

INDEX OF EFFECTIVE IMPLEMENTATION OF THE ARMS TRADE TREATY THE 10-YEAR-LONG TREATY BETWEEN SUCCESS & FAILURE



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Introduction

Arms Trade Treaty (ATT) is the first legitimate international agreement regulating all operations related to international trade in conventional weapons. After the conclusion of dozens of treaties on the prohibition and disarmament of weapons of mass destruction, the international community has turned its focus to conventional weapons, which are also considered serious threats to international and regional peace and security, given their dire effects on human security and human rights. According to many international reports, conventional weapons proliferation and arms illicit trade are closely linked to the spread of internal armed conflicts and increased activity of organized crime groups and terrorist organizations, given the fact that arms transfer, which is expressed in international trade and the prohibition of illicit trade in conventional arms, is the most important factor in promoting international peace and security and human security. This significance reflects the international efforts made by the international community, led by the United Nations, during negotiation, final formulation of the provisions of the treaty, and convincing states to ratify their provisions.

Thus, illicit trade in arms and lack of controls is a major factor contributing to increasing the suffering of civilians in areas of armed conflict. Besides, ongoing human rights violations, and absence of unified and agreed international standards on the import, export and transfer of conventional weapons increases the possibility of conflicts, displacement of populations, spread of crime and terrorism, undermining opportunities for peace and stability, and thus impeding the implementation of the goals of sustainable development.

Being the first treaty of its kind, ATT can help countries make a significant difference in their arms exports and imports to ensure they are aligned with development goals. To this end, the ATT needs to be universally adopted so that it can contribute to the well-being of all, from supporting responsible defense capabilities to protecting vulnerable sectors of society against atrocities committed using illegally or irresponsibly trafficked weapons.

However, nearly ten years after the entry into force, the ATT has not yet been able to achieve many of its targets, nor has it established a governing framework for states through which they can commit to during arms transfers, whether by legal or illegal means. During this period, many conflicts have spread and many countries have violated their obligations under this agreement and even violated Security Council resolutions banning the transfer of arms to a number of conflicting countries, which resulted in many violations of human rights, especially the right to life.

This paper attempts to analyze the extent to which countries are committed to implementing the provisions contained in this Convention, especially those related to arms export and import to conflict areas, illicit transfer and change of destination, as well as what can be done for the optimal activation of these provisions.

First: Overview of the Convention and its Objectives

On April 2, 2013, the United Nations General Assembly adopted the Arms Trade Treaty by 154 votes in favor, 3 against, and 23 abstentions. The Treaty opened for signature on 3 June 2013 and entered into force on 24 December 2014 following its ratification, acceptance or approval by 50 states (in accordance with Article 22(1)). Now, the number of States Parties to the Treaty has jumped to **113**, with only **28** signatory states, and the number of states that have not yet joined is **54**, according to the statistics on its official website.

Countries' attitude to ratification of the Treaty according to latest updates (June 2023)

Continent	No. of States Parties (113)	No. of Signatories (28)	No. of States Non-Parties (54)
Africa	29	11	14
Asia	11	10	27
Europe	40	1	2
Two Americas	27	3	5
Oceania	6	3	6

As for the Arab countries, only three countries ratified the Treaty, namely **Mauritania, Lebanon and Palestine**; and four countries signed it, namely **Libya, Djibouti, Bahrain, the Emirates, and the Comoros Islands**, and the rest of the Arab countries did not join.

The UNGA adopted the ATT to regulate international trade in conventional arms by setting the highest international standards and to prevent and eliminate illicit trade and diversion of conventional arms. The ATT contributes to international and regional peace, security and stability, reducing human suffering and promoting cooperation, transparency and responsible action among the international community.¹

¹ Treaty Status, Arms Trade Treaty, link, <https://thearmstradetreaty.org/treaty-status.html?templateId=209883>

The main objective of the ATT is to encourage the establishment and maintenance of international peace and security. The ATT stresses the need to prevent and eliminate illicit trade in conventional arms and prevent their diversion into black or illegal markets or their use in committing terrorist acts, as it recognizes the political, security and economic interests of states resulting from legitimate trade in conventional arms and the need for states to refrain from threatening territorial integrity or political independence of a state, whether as a result of using such arms or in any other way that is inconsistent with the purposes of the United Nations.²

In addition to setting the highest common international standards for regulating international trade in conventional arms and preventing and eliminating illicit trade in conventional weapons, international arms trade activities include export, import, transit, transshipment, and brokering. The Treaty shall allow a state party to transfer conventional arms for its use provided that these arms remain under the ownership of the state party.

The Convention also prohibits a range of activities related to the transfer of conventional arms, as it must refrain from any transfer of arms if this transfer violates its international obligations under measures taken by the Security Council under Chapter VII of the UN Charter, especially measures to ban the supply of arms to certain countries and regions. States should also refrain from any transfer of arms if the latter would lead to the violation of an international obligation under agreements to which the State is a party, especially agreements other than the ATT to which the State is a party. States Parties shall also refrain from any transfer if they are aware that the weapons to be transferred will be used to commit genocide, crimes against humanity, and grave breaches of the Geneva Conventions of 1949, among war crimes.³

Therefore, the ATT is the first treaty integrating human rights and humanitarian concerns into a global arms control agreement. It also introduces the idea of responsibility in the global arms trade which was absent before. Although some regional and national export laws included these considerations, others did not. These loopholes have led to weapons falling into the wrong hands or being diverted to the black market. The ATT is supposed to address such loopholes that arms dealers and governments use to commit further abuses.⁴

² United Nations Efforts to Control Arms Proliferation, Algerian Journal of Political Science and International Relations, December 2018, link, <https://www.asjp.cerist.dz/en/article/73162>

³ Contribution of the Conventional Arms Trade Treaty to the promotion of international peace and security, January 31, 2022, link, <https://www.asjp.cerist.dz/en/article/179492>

⁴ About the Arms Trade Treaty (ATT), Control Arms, link, <https://controlarms.org/att/>

