



Strategic Security Analysis

**The Arms Trade Treaty (ATT) and Asia's
Major Power Defiance - India, China,
Pakistan, and Indonesia**

Authors: Gaurav Sharma and Marc Finaud



Key Points

- Despite worldwide support of 130 states, the Arms Trade Treaty (ATT) has failed to attract membership from countries in Asia, one of the largest arms importing regions.
- One set of explanations for this reluctance to join an international regime of conventional arms trade regulation is related to the fear of restrictions on the imports of weapons seen as necessary in a context of protracted conflicts and rising tensions among key states in Asia. Another argument is the interpretation of the ATT as not directly prohibiting arms transfers to non-state actors, such as terrorist groups.
- Another reason is the efforts of some Asian states to develop their own arms industry and exports to reduce dependency on external suppliers and project influence in the region.
- One of the main criticisms from the Asian states about the ATT relates to the criteria of export risk assessment (Article 7), which, in their view, gives undue advantages to exporting countries.
- It would be desirable to promote some dialogue between State Parties and Asian non-parties and signatories to assess the benefits from and the difficulties in implementing the Treaty and address the objections of non-parties. Amending the Treaty will be easier if Asian countries accede to it.

About the Authors

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The ATT is the first global, legally binding instrument to regulate the international trade in conventional arms.

Introduction

The Arms Trade Treaty (ATT) that entered into force on 24 December 2014 aims to promote a more transparent, responsible and better regulated global conventional arms trade, as well as effectively fight against the illicit arms trade. The ATT is the first global, legally binding instrument to regulate the international trade in conventional arms.¹ It was initiated by the active campaign of civil society organisations that were convinced that the lack of norms and standards in the arms trade led to massive violations of humanitarian law and human rights. The ATT core focus is to require states to apply humanitarian standards towards arms transfers, and thus proclaims ‘reducing human suffering’ as one of its aims and purposes.

As of 10 May 2019 the Treaty has a total of 102 States Parties and 28 signatories (that still need to ratify the Treaty). This success, however, does not negate the 64 states that have not yet joined the treaty. In terms of membership, the ATT’s poor track record in Asia (see table 1), especially with regards to the major arms importing and manufacturing states such as India, China, Pakistan and Indonesia, undermines the effectiveness and seriousness of the Treaty on the Asian continent. Asia-Oceania is the second largest arms importing region after the Middle East² and is developing its own arms export potential, with India and China supporting and encouraging this domestic defence export market. In this context, the ATT has been a non-starter in the region. This paper examines the positions of India, China, Pakistan and Indonesia with regards to the nature of security concerns, foreign policy directives and ATT expectation mismatch. The paper presents the current points of contention, and the roadmap that the ATT could adopt towards universalizing the Treaty and promoting a secure Asian continent.



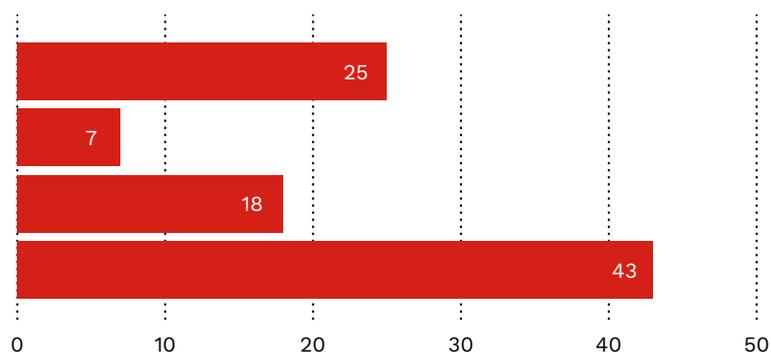
The complex nature of relationships within Asia and among its various member states involve tense security relationships, especially in South-Asia, East-Asia and the South-China Sea.

Asia’s Defiance to the ATT

Asia, as a whole, remains one of the least ATT supportive regions in the world. Major powers like India, China, Pakistan and Indonesia have not signed the ATT, in spite of having actively participated in the negotiation process leading to the ATT’s adoption at the United Nations. The complex nature of relationships within Asia and among its various member states involve tense security relationships, especially in South-Asia, East-Asia and the South-China Sea. In addition, old rivalries and new security challenges in the region accentuate the already complex diplomatic relations in Asia, thus adding minimal support in encouraging big powers like India, China and Indonesia to join the ATT. The two largest states in Asia, India and China, do have deep security tensions with regards to border disputes and have been engaging more bilaterally than multilaterally via institutions and Track-II dialogue between experts with regards to security dialogue, communication and resolution. The hostile bilateral relations between India and Pakistan have been deteriorating in recent months. Japan, the Republic of Korea, Malaysia and Singapore remain the prominent Asian powers as State Parties or signatories to the ATT, but most of South-Asian, South-East and East-Asian countries are not party to the ATT.

