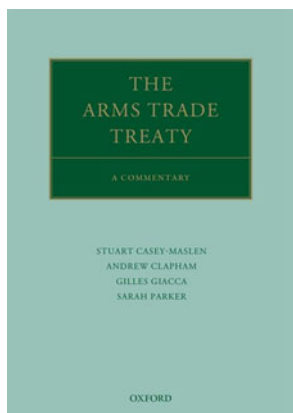


BOOK REVIEW



The Arms Trade Treaty: A Commentary

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“Weapons are among man’s oldest and most significant artefacts.”¹ This is how *The Arms Trade Treaty: A Commentary* (ATT Commentary) starts its historical introduction, which makes the volume immediately catch the interest of a wide range of readers and interpreters by bringing them into the journey of past and current international trade of conventional arms and its regulation.

The Arms Trade Treaty (ATT), adopted by overwhelming vote by the United Nations (UN) on 2 April 2013, is the first international treaty aimed at regulating international transfers of conventional arms. The ATT Commentary, written by the world’s leading scholars and practitioners, is the most comprehensive existing work for understanding the international law regulating the trade of arms and its practice.

As the introduction to the Commentary explains, it was the American Civil War during the mid-nineteenth century that changed the arms production system.² The mass bloodshed that it created was facilitated by industrialization, particularly of interchangeable parts of arms. The exigencies of warfare required production to take this direction. Citing James McPherson, the Commentary notes that it was “no coincidence that interchangeability was first perfected in small arms manufacture. In wartime an army needs a large number of weapons in a hurry and must be able to replace damaged parts in an equal hurry.”³ Today, this interchangeability has evolved into modularity, thus reflecting the need for even more flexible

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weapons that can be easily reconfigured to meet different operational needs and that can accommodate a range of sophisticated accessories. This evolution has shown the growing need for an adequate regulation of the trade not only of arms and their parts but also of their components,⁴ together with a proper understanding of it.

Even during the civil war, the output of arms factories was not limited to supplying the domestic market. In fact, arms transfers were a matter of concern for international law for a very long time. The very first modern instrument to regulate the trade of arms focused on slavery.⁵ As explained in the section of the Commentary on “The Historical Precedents of the Arms Trade Treaty”, the 1890 Brussels General Act⁶ was actuated with the intention of the colonial powers to end the traffic of African slaves and secure peace and security on the continent. To this end, restrictions on the importation of firearms and of ammunition throughout that territory seemed relevant to insert in the act.⁷

Today, we are awash with arms.⁸ Each year, \$45–60 billion worth of conventional arms sales agreements are concluded.⁹ For more than two decades, the main exporters have been the five permanent members of the UN Security Council. Developing countries are the main recipients of those transfers.

Despite a considerable corpus of international law detailing how arms may or may not be used, until recently there has clearly been much less regulation of their supply. For decades, contrary to most other areas of commerce, the arms trade has not been regulated on an international level, creating fertile ground for robust competition between suppliers – a trend now exacerbated by the global economic crisis.

Traditionally, disarmament efforts have been concentrated on weapons of mass destruction, deemed as the most dangerous for humanity. However, some

1 Robert L. O’Connell, *Of Arms and Men: A History of War, Weapons and Aggression*, Oxford University Press, New York and Oxford, 1989, p. 4, cited in ATT Commentary, p. 1.

2 ATT Commentary, p. 1.

3 James M. McPherson, *Battle Cry of Freedom: The Civil War Era*, Ballantine Books, New York, 1988, p. 16, cited in ATT Commentary, p. 1.

4 On the distinction between “parts” and “components” of weapons, para. 4.19 of the ATT Commentary states: “Parts and components’ are not defined in the treaty and there is no internationally agreed definition of what constitutes a part or a component. ... [W]hile in other fora the terms are generally used interchangeably, in a weapon context, a ‘part’ can be considered an item that cannot work independently, but is primarily used in the construction of a larger item (e.g. the armoured steel plates that will go into the battle tank chassis) while a ‘component’ can be understood as an item that has an independent function (such as a gas turbine engine) but that will need to be integrated into a larger item to be used” (footnotes omitted). See also Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, UNGA Res. 55/255, 31 May 2001, Art. 3(b); International Small Arms Control Standard 01.20, Glossary of Terms, Definitions and Abbreviations, Version 1.1, 17 June 2017, p. 14.

