws or regulations and institutional capacity building. The Fund is administered by the ATT Secretariat with the support of a project selection committee of 15 states. In its three annual cycles, from 2017 to 2019, the VTF has funded 43 projects.

Parties, each nominated by their respective regional group; a Voluntary Trust Fund selection committee, composed of representatives of 15 donor countries; and three working groups: effective implementation of the Treaty (itself composed of three subgroups: export bans, export and export assessment; transit and inter-transit; and diversion); transparency and reporting; and universalization of the Treaty.

The work is carried out over three sessions a year: two preparatory meetings, commonly in February and April, and the CSP in August.

During these years, the institutional and administrative foundations have been laid, but important challenges have also been identified that will need to be addressed in the course of the following CSPs. From 2020 onwards, the implementation phase will begin and it will be possible to identify whether the Parties honoring their commitments. Meanwhile, arms expenditure continues to rise globally, and conflict and violence persist.

## The importance of the Arms Trade Treaty for Mexico

It is estimated that approximately 200 000 weapons are illegally introduced into Mexico each year, 70% of which come from one country alone, the United States, and the remaining 30% from other countries.<sup>6</sup> This becomes relevant when observing that 69% of intentional homicides committed in Mexico are the result of the use of firearms.<sup>7</sup> The proliferation of weapons is also a public health problem and has reduced the quality of life and life expectancy of Mexicans. It is paradoxical that a country that has very strict regulations for the import and possession of firearms is flooded with illicit weapons, which are acquired relatively easily in other markets.

It is not possible for the Mexican authorities to address the serious problems they face without international cooperation from the producing countries. Undoubtedly, greater control at both land and sea borders, as well

<sup>6</sup> According to the Secretary of National Defense with data from the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

<sup>7</sup> According to the Executive Secretariat of Mexico's National Public Security System.

as ports of entry, is indispensable, but it is not the only way to prevent the illicit introduction of firearms. Without effective regulations to control the sale of arms and prevent their diversion from producing or trading countries, it will be impossible to achieve the security and justice objectives to which Mexico and the international community as a whole aspire.

In this sense, the ATT becomes a very valuable tool. It will not in itself solve the problems Mexico faces, but it does contain the minimum elements necessary for States Parties to work together, within the framework of the principles of international law, to reduce human suffering and promote transparency and responsible trade in conventional weapons.

I would like to highlight in this context three aspects to which I previously referred and which are particularly relevant in any effort to achieve responsible trade: risk assessment, prevention of diversion and compliance reporting.

*Risk assessment* is an analysis that each State Party must carry out before authorizing, or even having authorized, a transfer of the weapons covered by the Treaty. The assessment is unilateral and is undertaken according to each country's national system. However, it must meet clearly certain established criteria: it must be objective, non-discriminatory, comprehensive, include information provided by the importing State and all relevant factors, including the potential for the weapons to be used for illicit acts or to facilitate serious acts of violence. In a novel way, the Treaty establishes gender-based violence as one of the criteria to be considered in the assessment (Article 7, Paragraph 4).

Risk assessment is not a mechanical exercise: it must be comprehensive and case-by-case. Conducting it within the parameters required by the ATT could lead to the refusal of an export. It should be noted that although the Treaty refers to information provided by the importer, there is nothing to prevent a third State from providing additional information to help assess the risk. This is particularly important in the case of data documenting detected deviations that have affected the originator of the information. Furthermore, CSPs provide spaces to exchange information on how different exporters conduct their respective assessments, to compare practices and criteria, and to share lessons learned.

The other relevant mechanism is the *prevention of diversion* as, unfortunately, it is not uncommon for weapons that were legally transferred to one

country to appear later in another and fuel conflict and violence. The ATT establishes the duty of parties involved in a conventional arms transfer to take steps to prevent diversion. These measures include a review of the Parties involved in the export, information exchange and risk mitigation actions, among others. The CSP is currently considering establishing expedited mechanisms for Parties to exchange information on the subject, under relevant confidence and confidentiality parameters.