Table 1 shows the current Asian membership of the ATT. Out of the 43 states on the Asian continent (including Central Asia and the Pacific), only 18 states have signed the ATT (41.9%)³ and, out of these, only 7 (16.3%)⁴ have ratified the Treaty or acceded to it and become State Parties to it, while 25 states (58.1%) remain outside the ATT. In addition, out of the total 64 world states that have not yet joined the treaty, 25 states (39%) are in Asia and four states, India, China, Pakistan and Indonesia alone, account for 19% of global arms imports.⁵

Table 1: Data from: United Nations Treaty Collection, ‘Arms Trade Treaty’



China, has built-up a strong arms exporting industry and has been fuelling arms exports to Pakistan, Bangladesh and Myanmar

India and its Stand on the ATT

Although India had actively participated in the negotiation of the Treaty, its stand has remained consistent in its reason for abstaining from becoming party to it. At the time of the ATT's adoption, India asserted its view that the ATT did not ensure a balance of obligations between exporting and importing states. It abstained from signing it on the grounds that it *'cannot accept that the Treaty be used as an instrument in the hands of exporting states to take unilateral force majeure measures against importing states parties without consequences.'*⁶ In addition, India plans to export US\$2 billion worth of defence equipment by the end of 2019,⁷ and the main buyers of Indian defence equipment include Vietnam, Mauritius, Bangladesh, Oman and Afghanistan. Thus, with regards to the ATT, the Indian interests are seen to be in direct contrast to India's current defence industry mindset.

The scope of the treaty that defines the equipment and the material covered in Article 2, followed by the obligations on the exporting states, ranging from absolute prohibitions (Article 6)⁸ to export assessments (Article 7),⁹ are the key areas where the ATT is most contested by Asian countries. They perceive that it fails to take into account the regional perspective and presents a rather favourable approach towards the top five arms exporting nation states (depending on the period, the five Permanent Members of the UN Security Council or four of them and Germany).¹⁰ Indian experts specifically consider Article 7 as objectionable to the Indian foreign and security policy, not only in the domestic content but in a more regional definition that this article fails to address and account for the non-state actors which are the primary source of terrorism and illicit arms trade in the region.¹¹ Article 7 is seen as the significant weakness of the ATT as Asian architecture is currently being reframed by regional economic powers such as China, India and Indonesia, and Asia's security relationships are being contested. Therefore, any efforts on the part of the ATT States Parties to attract support for the Treaty and promote its universalization would require addressing not only India's objections but also the larger perspective of other Asian powers with regards to the ATT.

India's defence sector export footprint is expanding in markets in Asia and Africa, and the Indian defence engagements have become instrumental in advancing Delhi's foreign policy with regards to its strategic partnerships across the globe. Defence partnerships have become India's frontal foreign engagement model with new partners such as France, Israel, and Japan as new defence strategic partners. Weapons sales by India increased to 56 USD million in 2017 from 42 USD million in 2016.¹² India's economic rival and neighbour, China, has built-up a strong arms exporting industry and has been fuelling arms exports to Pakistan, Bangladesh and Myanmar, thus influencing the security architecture in South Asia. These developments present challenges to India's policy makers and with apprehensions high regarding India's domestic security concerns on terrorism and its current analysis of Article 7 obligations, India's prospects of acceding to the ATT in the near future are low.

It is nevertheless worth noting that, since 2013, India has taken a path of global export control and shifted to align its policies with international norms by becoming a member of three export control regimes aimed at checking the proliferation of weapons of mass destruction. India, the Republic of Korea and Japan are the only Asian members among the 42 participating states of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.¹³ India is currently a member of the Missile Technology Control Regime and the

Australia Group and positioning itself to join the Nuclear Suppliers Group (NSG). Thus, India's position as an international engagement partner in export control regimes has gained international credit worthiness.