Second: Key Provisions of ATT

- Article 1 defines the Treaty's objective and purpose as establishing the highest possible common international standards for regulating and improving international trade in conventional arms, as well as preventing and eliminating illicit trade in conventional arms and their diversion for the purpose of contributing to international and regional peace, security, and stability.
- Article 2, in its first paragraph, defines the conventional weapons included in the Treaty to include the **following categories**: Battle tanks, military vehicles, artillery systems, and military aircraft (with crews or with drones), military helicopters (with flight crews or with drones), marine boats (boats that sail over the surface of the water and under the surface of the water, armed and equipped for military uses), missiles and missile launchers (guided and unguided), and small arms and light weapons, ammunition, technology and equipment that is specifically designed, used, manufactured, or maintained in accordance with the categories listed in this treaty⁵.
- Article 3 also obliges Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched, or delivered by the conventional arms provided for, and to regulate the export of parts and components that enable the assembly of the conventional weapons provided for.
- Under the treaty, states parties or signatories who have given their consent to the treaty are obligated to comply with Articles 6, 7, 9 and 11, by obligating:
 - Not authorizing the transfer of conventional weapons while knowing in advance that they will be used in human rights violations.
 - The state does not authorize any transfers of conventional arms stipulated in the treaty if the transfer would violate the obligations imposed on the states under the measures taken by the UN Security Council acting under Chapter VII of the Charter of the United Nations, in particular the arms embargo measures.
 - In addition to the obligation not to export these weapons if the exporting State Party proves that there is a high risk of any of the negative consequences mentioned in Article 7, paragraph 1.
- Other parts of the treaty establish guidelines for countries that import weapons and require importers and exporters to cooperate in the exchange of information necessary for the assessment of the use of such weapons. It also includes obligations

⁵ Weapons of Repression: Will they be covered by the Arms Trade Treaty? Amnesty International, 2011, link <https://www.amnesty.org/en/wp-content/uploads/sites/9/2021/06/act301202011ar.pdf>

for countries that have weapons passing through their borders and brokering activities.

- Its commitment to transit controls and work to prevent the diversion of weapons, as preventing the diversion of conventional weapons is one of the declared objectives of the treaty in the text of Article 1⁶.
- In addition to Articles 12 Record keeping, Article 13 Reporting on Measures Taken for the Implementation of the Treaty, Article 14 Enforcement, and Article 15 International Cooperation, Article 16 International Assistance, Article 17 Conference of States Parties and its organization, and Article 18 establishes a Secretariat to assist States Parties in the effective implementation of this Treaty.
- Articles 19 to 25 regulate the organizational procedures related to the treaty, Dispute Settlement regarding the interpretation of the treaty; amendments; Signature, Ratification, Acceptance, Approval or Accession; Entry into Force; Provisional Application; duration and withdrawal; and finally reservations⁷.
- The strict standards contained in the aforementioned articles of the Treaty aim to ensure that weapons do not end up in the hands of those who may use them to commit serious violations of international humanitarian or human rights law or to commit serious acts of gender-based violence. All decision-makers, including high-ranking officials, must apply these articles in a consistent, objective, and non-discriminatory manner. The immense human suffering in conflicts around the world makes it imperative for all nations to accede to the Arms Trade Treaty and faithfully implement its requirements to the highest standards⁸.

⁶ About the Arms Trade Treaty (ATT), Control Arms, link, <https://controlarms.org/att/>

⁷ United Nations Efforts to Control Arms Proliferation, Algerian Journal of Political Science and International Relations, December 2018, link, <https://www.asjp.cerist.dz/en/article/73162>

⁸ Sixth Conference of the States Parties to the Arms Trade Treaty, International Committee of the Red Cross, 24 August 2020, link, <https://bit.ly/3sl45xi>

Third: Effective Implementation of the Main Provisions of the ATT

International law and international criminal law have included the consideration that arms transfers must be regulated without harming human rights. When considering permission to transfer conventional weapons, States must also take into account respect for international humanitarian law and should not authorize transfers if there is a real risk of weapons being used to commit serious violations of that law. The Human Rights Committee has emphasized that in situations of armed conflict, both laws are complementary and not mutually exclusive when it comes to the transfer of conventional arms in states engaged in armed conflicts. It is important to consider not only compliance with international humanitarian law but also the potential risk of human rights violations when making decisions about such transfers⁹.

Hence, during the period following the entry into force of the Conventional Arms Trade Treaty, many armed conflicts spread and the rates of arms smuggling increased by all illegal means, which led to an increase in human rights violations, and then there is a strong trend that the Conventional Arms Trade Treaty lacks a governing framework to effectively regulate operations and prevent unauthorized transfers, particularly by countries that fail to comply with its provisions on the export and import of weapons to conflict-affected countries. The study will assess the extent to which countries are committed to this Treaty.

1. Article 3 of the ATT

Article III of the International Convention on the Trade in Conventional Arms provides that each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched, or delivered by the conventional arms covered under Article 2 (1), and shall apply the provisions of Article 6 and Article 7 before authorizing the export of such ammunition/munitions. Articles 6 and 7 of the same treaty also included not allowing any state party to transfer or export the items mentioned in Article 3 thereof if it was aware that they would be used in a way that would violate human rights or commit an international crime such as war crimes, crimes against humanity, or any other crimes covered by international conventions concerned with the protection and promotion of human rights¹⁰.

