

PGA PARLIAMENTARY TOOL KIT ON THE ARMS TRADE TREATY

*Promoting
Signature,
Ratification and
Implementation of
the ATT*



Parliamentarians for Global Action
Acción Mundial de Parlamentarios
Action Mondiale des Parlementaires

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A CONTEXTUAL AND FORENSIC ANALYSIS

Purpose

The purpose of the *PGA Parliamentary Tool Kit on the Arms Trade Treaty (ATT)* is to provide Parliamentarians with a practical, 'hands-on' capacity building mechanism to facilitate their understanding of the ATT and, more concretely, through consecutive Article-by-Article contextual/forensic analysis, to identify the many ways in which Parliamentarians can invoke their constitutional and legislative prerogatives to promote ratification and adequate implementation of the ATT in their respective countries.

While it is acknowledged that certain Articles of the ATT will hold greater significance for Parliamentarians than others, indirect and/or secondary/ancillary roles for Parliamentarians, not unimportant either, can nevertheless be inferred or discerned in virtually all corners of the text of the ATT.

In terms of methodology, this Parliamentary Tool Kit sets out, very briefly, the subject matter of each consecutive article of the ATT and, thereafter, the different implications and ramifications for Parliamentarians of each such Article of the ATT. Parliamentarians are recommended to have, at all times, a copy of the [Arms Trade Treaty](#) itself to hand as they utilize this Parliamentary Tool Kit on an ongoing basis in their promotion of ratification and effective implementation of the ATT. In addition, the [PGA Parliamentary Handbook on Promoting Signature, Ratification and Implementation of the ATT](#) is a useful companion publication to this Parliamentary Tool Kit for Members of Parliament and therefore helpful to also have available.

Parliamentarians have a significant role to play in promoting ratification and seeking robust implementation and enforcement of the ATT. This Tool Kit contextually identifies and highlights - with some precision - how Parliamentarians – acting together, as well as in partnership with the Executive Branch of Government and Civil Society - can assert their different constitutionally bestowed prerogatives to satisfactorily discharge these responsibilities.

Article 1

Object and Purpose of the ATT

Role for Parliamentarians

Parliamentarians must ensure that legislation implementing the ATT domestically includes reference to the Object and Purpose of the ATT and, where they have reason to believe that legislation is not being properly implemented to meet the Object and Purpose of the Treaty, draw it to the attention of the Executive Branch of Government, and hold parliamentary meetings, as appropriate, including with participation by relevant Government officials.

Article 2

Scope – Those conventional weapons covered by the ATT

Role for Parliamentarians

Parliamentarians must ensure that legislation implementing the ATT domestically adequately incorporates the weapons covered in the Scope of this Treaty – the Treaty sets out a minimum threshold to be met – national legislation can be more expansive. Many Parliaments have Defence/Arms Export Control Standing Committees/Sub-Committees with oversight responsibility for arms and ammunition transfers/exports and Government Ministers and other relevant officials are often required or expected to appear and provide clarifications/information to Parliamentarians on a periodic basis.

Article 3

Establishing a National Control System to Regulate Export of Ammunitions that can be used in the weapons covered by the Treaty in Article 2 (Export Control)

Role for Parliamentarians

This will necessarily involve the introduction of some form of regulatory framework/legislation – Parliamentarians will be involved in drafting this or reviewing Executive Branch of Government initiated draft regulation/legislation to ensure it adequately addresses the stipulations contained in this Article. Parliamentarians should also verify that such legislation is being properly implemented and enforced. Many Parliaments have Defence/Arms Export Control Committees/Sub-Committees with oversight responsibility for arms and ammunition transfers/ exports and Government Ministers and other relevant officials are often required or expected to appear and provide clarifications/information to Parliamentarians on a periodic basis. Parliamentarians are encouraged to seek expert advice – possibly in the form of parliamentary hearings - in relation to how most effectively to establish a control system specifically to regulate export of ammunitions.