China and its Stand on the ATT

China's arms export market has been growing and in the last ten years. According to the Stockholm International Peace Research Institute (SIPRI), between 2009-2013 and 2013-2017, Chinese arms exports rose by 38% and reached \$14.4 billion (see Table 2).¹⁴ This is significant as Beijing's defence exports to Africa rose from 8.7% to 14%, and the major share of total exports (74%) went to Asia, especially to South and Southeast Asia. During the same period China also tripled its defence budget. Thus, diplomatically exporting arms is a good business proposition for the growing defence infrastructure base in China. As Russia has not signed the ATT, both the United States and Israel have signed but not ratified the ATT, the question certainly arose in Beijing as to whether China would be on the losing side of the lucrative weapons exporting market by signing the ATT.

In addition, the Chinese official version has been with the problem of 'consensus' with regards to the adoption of the ATT,¹⁵ thus more of a procedural problem than has been highlighted. It is also interesting to note that many of the countries that China is targeting for arms sales in Africa or Latin America have supported and joined the ATT.¹⁶

Pakistan and its Stand on the ATT

Pakistan took part in the ATT negotiations and voted in favour of the Treaty in 2013. However, it has expressed reservations over provisions of the ATT that, in its view, make the Treaty imbalanced by its built-in advantage for arms-exporting countries over arms-importing ones.¹⁷ This is of particular significance for a country like for Pakistan, which is mainly an arms importing country. As its representative stated in 2012, *'Any treaty which seeks to address only the transfer of arms but not their development, production and deployment will be internationally inequitable against countries which do not produce such armaments.'*¹⁸ Pakistan also considers the Treaty imbalanced towards arms exporters because it does not include any mechanisms for accountability in case of violations of the obligations of arms-exporting countries, particularly those related to the criteria articles. It fears that the subjective nature of the transfer criteria may be used as a foreign policy tool by certain powerful states to deny arms sales to Pakistan on the basis of a risk of diversion of the weapons to Pakistan-based terrorists. Finally, Pakistan views the porous nature of its border with Afghanistan as a major challenge, which would make it difficult for Pakistan to meet its treaty obligations in terms of control over arms trafficking.¹⁹

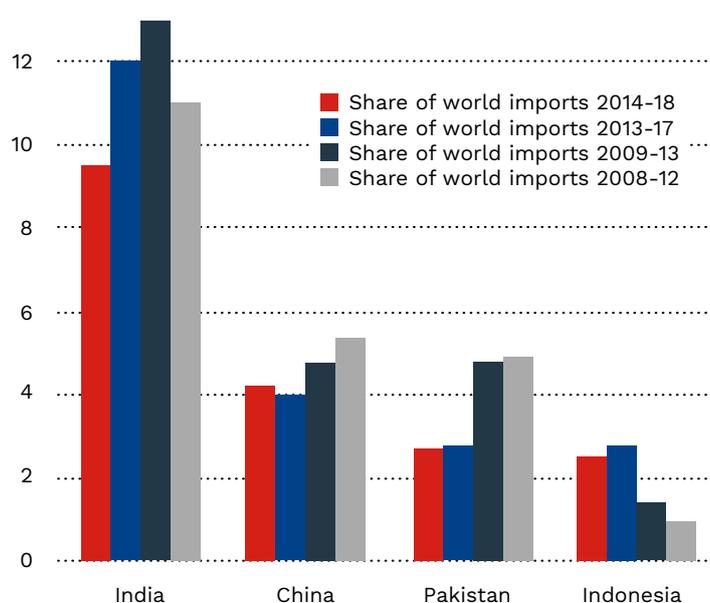
Indonesia and its Stand on the ATT

In October 2018, through its Foreign Affairs Ministry spokesman Michael Tene, Indonesia reiterated that it *'is unable to sign [the ATT] yet because the treaty contains a notion of conditionality that is against our law.'*²⁰ Indonesia initiated engagement and discussions with the United Nations Office for Disarmament Affairs to deepen understanding and knowledge on the ATT in September 2015,²¹ but the recent denial takes the dialogue a step back. Indonesia ranks 12th in world among arms-importing

According to most sources, some 90% of illicit or trafficked weapons have their origin in licit transactions.

countries,²² and fears that the ATT would restrict its access to weapons it considers crucial for its security. In the last four years it has made heavy investments in significant high-end strategic weapons systems such as Sukhoi Su-30 jets imported from Russia and most recently 11 Sukhoi Su-35 jets at a cost of \$1.14 billion, with two jets already delivered.²³ The South-China sea dispute over the 'nine-dashed line' has reached the Indonesian waters of the Exclusive Economic Zone in the northernmost region of the Natuna Islands and with three maritime skirmishes in 2016, the China-Indonesia maritime relations are out in the open. Indonesia, as an archipelago, has also been confronted with the problem of terrorism and with seven terrorism-related incidents in 2017-2018. Its apprehensions regarding the illicit trade in small arms and light weapons (SALW) and their transit and transshipment negatively impacts on its attitude towards the ATT and, more specifically, the non-explicit mention of the non-state actors in the Treaty.