⁹ - How to apply human rights standards to arms transfer decisions, Amnesty International, link, https://www.amnesty.org.uk/files/how_to_apply_human_rights_standards_to_arms_transfer_decisions.pdf

¹⁰ Review to the text of Articles 3, 6 and 7 of the Conventional Arms Trade Treaty at the link, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2013/06/3.pdf>

However, ten years after the entry into force of the Convention, reality confirms the non-compliance of States parties with these rules, as we find the following:

The increasing stockpile of weapons and ammunition has led prolonged armed conflicts and increased tensions between opposing parties, which has led to the continuation of the current wave of conflicts in the Middle East for over a decade, and there is no indication on the horizon of its settlement or resolution for one of its parties, especially with certain armed militias gaining over the majority of regular army warehouses, as well as their control over certain air and sea outlets which enables them acquire more weapons and missiles. Among the most serious risks resulting from the increase in stocks of conventional ammunition are:

Armed militias leverage their geographical strongholds to store weapons: This applies to the Houthis' actions, including storing weapons in Saada and other cities to launch ballistic missiles toward Saudi Arabia and the liberated areas of Yemen. In addition, on April 12, 2018, Yemen's Ministry of Foreign Affairs accused Iran of converting its embassy building in the capital, Sanaa, into storage for weapons, explosives, and missiles, as well as being a militia training center and operations rooms where Iranian military advisers meet their leaders¹¹. Over the years of war since 2015, the capital, Sana'a, has also witnessed several fire incidents in arms shops and hundreds of crimes that have claimed hundreds of civilian casualties due to the indiscriminate use and illicit sale of weapons. Occasionally, massive explosions erupt in shops and weapons stores in Sana'a, and explosions of ammunition and explosives stored inside weapons shops have caused significant damage to nearby shops. The war sparked by the Houthi militia not only led to the displacement and starvation of millions of Yemenis, but also affected economic life. In Yemen, what is known as the arms economy is spreading as a result of the conversion of traditional craftsmen to selling weapons and ammunition, starting with light types and military supplies, starting with pistols, Kalashnikovs, grenades, and others. Observers in Sana'a believe that the arms trade has become a major source of income for the wealth of many of its vendors, mostly leaders and supervisors belonging to the Houthi group, they attributed the flourishing of this trade to the turbulent security conditions and ongoing chaos resulting from the war, particularly in the areas under their control. In addition, the Houthi militia, after its coup, stormed and looted military and security institutions and warehouses, deliberately expanding the scope of this type of dangerous profession in various regions of Yemen¹². On November 13, 2021, the

¹¹ How Arms Stockpiling Affected Regional Instability, Future Research and Advanced Studies, 2018, link <https://bit.ly/3yl27WU>

¹² The chaos of the arms market is expanding in Yemen under the control of the Houthis, Asharq Al-Awsat, <https://bit.ly/3P1YXOd>

Coalition to Support Legitimacy in Yemen announced the bombing of weapons and ammunition sites and storage locations for Houthi ballistic missiles in Sana'a. The militia's secret sites in Sana'a have taken hospitals, organizations, and civilians as human shields. Precautionary measures were also taken to prevent collateral damage to civilians and civilian objects¹³.

2. Article 6 of the ATT

Under the first paragraph of Article 6, a State Party shall not authorize any transfer of conventional arms provided for in the Treaty if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes¹⁴. This paragraph addresses the restrictions on arms transfer when they conflict with international legal obligations or when a state knows that weapons will be used for genocide, crimes against humanity, or specific war crimes. These provisions serve as a clear guide for state authorities to consistently and effectively adhere to these prohibitions. However, it was recognized that a potential export could have serious humanitarian consequences, even if it was not originally prohibited under Article 6¹⁵.

As for the second paragraph of Article 6, it states that the State Party shall not authorize any transfer of conventional arms if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in conventional arms¹⁶. It can be argued that the phrase should “not authorize” that decisions regarding the authorization of transfers based on international human rights obligations are primarily aimed at preventing serious human rights abuses. Therefore, the decision-making process must take place within a preventive approach. This approach aims to prevent arms transfers where there is credible information indicating a high risk of weapons being used for serious human rights violations. Where there is such information that there is a significant risk, the assumption should be that that transfer of arms is prohibited until the risk of further serious violations is reduced¹⁷.

¹³ The coalition announces: air strikes on weapons and ammunition stores and Houthi missile sites in Sana'a, Sabq website, November 13, 2021, link <https://sabq.org/saudia/sm6hqf>

¹⁴ Article 6, paragraph 1, of the Arms Trade Treaty link, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2013/06/3.pdf>

¹⁵ Peter Woolcott, Arms Trade Treaty, United Nations Audiovisual Library of International Law، الرابط، 2017، https://legal.un.org/avl/pdf/ha/att/att_a.pdf

¹⁶ Paragraph 2 of Article 6 of the Arms Trade Treaty link, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2013/06/3.pdf>

¹⁷ How to apply human rights standards to arms transfer decisions, Amnesty International, link, https://www.amnesty.org.uk/files/how_to_apply_human_rights_standards_to_arms_transfer_decisions.pdf

Hence, it can be argued that States parties or signatories to the Treaty must not authorize the transfer of conventional weapons knowing in advance that they will be used in human rights violations. Unfortunately, this is what Ukraine violated, despite being a signatory to the treaty, for example, six months after signing the treaty in 2014, it agreed to export 830 light machine guns and 62 heavy machine guns to South Sudan. The Ukrainian authorities also issued an export license on March 19, 2015, to supply South Sudan with Mi-24 attack helicopters, and then arms purchased from a treaty signatory helped fuel the civil war in South Sudan¹⁸.

Despite the United Nations Security Council's resolutions banning the export of weapons to countries like Libya, Yemen, and Somalia or any parties involved in conflicts there, some countries did not respect the obligations imposed on them as members of the UN and violated these resolutions by exporting weapons to these countries.

For example, a report by the United Nations Committee of Experts on Libya confirmed that a number of countries continued to export weapons and foreign fighters to Libya, especially between October 25, 2019 and January 24, 2021, despite the ceasefire and arms embargo. The experts go on to describe the arms embargo as totally ineffective, emphasizing that violations by States supporting the parties to the conflict are grave and flagrant and completely ignore the sanctions measures, their control over the entire supply chain complicates the detection, disruption or prevention of violations and makes any efforts to implement the arms embargo more difficult. Despite the embargo on Libya, one organization detected 36 suspicious flights in September 2021, along with inspections of 25 airports and 16 ports. Since its launch in April 2020, 20 suspicious vessels have been inspected, one of which has been transferred to a European port where its cargo has been unloaded and 26 violations of the arms embargo have been detected¹⁹.