Finally, Parties are obliged to submit *annual reports*. The first within one year of the Treaty entering into force for that State, which must contain the measures taken to implement the Treaty, including national laws, national control lists, and other regulations and administrative measures (Article 13, Paragraph 1).<sup>8</sup> They must also report any changes to their regulations. In addition, they must submit an annual report, no later than May 31 of each calendar year, on imports and exports of conventional arms that were authorized or carried out. These reports serve as a basis for assessing whether the exports made by a Party contribute to the fulfilment of the objectives of the Treaty.

Work is currently under way to improve the voluntary formats that were agreed upon to facilitate reporting, make them more agile, clear and comprehensive and, above all, to avoid their duplication or becoming an onerous burden on the Parties, as it has been detected that some countries do not submit them due to a lack of technical capacity to produce them. As of May 31, 2019, of the 92 States parties that were required to submit their 2018 annual reports, only 45 submitted them on time, representing a compliance rate of 49%.<sup>9</sup>

Mexico serves as co-chair of the Working Group on Transparency and Reporting, a function that allows it to promote an improvement in the quality and level of compliance by States with regard to reports, as well as to encourage spaces for constructive discussion. It could also encourage compliance reporting and the development of guidelines to facilitate national implementation of risk assessments.

---

<sup>8</sup> To date, 75 % of the Parties to the Treaty have complied with the submission of these initial reports.

<sup>9</sup> Control Arms Secretariat, *ATT Monitor 2019 Report*, New York, August 2019, p. 111.

## Step towards the universality of the Arms Trade Treaty

For the Treaty to be effective, it must achieve universality. To date, the ATT has 105 States Parties and 33 signatories.<sup>10</sup> In the first two years, 69 countries, or 65% of the current membership, joined, but over the subsequent three years the pace slowed significantly.

There is plenty of room for progress, considering that there are 33 signatories, that the ATT was adopted by 156 countries and that some others have not yet taken a stance, but could join in the future. The United States is a signatory but has expressed that it does not intend to ratify,<sup>11</sup> while countries such as China, India and Russia have not signed this instrument. The regions with the lowest rate of accessions are Asia and Africa, in that order, which is paradoxical given that conflicts and the availability of weapons in those regions are reaching very worrying levels.

Among the factors that make an increase in membership difficult are the lack of knowledge of the Treaty and its benefits; the perception that the obligations would generate a considerable workload; and aspects related to national ratification procedures. All these causes can be addressed. Work is underway in the framework of the CSPs to streamline and facilitate reporting, support capacity building among Parties, and foster international cooperation. In addition, the Chairs of the CSPs are making significant efforts to expand the number of States Parties. These efforts are expected to continue, but the involvement of major arms producers and exporters is a factor in the effectiveness of the Treaty. These countries must be made aware of their responsibility and contribute to mitigating the social, economic and human consequences of the lack of controls on the arms trade.

<sup>10</sup> The ATT, "Treaty Status", at <https://thearmstradetreaty.org/treaty-status.html?templateId=209883> (date of access: January 30, 2020).

<sup>11</sup> The United States is a producer, exporter and importer of arms. It maintains weak regulations on acquisition by individuals and is also the place from which the largest number of weapons are illegally diverted to Mexico. The absence of the United States from the Treaty limits the ability of the Parties to know how it manages its arms trade and transfer register, and to have its cooperation and experience in preventing and addressing diversion. This means that any need for cooperation that Mexico may require in this area would not be based on the ATT, but on other mechanisms, including bilateral cooperation.

## Conclusion

The ATT contains the minimum controls necessary to reduce the availability of conventional weapons globally. It provides the technical and political space to highlight this problem and its consequences.

Its effectiveness depends on the seriousness with which the Parties implement its provisions, in particular with regard to risk assessment and concrete measures to prevent arms diversion.

Achieving the universality of the Treaty, in particular by bringing together the major producers and exporters of conventional weapons (the United States, China and Russia, among others) will contribute to its credibility and effectiveness. Strengthening the presence of the civil society will also contribute to this objective.

The ATT does not solve the issue of violence that Mexico faces, but it is a valuable space for exchanging experiences, good practices and promoting international cooperation. In this regard, Mexico should continue to actively participate in the CSPs and their preparatory meetings, as well as take advantage of good practices to strengthen its national legislation.