Table 2: Evolution of world shares of arms imports by key Asian countries – Source: 'Trends in International Arms Transfers 2017-2018', SIPRI Fact Sheets, March 2018-March 2019



The ATT Contentious Items in Asia

1. Arms Diversion – The number of cases of weapons that have been diverted into the illicit trade, especially from the top five weapons-exporting states, is staggering. According to most sources, some 90% of illicit or trafficked weapons have their origin in licit transactions.²⁴ The United States is the world's top weapons exporter and 60% percent of the illicit weapons sales occurring on the 'Dark Web' originate from that country.²⁵ Traceability becomes an issue and the digital crypto-platforms provide even more avenues for individual criminals or terrorists ('lone wolves') to buy or manufacture firearms or access knowledge about all kinds of weapons. This aggravates the traditional cases of physical diversion of legal state-to-state arms transfers, because of corrupt officials, weak stockpile management, porous borders, etc., with lethal consequences. The ATT does not provide magic solutions for combating diversion but requires national legislation and regulations, as well as international and regional cooperation (including judicial cooperation and information exchange). In order to tackle diversion and illicit arms

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trafficking effectively in the region, Asian states will have no other choice but to improve mutual communication and cooperation in this field.

2. **Transparency and reporting** of arms transfers were the keywords that resonated as part of the ATT framework. The ATT obliges States Parties to send an initial report about their legislation and regulations related to the international conventional arms trade and to update such reports, in addition to the reports on their annual arms transfers. Such updating of reports is critical in measuring any progress in the implementation of the ATT by States Parties. Unfortunately, to date not a single State Party has submitted an update. Thus, the submitted initial reports remain out of date and hence irrelevant and unclear about the current state practices. The very need for reporting among ATT States Parties is to bring greater transparency to the flow of arms and to balance the simple equation of arms exports with arms imports. The current reporting has been ineffective in fulfilling this objective. It was highlighted at the Fourth Conference of States Parties in Tokyo in August 2018 that, of the 89 required reports, only 36 were submitted on time, and only 48 (for the year 2017) had been received at all. While the number of States Parties to the Treaty had grown, the number of annual reports received had actually declined: 51 reports for 2015, 50 for 2016, and only 48 for 2017. In other words, only 51 percent of States Parties have submitted a current annual report.²⁶ This shows the global reluctance to increased transparency in the global arms trade, a feeling widely shared among Asian countries.
3. **The non-state actors:** India is plagued with terrorism, one of the major security challenges intrinsically linked to India's national security architecture. In the four years from 2014 to 2017 the number of deaths linked to armed non-state actors in India reached 3,369.²⁷ In addition, India's terrorism is of cross-border nature and has external funding support and thus, for India it was critical and imperative that arms transfers to non-state actors be explicitly prohibited in the purview of the ATT. India, China, Pakistan, and Indonesia are all bound by the Sustainable Development Goals (SDGs) adopted by the United Nations and thus adhere to the Target Goal 16.4 of '*significantly reducing the illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime*'. For India, there is a discrepancy between this special definition and the ATT, which does not specifically mention armed non-state actors although, according to the Treaty, any state- or non-state end user should be covered by the transfer controls. It is worth remembering that this was also one of the main reasons invoked by Russia for remaining outside the ATT.
4. **Volatile security architecture in Asia:** There is a lack of trust between the prominent arms importer partner-states in Asia, such as India-Pakistan, India-China, and Vietnam-China, and the issues are deeply embedded in the historical timelines of wars fought among these Asian powers. In addition, the security architecture is sceptical about the South China Sea and the Indian Ocean Region, where both powers, India and China, have established military bases and outposts towards securing the sea-lanes and their respective economic interests. There is thus a heightened arms race in the region and the regional powers fear that joining a treaty such as the ATT would hamper their sovereign security parameters.