Article 4

Establishing a National Control System to Regulate Export of Parts of Components that can be used in the weapons covered by the Treaty in Article 2 (Export Control)

Role for Parliamentarians

This will necessarily involve introduction of some form of regulatory framework/legislation – Parliamentarians will be involved in drafting this or reviewing draft regulation/legislation to ensure it is effective and verify that it is being properly implemented and enforced. Many Parliaments have Defence/Arms Export Control Sub-Committees with oversight responsibility for arms and ammunition transfers/ exports and Government Ministers and other relevant officials are often required or expected to appear and provide clarifications/information to Parliamentarians. Parliamentarians are encouraged to seek expert advice – possibly in the form of parliamentary hearings - in relation to how most effectively to establish a control system specifically to regulate export of Parts and Components that can be used in the weapons covered in the ATT.

Article 5

General Implementation of the Treaty

“Each State shall, pursuant to its national laws.....”

“Each State shall take measures necessary to implement the provisions of this Treaty...”

Role for Parliamentarians

Implementation of the ATT necessarily involves Parliamentarians in a substantive way. This can take the form of submission of draft implementing legislation (draft ‘national laws’) by the Executive Branch of Government to Parliamentarians to review, amend and approve or initiation of drafting of legislation within parliament itself. Parliamentarians have a parallel responsibility to advocate for proper implementation of the ATT, in particular where evidence suggests this is not taking place.

Article 6

Prohibitions – 3 Situations – UN Security Council Arms Embargos, Obligations under International Agreements to which a State is party, Knowledge that transfer would be used to commit genocide, crimes against humanity or war crimes.

Role for Parliamentarians

Parliamentarians will need to ensure that Article 6 is covered adequately by implementing legislation. Parliamentarians will also have important oversight/verification responsibilities/duties – to check/verify on a regular basis that the Executive Branch of Government is acting at all times in good faith in complying with these Prohibitions, that the legislation is being properly enforced and to ensure the Executive Branch of Government consults and/or obtains necessary parliamentary approvals, as may be required in domestic law.

Article 7

Export and Export Assessment

Role for Parliamentarians

Parliamentarians should monitor/verify closely that the Executive Branch of Government is making Export Assessments under this Article in a 'good faith' manner and informed by all the facts available pertaining to the proposed destination for the exports.

Article 7 (5) requires the Executive Branch of Government publicize in advance of export all authorizations for export of conventional arms, ammunition and parts under Articles 2-4 of the Treaty. Relevant Parliamentary Committees (National Security, Defence, Trade, Human Rights and Foreign Affairs) should ensure this requirement is met and should review such authorizations to assess if these authorizations are in conformity with the ATT.

A potential 'weak link' arises here in the context of End-User Declarations or End-User Certificates that exporters are typically required to submit to relevant Government Ministries for approval before exportation can take place. Both contractor and recipient are usually required to affirm that the arms intended for export are meant only for use in approved areas and will not be resold without original exporter country Government approval. In practice, unfortunately, these affirmations may not be checked as thoroughly as they should by Governments and excessive trust is placed by Governments in both exporters and purchasers. Parliamentarians, therefore, have an important role here to insist that these Declarations or Certificates are properly reviewed by Governments in relevant interactions with Government officials – End-User Declarations or Certificates do not replace End-User controls.

Article 8

Imports

Role for Parliamentarians

Parliamentarians will need to ensure that the implementing legislation adequately covers the informational/reporting requirements set out in this Article of the ATT. Parliamentarians are also free to inquire publicly if these requirements are, in fact, being met, post passage of implementing legislation and seek remedial action, if not. It is important that accurate and comprehensive information be provided, or sought (as the case may be) at all times, pursuant to this Article, by the Executive Branch of Government and Parliamentarians should verify/monitor this, to the fullest extent they are able to do so.

Article 9

Transit or Trans-shipment

Role for Parliamentarians

Parliamentarians will need to ensure that legislation implementing this provision adequately addresses the requirements/obligations set out therein and monitor/verify implementation. Where Parliamentarians believe that there may be a breach of this Article, they should call relevant government officials to parliament to consult/remedy, as appropriate. In particular, Parliamentarians should seek to ensure that the '*where necessary and feasible*' proviso included in this Article is not utilized by the Executive Branch of Government as justification for not adopting the measures set out in this Article.

Article 10

Brokering

Role for Parliamentarians

Parliamentarians will need to ensure that legislation implementing this provision adequately addresses the requirements/obligations set out therein and monitor/verify implementation. Where Parliamentarians believe that there may be a breach of this Article, they should call relevant government officials to parliament to consult/remedy, as appropriate. Article 10 also includes the following text – “Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.” The usage of ‘may’ indicates that this is an optional, not a mandatory specification. Given the desirability, however, of such measures, Parliamentarians should seek their adoption.