In addition, reports revealed that the Turkish-Tripoli military deals showed how Turkey is using the internal divisions in Libya to achieve strategic gains. During October 2022, Turkey signed military deals with all parties to the conflict in Libya, including the deal made with Dabaiba government to follow up on the military cooperation agreement signed by Ankara in 2019 with Tripoli, which stipulated for facing an attack from the eastern forces of Khalifa Haftar at that time. The second aimed at strengthening the defense capabilities of Libya, besides cooperation in the field of military equipment,

¹⁸ The United Nations: Never Tolerate Countries That Violate Their Obligations Under the Arms Trade Treaty, Amnesty International, link, <https://www.amnesty.org/ar/latest/news/2016/08/un-zero-tolerance-for-states-who-flout-arms-trade-treaty-obligations/>

¹⁹ One year after the cease-fire, intense signals regarding the violation of the arms embargo to Libya, Bawabo Al-Wasat, October 26, 2021, link, <http://alwasat.ly/news/libya/337255>

border security, organized crime and terrorism, and the formation of a military cooperation committee. More specifically, the deal includes training programs for military aircraft and helicopter pilots. On the other hand, Ankara sought to contact Dabaiba's eastern opposition, as the East cannot be ignored for economic reasons, especially since Turkish companies are still chasing more than \$15 billion in claims. Dabaiba's government has provided little of this amount so far and cannot do more in the near future. Thus, it can be argued that Turkey, with its military deals with the Libyans, has violated the arms embargo imposed by the UN Security Council on Libya.²⁰

The Combined Maritime Forces (CMF) managed to carry out 7 interception operations since December 2022 to February 2023 and seized 5000 arms, 1.6 million rounds of ammunition, 7000 approximate fuses for missiles, 2100 kilograms of fuel used to launch rockets, 30 anti-tank weapons, guided missiles and ballistic missile components. While the security services at the Shahn land port were able to seize 100 engines for drones that were on their way to the terrorist Houthi militia, in the 5th incident during the January and February 2023.²¹ In June 2023, the security forces in the coastal city of Aden, southern Yemen, revealed that they have seized a new shipment of components for drones destined for the Iran-backed Houthis, where a number of closed boxes were found containing communications equipment with the aim of guiding drones that were hidden in a truck in Mansoura area in Aden heading to the areas controlled by the Houthis. The cardboard packages were disguised as medical materials that were loaded from a warehouse of a local medical company in Aden.²²

3. Article 7 of the ATT

Article 7 of the Treaty sets the standard by which states are required to refuse to export arms based on an assessment of risk. The process of assessing export risks requires states to carry out a complex balancing process between a range of considerations that, when implemented, ensure better regulation of the arms industry. The risk assessment recognizes that the impact on civilians should be a primary consideration in determining the way of conducting the arms industry business.

Under Article 7, exporting authorities must consider whether arms or items meet the following:-

²⁰ Turkey looks to sell armed drones to Libya, Al-Monitor, 29 Oct. 2022, link, <https://www.al-monitor.com/originals/2022/10/turkey-looks-sell-armed-drones-libya>

²¹ Iran's smuggling of weapons to the Houthis is a flagrant violation of international resolutions, Al-Ain Al-Ain News, March 2023, link, <https://al-ain.com/article/sudan-houthi-smuggling-route>

²² Aden authorities seize hidden drone components intended for Houthis, Arab News, 12 June 2023, link, <https://www.arabnews.com/node/2320456/middle-east>

- Contributing to establishment of peace and security or undermining them. These arms or items can be used in the following:
 - Committing or facilitating serious violations of international humanitarian law or international human rights law;
 - Committing acts that constitutes a crime under international conventions or protocols related to terrorism or transnational organized crime, to which the exporting country is a party, or facilitating the commission of this act;
 - Taking into account the possibilities of using arms to commit serious acts of violence on grounds of gender or acts of violence against women and children.

Paragraph 3 of Article 7 also states that, after conducting this risk assessment and considering available mitigation measures, if the exporting State Party proves that there is a significant risk of any of the negative consequences mentioned in paragraph 1 of Article 7, the export must not be authorized. The concept of significant risk was included in the draft treaty of July 26, 2012 and remained in the final text of the treaty.²³

States parties to the ATT also undertook not to permit any transfer of conventional arms if they know at the time of authorization that the arms or materials will be used to commit genocide, crimes against humanity, grave breaches of the 1949 Geneva Conventions, attacks against civilian targets or civilians protected as such, or other war crimes as defined in international agreements to which they are a party.²⁴

However, these provisions were not adhered to, as many reports on the export of arms documented that a number of countries experiencing armed conflicts witnessed a significant increase in their arms imports in the period from 2017-2021. The five largest arms importers in sub-Saharan Africa were Angola, Nigeria, Ethiopia, Mali, and Botswana. In contrast, Myanmar's arms imports declined by 32% between 2012-2016 and 2017-2021 and accounted for 0.6 percent of global arms transfers in 2017-21. Israeli arms imports also increased by 19% between 2012-2016 and 2017-2021.²⁵ Israel also received two frigates and will receive a submarine in 2023 and placed an order for three more submarines, while Turkey requested six submarines and an amphibious assault ship.²⁶

²³ Peter Woolcott, Arms Trade Treaty, op. cit., https://legal.un.org/avl/pdf/ha/att/att_a.pdf

²⁴ Article 6, Paragraph 3, of the Arms Trade Treaty. Link, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2013/06/3.pdf>

²⁵ Global arms trade falls slightly, but imports to Europe, East Asia and Oceania rise, SIPRI, 14 Mar 2022, link, <https://www.sipri.org/media/press-release/2022/global-arms-trade-falls-slightly-imports-europe-east-asia-and-oceania-rise>

²⁶ Trends in International Arms Transfers, 2022, SIPRI, 13 March 2023, <https://www.sipri.org/media/press-release/2022/global-arms-trade-falls-slightly-imports-europe-east-asia-and-oceania-rise>

Also, the proliferation of arms had the greatest impact on the increasing rates of violations of all human rights, as the non-compliance with Article 7, Paragraph 4, which requires that when deciding to approve the export of arms, take into account the risk of using these elements to commit or facilitate gross acts of violence on the basis of gender or violence against women and children. The inclusion of gender-based violence in the ATT is particularly important, as this means for the first time that the relationship between these acts and weak regulation of the arms trade is formally recognized by an international, legally binding treaty. However, there is still no agreement on how to implement this provision at the national level due to the limited understanding of the different forms of gender-based violence and how these considerations can and should be taken into account when making arms export decisions.²⁷ Hence, it can be said that the inclusion of gender considerations in the field of security has led to the recognition of the role played by conventional arms, especially small arms and light weapons, in facilitating gender-based violence and the disproportionate impact of these actions on women and girls. Despite acknowledging what was expressly stated in this treaty, the exporting countries did not explicitly ask the importing countries to make commitments on gender-based violence by including a specific reference in the end-use documents requested from these countries.