The ATT has been a significant milestone in recognising the dangers of the unregulated arms trade and its loopholes

ATT's Future Roadmap for Major Asia Countries

The ATT is, and remains, one of the best arms control mechanisms and has been successful in bringing together 100 States Parties to agree that arms trade practices be made transparent and open to scrutiny. The ATT has been a significant milestone in recognising the dangers of the unregulated arms trade and its loopholes, and thus confirms the need for such a treaty from a humanitarian perspective.

The focus for the current state of the ATT and for inclusion of more States Parties, especially with regards to major Asian arms importers and manufacturers such as India, China, Pakistan and Indonesia, remains important and urgent. There is also a need to focus on the practice and law of domestic implementation for the important states in Asia that have signed but yet not ratified the Treaty, for example Bangladesh, the Philippines, Malaysia, Singapore and Thailand. The need is to address the key constructs and objections to the Treaty in the Asian context, especially India, Pakistan and Indonesia who had been proponents and supporters of the ATT in its negotiation stages, but have also highlighted the ATT weaknesses.

Among the topics required for discussion between the States Parties and the Asian non-signatories in the framework of efforts to universalize the Treaty, Article 7 on export assessment would rank highest. It is one of the most contested and discussed articles of the Treaty. While keeping with the ethos of the ATT, the concerns of the Asian powers could be clarified, especially looking at the state practice of States Parties in implementing this Article. If, in their current form, the provisions of Article 7 still present an obstacle for many Asian states from acceding to the ATT, suggestions for amendments could be raised. Under Article 20 of the ATT, as from 25 December 2020, the ATT allows amendments to be considered by the Conference of States Parties. If the Asian States wish to amend Article 7, it would be in their interest to accede to the Treaty first, and influence the process from within.

The current case of India, China, Pakistan and Indonesia is intertwined with protecting the sovereign security architecture and is affected by the changing geopolitical global order. It is therefore largely based on their threat and security perceptions. By joining a dialogue with the current ATT States Parties, they could realise that, since it has entered into force, not only has the implementation of the Treaty by States Parties not led to any reduction in the global arms trade, but also that Asian imports from key exporting States Parties (France, Germany, Netherlands, UK) or signatories (US, Israel) have increased despite the constraints imposed by the ATT. In the 2014-2018 period, among their top three clients, the US had one from Asia-Oceania (Australia); France had one (India); Germany, one (South Korea); the UK, one (Indonesia); Israel, two (India, Vietnam); and the Netherlands, one (Indonesia). The fact that Bangladesh is an ATT signatory did not prevent it from being the second client of China, nor did South Korea's similar status hamper in any way its exports to Indonesia, its first client.²⁸

In South Asia and Southeast-Asia, no prominent regional organisations, such as the Association of Southeast Asian Nations (ASEAN), the South Asian Association for Regional Cooperation (SAARC) or the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), has had the 'Arms Transfer Control' on its agenda. Thus, none of the regional institutions has been involved or has played any role in promoting the ATT in Asia, except the United Nations Regional Centre for Peace and Disarmament in Nepal. It is thus imperative that regional organisations put arms transfer control onto their main agenda in order to navigate and help nation states in planning the accession or ratification process. The need for a regional organisation committee is essential in

understanding the country specific requirements among the member states and more importantly, to inculcate the need for instruments for rightful measurement and reporting in line with the ATT provisions.

International law and state practice will play a significant part in making the ATT more effective, as the current trends in migration, increasing number of refugees and the number of people affected in conflict zones leading into global crisis and need for humanitarian aid and support has increased. In the words of United Nations High Representative for Disarmament Affairs Izumi Nakamitsu, *'At a time when we are witnessing growing signs of tension in the international security environment and the global arms trade is flourishing – with States showing a renewed interest in expanding and modernizing their arsenals – the ATT's relevance becomes even more critical, as it is the world's only treaty aimed at ensuring transparency, responsibility and accountability in international transfers of conventional arms.'*²⁹



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- Article 7 of the ATT provides: 'Export and Export Assessment 1. If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items: (a) would contribute to or undermine peace and security; (b) could be used to: (i) commit or facilitate a serious violation of international humanitarian law; (ii) commit or facilitate a serious violation of international human rights law; (iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or (iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party. 2. The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States. 3. If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export. 4. The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children. 5. Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export. 6. Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies. 7. If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.'
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