Article 11

Diversion

Role for Parliamentarians

Parliamentarians will need to ensure that legislation implementing this provision adequately addresses the requirements/obligations set out therein and monitor/verify implementation. Where Parliamentarians believe a breach of this Article may have occurred, they should request relevant government officials to provide clarifications and, where necessary, remedy. In common with other Articles of the ATT, this Article prescribes what State Parties are obligated to do, pursuant to this Article, as well as suggesting what the measures to be taken ‘may include’. Also in common with these other Articles, and as a general proposition, Parliamentarians can, therefore, play a strong advocacy role in strongly encouraging the Executive Branch of Government to adopt *all* such measures in order to ensure this Article will be truly effective as well as seeking their inclusion in implementing legislation that may be initiated within Parliament.

Article 12

Record Keeping

Role for Parliamentarians

Parliamentarians will need to ensure that legislation implementing this provision adequately addresses the requirements/obligations set out therein and monitor/verify implementation. This Record Keeping requirement imposed on the Executive Branch of Government is important as, among others, Parliamentarians should be allowed access to these national records to ensure that the export authorizations issued thereunder are in conformity with the ATT.

Article 13

Reporting

Role for Parliamentarians

This Reporting requirement imposed on the Executive Branch of Government to report to the Secretariat to be set up under the ATT of measures undertaken to implement the ATT is another important 'transparency' measure under the ATT. Parliamentarians are encouraged to urge the Executive Branch of Government to meet this requirement fully and accurately.

Article 14

Enforcement

Role for Parliamentarians

This is another crucial Article of the ATT for Parliamentarians. The Article requires State parties to take appropriate measures to enforce national laws and regulations that implement the Treaty. Parliamentarians play a substantive role in the review, drafting and approval/passage of such national laws and regulations. Parliamentarians should also – through their powers of oversight – verify that the measures are indeed appropriate and effective to implement the ATT and seek remedial action, where they fall short.

Article 15

International Cooperation

Role for Parliamentarians

This Article relates to International Cooperation to effectively implement the ATT. It contains multiple references to the need for '*national laws*' and '*national measures*' in order to do so and Parliamentarians can and should play a substantive role in advocating for, drafting and approving such national laws and national measures.

Article 16

International Assistance

Role for Parliamentarians

Significant international assistance will be needed to effectively implement the ATT around the world. This Article specifically includes – within this broad framework of assistance – ‘...*legal or legislative assistance*’ – an express acknowledgment that legislation is a fundamental part of the international assistance equation. Parliamentarians, as standard bearers in ensuring adequate legislation is drafted and implemented, can share their legislative experiences in implementing the ATT with their counterparts in many other countries around the world.

Article 17

Establishment of Conference of States Parties

Role for Parliamentarians

Under Article 17, the Conference of States Parties, once established, can, inter alia:

“Consider and adopt recommendations regarding the implementation and operation of the treaty...”

As such, it may make recommendations that require a review and change of existing national legislation to ensure the ATT is being properly implemented and Parliamentarians would necessarily be involved in any such steps, as may be required.

Article 18

Establishment of Secretariat

Role for Parliamentarians

This Article, of less immediate importance to Parliamentarians, establishes the Secretariat of the ATT. However, to the extent that it will be responsible for "*Facilitating the matching for offers of and requests for assistance for Treaty implementation*" – some indirect interaction with Parliamentarians is foreseeable under this Article.

Article 19

Dispute Settlement

Role for Parliamentarians

It is not anticipated that this is an area in which Parliamentarians will play a role as it is essentially an Executive Branch of Government prerogative to decide whether or not to invoke this Article. However, Parliamentarians can have an ancillary role in encouraging recourse, or consideration of recourse, to this Dispute Settlement mechanism, in instances where they believe it is appropriate.