In August 2021, the UN Special Representative on Sexual Violence in Conflict warned of the alarming increase in sexual violence in Somalia and called on all those responsible for these behaviors to stop these violations. These reports also documented more than 100 cases of sexual violence against girls in the first quarter of 2021, pointing out that the perpetrators often took advantage of the vulnerability of the displaced girls and targeted them when they left the camps to perform some housework. The reports pointed out that the violations committed by the clan militias nearly tripled during 2020, with the proliferation of individual and light arms between its members.²⁸

4. Article 9 of the ATT

Article 9 of the ATT emphasized that each State Party shall take appropriate measures to regulate the transit or trans-shipment under its jurisdiction of conventional arms, where necessary and feasible, through its territory in accordance with relevant international law.²⁹

²⁷ Giovanna Maletta and José Francisco Alvarado Cobar, The inclusion of gender-based violence concerns in arms transfers decisions: The case of the Arms Trade Treaty, SIPRI, 23 August 2019, link, <https://www.sipri.org/commentary/blog/2019/inclusion-gender-based-violence-concerns-arms-transfers-decisions-case-arms-trade-treaty>

²⁸ Government forces involved in it.. Shocking reports about the high rate of sexual crimes in Somalia, Al-Hurra website, August 6, 2021, link, <https://arbne.ws/3nbcgiS>

²⁹ See the text of Article 9 of the Arms Trade Agreement at <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2013/06/3.pdf>

From this text, it can be noted that Article 9 did not explicitly stipulate transit and shipping controls; however, these controls were explicitly included in the resolutions of the United Nations General Assembly (UNGA) on the ATT, and was included in the draft papers of the Chairman of the Preparatory Committee for the ATT as activities that should be covered by national legislation and laws, which must detail the form that transfer controls under the ATT should take by adopting transit control legislation and procedures including:-

- (a) Exchange of information between the state parties regarding transit controls.
- (b) Submitting public reports on the controls implementation.
- (c) Provision of guidance by counterparts or experts on ways to improve national practices once the treaty enters into force such as user guides, best practice guidelines or model legislation.
- (d) A system for arranging international assistance for the design or implementation of transit controls.

Effective enforcement of transit controls requires that relevant non-state entities involved in the international arms trade such as producers, export-import companies, and transporters are aware of the diversion risks and penalties for involvement in attempts to divert legitimate arms shipments to entities other than the declared end-user. Therefore, the ATT should also encourage government agencies and non-state entities to share information about arms subject to transit controls, prohibited or suspected end-users, and which companies are permitted or prohibited from participating in international arms deals.³⁰

However, there are many violations in reality. Turkey has violated the principle of transit many times, as the UN Committee of Experts on Somalia, which monitors illegal arms, emphasized in August 2021 that it was investigating a Turkish ship anchored off a part of the Somali coast controlled by Al-Shabaab terrorist movement. The ship remained in its place for 24 hours less than 1,000 meters off the Somali coast in an area controlled by Al Shabaab, as this area is not patrolled by Somali security forces and Al Shabaab has a stronghold 30 kilometers inland in an area called Ali Ghode. The ship raised suspicious about why it was staying so close to Al-Shabaab and whether it was transporting supplies or arms there, especially since the ship was owned by a Turkish charity linked to Al-

³⁰ Paul Holtom and Mark Bromley, Transit and trans - shipment controls in an arms Trade Treaty, SIPRI ,July 2011, link, <https://www.sipri.org/sites/default/files/files/misc/SIPRIBP1107a.pdf>

Qaeda. The navigation chart shows that the ship left Fethiye region, Antalya province, southern Turkey and stayed near Al-Shabaab area from August 12 to 13, 2021.³¹

The UN also announced evidence of Iran's involvement in smuggling arms to the Houthi group, as the UN secret report, prepared by a committee of experts in the UN Security Council concerned with Yemen, revealed Iran's involvement in smuggling thousands of arms to Yemeni territory across the Arabian Sea. The report suggested that the Iranian port of Jask on the Gulf of Oman is the source of thousands of arms confiscated by the US Navy over the past months in the Arabian Sea. According to the report, small wooden boats and land transportation were used in attempts to smuggle arms to Yemen, and that the arms are made in Russia, China and Iran and are being transported through roads leading to Yemen, but the US Navy tried to close these roads over the past years.³²

Iran's control on a multi-million dollar arms smuggling network between Iran, Yemen and the Horn of Africa is clear. This network was sanctioned by the United States on November 1, 2022. Iranian arms and funds play a pivotal role in the illegal network, as these arms and funds allegedly fuel the violence of Al-Shabaab movement in Somalia backed by Al-Qaeda, in addition to the Islamic State in Somalia (Daesh-Somalia).³³ The American forces intercepted a dhow in international water between Iran and Yemen carrying more than 2,000 AK-47 assault rifles. According to the reports, shipments of thousands of illegal arms between Iran and Yemen are transported via sea routes to Somalia, these shipments are sold there to the violent extremist groups backed by the Islamic State in Somalia and Al-Shabaab³⁴.