5 ATT Commentary, p. 3.

6 General Act on the Slave Trade and Importation into Africa of Firearms, Ammunition and Spiritous Liquors, signed in Brussels on 2 July 1890.

7 Article 1(7) of the 1890 Brussels General Act; ATT Commentary, p. 3.

8 *Ibid.*, p. 7.

9 Marc Finaud, “The Arms Trade Treaty: Half Full or Half Empty?”, Geneva Centre for Security Policy, Policy Paper No. 2013/6, August 2013, p. 1, available at: www.gcsp.ch/News-Knowledge/Publications/The-Arms-Trade-Treaty-Half-Full-or-Half-Empty.

major conflicts such as the Balkan wars and the Rwandan genocide, as well as internal violence in Latin America, showed how devastating the unregulated sale of conventional weapons, including small arms and light weapons, could be. The ATT's greatest strength is that it subjects arms transfers to humanitarian concerns and requires that transfers be denied where real risks of serious violations exist.

What are the criteria for assessing whether exports or imports can be authorized? What constitutes legitimate trade and lawful ownership and use of certain conventional arms? How can the rules regulating the trade of arms be implemented and enforced? Written by qualified academics and experienced practitioners directly involved in the treaty negotiation, the ATT Commentary explains in detail each of the treaty provisions, the parameters for denial of transfer and for international cooperation and assistance, and the relevant implementation obligations and mechanisms. Within its material scope, the Treaty and together with it the Commentary deal with the seven categories of heavy armaments contained in the UN Register of Conventional Arms, small arms and light weapons, ammunitions and munitions, parts and components¹⁰ of the weapons covered by the Treaty, and technology transfers.

As States will go through the process of ratification and implementation of the ATT over the next few years, the ATT Commentary provides invaluable guidance to government officials, civil society and international organizations, and scholars on the meaning of its provisions. In addition, given the international media attention that the arms trade receives, anyone interested in exploring the issue can gain a comprehensive overview by reading this volume.

The ATT may appear to be rather technical, and media do not always report the legal considerations that go with the international trade of arms. The ATT Commentary describes the context of past and current international regulations of arms transfers, details the categories of weapons covered by the ATT and explains the different forms of transfer that the Treaty regulates. It covers questions regulated by international humanitarian law (IHL), international human rights law, international criminal law and the *jus ad bellum*, as well as the application of the Treaty to non-State armed groups. Thanks to the structure of the book, even those less familiar with the subject will be able to form their own opinion on the main aspects of the international regulations of the arms trade while benefiting from an analysis based on relevant case law and practice, which shows that the multiple branches of international law involved on the issue are lively and developing bodies of law.

The authors bring a real added value to the clarifications on the rules of the ATT, with expertise ranging from public international law to IHL and arms regulations, and with their professional experience ranging from academia and the governmental sector to civil society and organizations like the International Committee of the Red Cross (ICRC) – the guardian of IHL. The authors manage to address a broad public, and this is certainly due to their diverse expertise.

¹⁰ See above note 4.

Their in-depth comprehension of a range of actors, such as academics, industry representatives, international organizations and civil society, underlies the volume and ensures that it realistically presents the international environment in which those actors work.

The wide array of supporting documents presented in the ATT Commentary shows the authors' expertise and commitment to finding the most appropriate texts to support their explanations. Professors, students and laypersons will be able to find the answers and clarifications to the most controversial and difficult questions that the ATT raises. At the same time, scholars and researchers looking for additional sources will be introduced to less commonly cited but equally relevant resources. The wealth of the sources used also lies in their variety, both in terms of the types of documents and their provenance (ranging from international, regional and national courts' decisions and instruments to UN resolutions and positions of the ICRC).

In conclusion, one can only recommend *The Arms Trade Treaty: A Commentary*, as Andrew Clapham, Stuart Casey-Maslen, Gilles Giacca and Sarah Parker offer a well-written, comprehensive discussion and interpretation of the ATT, particularly on its most controversial provisions. The authors have not only succeeded in clarifying the ATT but have also transmitted their interest in the matter. The ATT Commentary has been written in an easy-to-read style, placing different but related branches of law in context through important references from history and economics. As such, it will make a wide range of readers willing to continue the discussions and carry out further work on the subject. In this respect, the ATT Commentary will also constitute a key tool for everyone involved in the important process of ratification and implementation of the ATT by States.