Article 20

Amendments

Role for Parliamentarians

This Article sets out the procedures to be observed in seeking possible amendments to the Treaty after it has entered into force. While not an area of primary action-taking by the Legislative Branch of Government, Parliamentarians are nevertheless encouraged to monitor/review carefully any such amendment proposals – by their own Government or other Governments - to ensure that they are in conformity with the ATT and national laws. Parliamentarians can also advocate, together with colleagues in civil society, for possible suitable amendments in their frequent foreign affairs interactions with the Executive Branch of Government.

Article 21

Signature, Ratification, Acceptance, Approval or Accession

Role for Parliamentarians

While a decision to sign a treaty is typically one taken exclusively by the Executive Branch of Government, ratification by a country of an international treaty usually also requires prior parliamentary approval or 'parliamentary ratification'. This is a fundamental prerogative bestowed upon Parliamentarians in a country's conduct of its foreign relations, ensuring that when a country becomes party to an international treaty (not merely a 'signatory'), that this reflects the wish of the people as a whole (entrusted in their elected officials in parliament), not merely that of the Executive Branch of Government. Parliamentarians also have a key advocacy role in actively reaching out to the Executive Branch of Government to urge it to sign, the ATT, to refer the ATT to parliament so that parliament can review and ratify, if appropriate.

Article 22

Entry into Force

Role for Parliamentarians

This Article of the Treaty stipulates the requirements for the Treaty to enter into force. The role for Parliamentarians here is an important advocacy one. Urging their respective Governments to sign and ratify so that the ATT can enter into force sooner rather than later in their respective countries, as well as acting quickly on their own ratification prerogatives in parliament with the same objective in mind.

Article 23

Provisional Application

Role for Parliamentarians

This is a rather technical Article which allows countries, upon signature or ratification, to declare that they will apply Articles 6 and 7 immediately (i.e. the country decides to apply Article 6 and 7 right away, not in accordance with the time/temporal specifications set out in Article 22). The Treaty does not enter into force until 90 days after there are 50 ratifications. For countries that ratify the Treaty after its general entry into force, it enters into force until 90 days after that country deposits its Instrument of Ratification or Instrument of Accession. In reality, the Treaty as a whole may not enter into force for another 12-24 months. So a country that ratifies now or in the near future (from June-December 2013), and is in a position to declare that it will apply Articles 6 and 7 immediately, as per this Article, may wish to do so to the extent it sends a very positive signal of commitment to the international community. Spain has done so. Parliamentarians in such countries may wish to encourage their Executive Branch of Government colleagues to take this step.

Article 24

Duration and Withdrawal

Role for Parliamentarians

This is a technical article which, inter alia, sets out the conditions, if a country wishes to withdraw from the Treaty. While there may be no substantive role for the Legislative Branch of Government in this area, Parliamentarians are nevertheless encouraged to remain vigilant to ensure that – in the event the Executive Branch of Government in their country takes such a step – that it does so in conformity with the requirements set out in the Article. In the event Legislators believe a Government is seeking to withdraw from the ATT without good/justifiable reason, they should, naturally, make their views known and urge re-consideration by the Executive Branch of Government.

Article 25

Reservations

Role for Parliamentarians

Countries ratifying the ATT may make reservations that are not incompatible with the object and purpose of the ATT. While there may be no substantive role for the Legislative Branch of Government in this area, Parliamentarians are nevertheless encouraged to stay vigilant to ensure that any reservation that may be made by the Executive Branch of Government in its country is not incompatible with the object and purpose of the ATT and to seek clarification if this is the case. Parliamentarians, in particular, are encouraged to interact with the Executive Branch of Government in the lead up to deposit of Instruments of Ratification or Accession to inquire if the Executive Branch of Government intends to make any reservation, and if so, to inquire further as to what will be the precise nature of any such reservation.

Article 26

Relationship with other International Agreements

Role for Parliamentarians

Parliamentarians should remain vigilant that the specifications of this Article are adhered to, in particular where a claim is made that an agreement is a defence cooperation agreement – thereby, pursuant to this Article, unaffected by the provisions of the ATT - to ensure that the agreement in question is being legitimately described as such and has not simply been entered into to evade application of the ATT.

Article 27 and Article 28

Depositary and Authentic Texts

Role for Parliamentarians

These are standard 'Final Provision' articles governing procedure in which Parliamentarians do not have a specific role to play, but can make an ancillary contribution by encouraging/advocating for prompt deposit of Instrument of Ratification, once all necessary domestic requirements have been met.