5. Article 11 of the ATT

The ATT dedicated **Article 11** for approving the measures that countries must take to prevent the diversion of arms. The first paragraph of the treaty stipulated that each State Party concerned with the transfer of conventional arms included in Article 2, Paragraph 1, shall take measures to prevent the diversion of arms. The Treaty also stipulated the need for cooperation between the states parties to mitigate the effects of diverting the transfer of arms and the need to build confidence between countries and exchange information to prevent the diversion of the transfer of arms and their falling into the hands of perpetrators

³¹ UN investigates Turkish ship that had been moored near al-Shabab stronghold in Somalia, , Nordic Monitor, 10 Feb. 2022, link, <https://nordicmonitor.com/2022/02/un-investigates-turkish-ship-near-al-shabab-stronghold-in-somalia/>

³² A secret UN report... New evidence of Iran's involvement in smuggling weapons to the Houthis, Al-Ain News, January 9, 2022, link, <https://al-ain.com/article/secret-un-iran-smuggling-weapons-yemen>

³³ Tehran is involved in a network of arms smuggling for terrorist groups in Somalia and the Horn of Africa, Somalia Today website, November 3, 2022, link, <https://alsomalalyaum.com/40016/>

³⁴ An ocean of weapons: arms smuggling to Somalia, ISS, 07 Feb 2023, link, <https://issafrica.org/iss-today/an-ocean-of-weapons-arms-smuggling-to-somalia>

of international crimes or terrorist groups.³⁵ Thus, the diversion of conventional arms, ammunition, related parts and components to unauthorized end users poses a significant threat to societies all over the world.

Preventing the diversion of weapons is a global challenge, especially in areas of armed conflict. Small arms and ammunition are often used in illicit circulation at the local level through theft, resale, and corruption.³⁶ According to an expert report to the UN Security Council, Iran's weapons go to Libya with the assistance of the Turkish Government. Evidence indicates closer cooperation in recent years between the Turkish and Iranian armies and State-run contractors of defense. Reports confirmed that Turkish-backed armed factions of the Libyan Government of National Accord received the Dehleyvah anti-tank missile system (ATGM) and the Mobile Air Defense System (Misagh-2/ MANPADS), both manufactured in Iran. In its assessment in March 2021, the Panel of Experts on Libya confirmed that Turkey supplied Iranian arms to Libyan factions in violation of United Nations sanctions. Intelligence information cited that was subsequently disseminated; MANPADS MISAG 2 provided by Iran in 2018/2019, and United Nations report confirmed it.³⁷

The reorientation of weapons may occur due to transfers without adequate controls, unauthorized relocation, thefts from underinsured warehouses or assistance to armed groups, civilian populations, or trade-offs involving natural resources. Corruption is often associated with arms diversions, and government warehouses were prominent sources of illicit weapons.³⁸ In 2019, the Federation Prosecutor's Office in Nigeria announced operations to smuggle arms from government warehouses. This body took action against the Police High Command for the disappearance of some 178,459 different weapons and ammunition. More than 88 thousand Kalashnikov assault rifles and 3,907 assorted rifles and pistols disappeared from police stores nationwide. These weapons and ammunition were not found in the January 2022 records. Reports also confirmed that in Nigeria, it has always been estimated that some 1 million light weapons are circulating in the country from former conflict zones in Liberia, Sierra Leone, Côte d'Ivoire, Chad, Niger, Mali, and Libya. In Mali, on 4 January 2022, the Bamako Military Court sentenced a warrant officer and 16 accomplices to imprisonment for diverting weapons and ammunition; the accused

³⁵ For more, you can refer to the text of Article 11 of the agreement at the link, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2013/06/3.pdf>

³⁶ Arms Trade Treaty: Commitments to Prevent the Diversion of Conventional Arms, United Nations Institute for Disarmament Research, 2020, link, <https://unidir.org/sites/default/files/2020-12/ATT%20%20Issues%20Brief%201%20-%20Arabic%20Translation.pdf>

³⁷ Turkey helped Iran deliver weapons to Islamists in Libya, Nordic Monitor, 22 Feb. 2022, link, <https://nordicmonitor.com/2022/02/turkey-helped-iran-deliver-weapons-to-islamists-in-libya/>

³⁸ Arms Trade Treaty: Commitments to Prevent the Diversion of Conventional Arms, United Nations Institute for Disarmament Research, 2020, link, <https://unidir.org/sites/default/files/2020-12/ATT%20%20Issues%20Brief%201%20-%20Arabic%20Translation.pdf>

transferred 80 weapons and ammunition to the black market from the Cayce military base's warehouses.³⁹ The Taliban's control over Afghanistan's rule also led to their control of government weapons stores as well as the seizure of weapons stores left by United States forces after they withdrew from Afghanistan, which led to the proliferation of arms dealers in Afghan markets, where United States forces left behind an arsenal of weapons from light weapons, such as pistols and automatic rifles, to aircraft and heavy weapons, 16,000-night vision goggles and drones, as well as 162,000 pieces of communications equipment.⁴⁰

Illicit transfer of conventional arms has also led to many violations, primarily of children. In Yemen, for example, Iranian arms smuggling to the Houthi group, Yemen had become the largest country in the Middle East region hit by a mine-proliferation disaster. The list of the world's most landmine incidents is issued, posing a sustainable threat to civilian life. International and local human rights reports have identified 37 victims of Houthi militia mines since early 2022. Yemen's total number of victims of Houthi mines exceeds 10 thousand, with children and women accounting for the vast majority. Ta 'izz governorate had the largest share in the number of mines cultivated and victims, followed by Hodeidah governorate and Al-Jawf governorate.⁴¹

³⁹ Arms trafficking in Africa is an impossible phenomenon to stop, Al-Ain News, January 2022, link, <https://al-ain.com/article/arms-trafficking-africa-unstoppable-phenomenon>

⁴⁰ Kandahar is an open market for arms and ammunition trade for those who buy, Gulf, September 2021, link, <https://bit.ly/3remGA0>

⁴¹ Thousands of mine victims in Yemen, and the threat includes millions, Sam Project, March 2022, link, <https://bit.ly/3ju6PJf>

Fourth: ATT's Impact on Arms Movement

Developments witnessed in many unstable regions around the world in recent years have contributed many countries' tendency to increase spending on armaments deals. Many States not engaged in conflicts or without tensions were keen to increase their military spending to see that it contributed to strengthening their national security.

1. Arms Exporters and Importers in 2023

The dominance of the United States in the global arms trade has increased significantly over the past five years according to new data from the Stockholm International Peace Research Institute released in March 2023. The United States leads the exporters with (40%), followed by Russia with (16%), then France with (11%), China (5.2%), Germany (4.2%), Italy (3.8%), Britain (3.2%), Spain (2.6%), South Korea (2.4%) and Israel (2.3%) exported. The UAE and Jordan have also managed to join the exporters' list and take a place among the 25 largest arms exporters.⁴²

Reports documented that: -

- The USA accounted for 40% of total exports from 2018-2022, up 33% in the previous five years, while Russia fell from 22% to 16%. The United States supplied more than half of the weapons purchased by 13 of the 17 largest importers, and Saudi Arabia, Japan, and Australia were the most purchased from the United States.
- Russia fell to an increasingly distant second place while China's share of world exports remained relatively steady. India, the world's largest arms importer, reduced its Russian arms purchases by 37% from 2018-2022 against 2013-2017 despite Russia remaining India's largest supplier.
- France has ranked third in aircraft exports over the past five years thanks to contracts to sell fighter jets, followed by China and Germany.
- Other exporters include Italy, the United Kingdom, Spain, South Korea, and Israel.
- What to watch for: Ukraine accounted for less than one-tenth of 1% of global arms imports until recently, but the flow of arms into Ukraine is now reshaping the global defense industry.⁴³

⁴² Trends in international arms transfers 2022, SIPRI, Mar 2023, link, <https://sipri.org/publications/2023/sipri-fact-sheets/trends-international-arms-transfers-2022>

⁴³ U.S. dominates global arms sales, with Russia falling far behind, AXIOS, 14 Mar 2023, link, <https://www.axios.com/2023/03/14/global-arms-sales-us-dominates-russia>

- Canada, Saudi Arabia, Israel, and Qatar were among Canada's largest agents of arms and other military supplies after the United States in 2022. Data show that Saudi Arabia received about \$1.15 billion in Canadian military exports last year, making it the largest non-U.S. customer of Canadian gear. It bought more than Germany, which imported \$221.63 million in Canadian arms and military technology last year. Saudi Arabia accounts for about 54% of the total value of non-U.S. military exports. Armored vehicles made up a significant portion of Canada's exports to Saudi Arabia. Qatar was Canada's sixth largest non-United States customer and the second largest in the Middle East for military exports, receiving arms and other materials worth \$49.26 million in 2022. Data also show that the Middle East as a region accounts for 59% of non-United States military goods from Canada, making Ottawa's second-largest military agent.⁴⁴
- Swiss companies also exported tanks, weapons, and other military equipment worth 955 million Swiss francs (\$1.02 billion) to 60 countries in 2022, almost a third more than last year, the highest level ever recorded.⁴⁵
- Both the United States and the European Union are considering how to build their defense industrial bases to keep pace with war demands, replenish their stockpiles and prepare for future conflicts. Meanwhile, Russia is likely to play a smaller role in the global arms trade in the coming years because its weapons are necessary for war and because of sanctions aimed at reducing its ability to produce more.⁴⁶

2. Volume of international trade in firearms and light weapons

The global small arms market has been estimated at US \$8.53 billion in 2021 and is expected to reach US \$8.75 billion by 2022. According to a recent report published by Fortune Business Insights, the global small arms market is expected to reach US \$11.16 billion by 2029 showing a CAGR of 3.53% over the forecast period. The report highlights the important role of growing armed conflicts and cross-border conflicts, increased fishing activities, and shooting ranges in promoting market growth.⁴⁷ The global light weapons market reached \$12.61 billion in 2019 and is expected to reach \$17.33 billion by 2027, with a CAGR of 4.67% over the forecast period.⁴⁸

⁴⁴ Canada's arms exports boom to Saudi Arabia, Israel, Qatar, Al-Monitor, 6 June 2023, link, <https://www.al-monitor.com/originals/2023/06/canadas-arms-exports-boom-saudi-arabia-israel-qatar>

⁴⁵ Switzerland's war materiel exports reach record level, Swiss Info, 7 March 2023, link, <https://bit.ly/3WZdqhM>

⁴⁶ U.S. dominates global arms sales, with Russia falling far behind, AXIOS, 14 Mar 2023, link, <https://www.axios.com/2023/03/14/global-arms-sales-us-dominates-russia>

⁴⁷ Small Arms Market to Worth USD 11.16 Billion by 2029 | With a 3.53% CAGR, Fortune Business Insights, 1 June 2023, link, <https://www.fortunebusinessinsights.com/small-arms-market-103173>

⁴⁸ Light Weapons Market, Fortune Business Insights, link, <https://www.fortunebusinessinsights.com/light-weapons-market-103529>

Based on the volume of exports, the main trends in global arms transactions can be reviewed as follows:

- **India, Saudi Arabia, and Qatar topped the list of importers:** Riyadh ranked second (after India) in the list of the world's largest arms importers during 2018 – 2022. Washington also provided 78% of the total imports of these weapons. Qatar was also ranked third. Arms imports increased by 311% during 2018-2022 compared to 2013-2017.
- **UAE ranked 11th among Importers:** Imports of arms by the United Arab Emirates fell 38% during 2018 - 2022 compared to 2013 – 2017. Abu Dhabi ranked eleventh among the world's largest importers of arms, and Kuwait increased its arms imports by 146% during the period 2018-2022.
- **A recovery in French arms exports:** The world's top five arms exporters, by export volume, are the United States, Russia, France, and the China. France was ranked third, registering a 44% increase during 2018-2022 compared to 2013-2017, as Paris strengthens its armaments industry.
- **USA continue to be the most important source of arms.** US exports increased 14% during 2018-2022 compared to 2013-2017. About 41% of U.S. arms exports were from Middle Eastern countries, partly because of Washington's policy of containing Iranian influence in the region. US arms exports rose during 2018-2022 compared to 2013-2017 to many NATO countries due to growing tensions with Russia. In contrast, US arms exports to Turkey declined during 2018-2022 as a result of strained bilateral relations.
- **Moscow, Beijing, and Berlin's arms exports have declined.** China, Germany, and Russia accounted for 5.2%, 4.2%, and 16%, respectively, of total global arms exports during 2018-2022. Beijing, Berlin, and Moscow's arms exports fell by 23%, 35%, and 31%, respectively, during 2018-2022 compared to 2013-2017. Countries in Asia and Oceania received 32% of total U.S. arms exports during the same period.
- **Reduction in African States' arms imports;** African countries' imports of weapons decreased by 40% during 2018-2022 compared to 2013-2017, Owing to the decrease in arms imports of the region's two largest importers: Algeria and Morocco (their arms imports decreased by 58% and 30%, respectively). Sub-Saharan Africa accounted for about 2.0% of the world's total arms imports.
- **Rising arms imports by European countries,** The report confirmed that European countries' arms imports rose by 47% during 2018-2022 compared to 2013-2017,

noting that Britain, Ukraine, and Norway occupied the 13th, 14th, and 15th places, respectively, among the largest arms importers in the world.⁴⁹ The report noted that NATO countries in Europe increased their arms imports by 65% during 2018-2022 in response to the deteriorating security environment in the region.

- **Stimulating conflicts in Asia has increased arms exports:** according to the report, tensions between India and Pakistan are driving increased imports of the two countries' weapons; Pakistan's arms imports increased by 14% during 2018-2022 compared to 2013-2017. While India retained its status as the world's largest arms importer from 1993-2022, its arms imports fell by 11% during 2018-2022.
- **Tehran's arms imports are at a low level:** Iran recorded a decline in its arms imports compared to imports of other arms importers in the Persian Gulf region as Iran's imports of key weapons from 2018-2022 were close to zero. In 2022, Iran applied for 24 fighter jets from Russia, the first significant purchase of fighter jets since the early 1990s.⁵⁰

Compared to the period before the ATT from 2011/to 2015, nearly 42 states have been has been regularly exporting and more than 152 States have been importing arms. The financial value of the global arms trade was at least \$0645 billion in 2015, with the United States of America, Russia, Germany, France, and the United Kingdom being the top arms exporters. It accounted for 22% of global arms exports from 2004 to 2008, while China and India are the largest arms importers. Statistics on imports from 2011 to 2015 reveal that before the Treaty entered into force Asian continent acquired 46% of arms imports, the Middle East region 25%, and Africa 8%.⁵¹

⁴⁹ What are the main trends in global arms deals, Interregional website for strategic analytics, March 14, 2023, link,<https://www.interregional.com/%D8%A8%D9%8A%D8%A7%D9%86%D8%A7%D8%AA-%D8%B3%D9%8A%D8%A8%D8%B1%D9%8A/>

⁵⁰ Trends in International Arms Transfers, 2022, SIPRI, 13March 2023, <https://www.sipri.org/media/press-release/2022/global-arms-trade-falls-slightly-imports-europe-east-asia-and-oceania-rise>

⁵¹ Contribution of the Conventional Arms Trade Treaty to the promotion of international peace and security, January 31, 2022, link,<https://www.asjp.cerist.dz/en/article/179492>

Conclusion

In conclusion, and in light of the actual reality, we find that the arms-producing and exporting countries do not adhere to these principles or the conditions stipulated in the aforementioned articles. USA and European countries provided the governments of the Middle East and North Africa with large quantities of weapons before the 2011 uprisings, despite substantial risk that these arms will be used to commit or facilitate serious human rights violations. It also used, until recently, to supply weapons, ammunition, as well as military and police equipment that were used to kill civilians and are still being used today in Syria and Yemen. For example, at least 11 countries have provided military aid or allowed the export of weapons, ammunition and related equipment to Yemen. These countries include Bulgaria, the Czech Republic, Germany, Italy, the Russian Federation, Turkey, Ukraine, the United Kingdom and the United States of America. Despite ongoing brutal crackdown on protesters, the international community has failed to take strong action to stop arms transfers to Yemen.

Thus, at the level of the Treaty, the states parties to the ATT must address the shortcomings thereof, which are mainly:

- Failure to include strict international rules on brokering and criminalize violators of these rules.
- The need to draw a distinction between arms trade and transfer of arms in the form of donations and aid.
- Codifying procedures through which weapons can be prevented from being diverted to black markets.
- Addressing the shortcomings that allow weapons to fall into the hands of non-governmental organizations, including terrorist and criminal organizations.
- Developing legal provisions binding on all countries that clarify the procedures and measures necessary for the transit of weapons

In practice, work should be done to achieve the following:

1. Exerting more efforts in order to expand the implementation of the obligations imposed on states under the ATT and the effective implementation of Articles 6, 7, 9 and 11 thereof, and to create a legal, comprehensive and inclusive mechanism based on accurate international standards with regard to regulating commercial transactions in this field.

2. States should agree to a monitoring and enforcement mechanism that provides for a prompt, impartial and transparent investigation of alleged violations of the ATT and appropriate sanctions.
3. Prevent irresponsible transfers of conventional arms and consider the possibility that the weapons will be used to commit serious acts of gender-based violence or violence against women and children.
4. The importance of monitoring arms trade, especially in areas where armed conflicts are rampant, and activating controls on the transit of arms, as irresponsible transfers of arms can destabilize an entire region, allow violations of the arms embargo, and contributing to human rights violations. Where the trade in legal and illegal arms through black markets contributes to the exacerbation of international conflicts and civil wars.
5. Countries must activate cooperation among themselves to enhance respect for United Nations resolutions calling for a ban on the supply of weapons to countries or armed groups in conflict areas such as Syria or Yemen, especially since there are external parties such as Iran, for example, violating the decision to ban the supply of arms to the Houthi groups in Yemen and the Al-Shabab group in Somalia.