



TAKING STOCK OF THE ARMS TRADE TREATY: APPLICATION OF THE RISK-ASSESSMENT CRITERIA

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I. Introduction

The entry into force of the Arms Trade Treaty (ATT) in 2014 was an important milestone in the control of international arms transfers.¹ For the first time the international community was able to agree on a global, legally binding instrument containing minimum standards for the control of international transfers of conventional arms, including exports, imports, transit, transshipment and brokering. Article 6 of the ATT, on ‘Prohibitions’, and Article 7, on ‘Export and export assessment’, are key elements of the treaty, as they provide a series of prohibitions and risk-assessment obligations aimed at regulating the international trade in conventional arms.² Article 6 outlines a series of circumstances in which states parties must prohibit transfers of conventional arms, their ammunition or munitions, and parts or components covered by the scope of the treaty. When an export is not prohibited under Article 6, the exporting state party must assess the potential risks of this export on the basis of a series of criteria listed in Article 7. In doing this, the exporter must consider ‘whether there are measures that could be undertaken to mitigate [such] risks’.³ In cases where the risk of the negative consequences is determined to be ‘overriding’, export shall not be authorized.

With 110 states parties and a further 31 signatories as of 30 June 2021, the global footprint of the ATT is already significant. There are different ways of assessing the impact of this broad participation. Looking at the world’s top 25 exporters of major arms in 2016–20 (which together represented 98 per cent of recorded exports in that period), the 17 that are party to the ATT were responsible for only 35 per cent of recorded exports, while the 8 that have not yet joined the treaty were responsible for 62 per cent.⁴ But looking instead at the participating importing or transit states, the ATT may already be considered an important achievement. Some of these states had no prior legislation in this area, implying that transfers to or through their

¹ Arms Trade Treaty (ATT), adopted by the United Nations General Assembly 2 Apr. 2013, opened for signature 3 June 2013, entered into force 24 Dec. 2014.

² Casey-Maslen, S., Giacca, G. and Vestner, T., *The Arms Trade Treaty (2013)*, Academy Briefing no. 3 (Geneva Academy of International Humanitarian Law and Human Rights: Geneva, June 2013), pp. 23, 26.

³ Arms Trade Treaty (note 1), Article 7(2).

⁴ Wezeman, P.D., Kuimova, A. and Wezeman, S. T., ‘Trends in international arms transfers, 2020’, SIPRI Fact Sheet, Mar. 2021.

SUMMARY

● A central element of the 2013 Arms Trade Treaty (ATT) is the risk-assessment criteria in articles 6 and 7. The flexibility in the wording of the two articles has required efforts to reach common interpretations of the criteria in order to lessen the scope for different assessment outcomes. These efforts, as well as improved and aligned national practices, will enhance the treaty’s long-term impact. While there are limits to how far some states parties will want to go, there is a genuine preparedness to look at ways to increase the effectiveness of the ATT that should be encouraged and supported.

This is one of a series of five papers that are being produced as part of a wider project aimed at taking stock of specific aspects of the ATT—its scope, the application of the risk-assessment criteria, its processes and forums, universalization efforts, and international assistance to support ATT implementation.

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territories may not even have been illegal, just unregulated. Others had only rudimentary controls, which are now being strengthened in order to ensure compliance with treaty obligations.⁵ This large and still growing group of countries is particularly important for international efforts to combat diversion of authorized exports and other unregulated flows of arms.

Diverted and unregulated shipments of arms are particularly prone to cause harm because the recipients are likely to be governments or non-state actors that are not considered eligible for regulated transfers of such arms. By expanding transfer controls far beyond the traditional circle of producing and exporting countries, the ATT's minimum standards for responsible transfers of arms become important in new ways. As the jurisdictional space for unregulated (and therefore not illegal) arms transfers shrinks, the treaty's assessment criteria could be made applicable to potentially harmful transfers that until now have been carried out relatively unimpeded. Key element of such a development will be the extent and way that the ATT's assessment criteria are applied to transit trade.

With regard to the 25 major exporters, the ATT is likely to have a long-term impact on both the 17 that have joined the ATT and the 8 that have chosen to stay outside if the states parties' efforts to reach common interpretations of articles 6 and 7 and other key elements of the treaty are successful. For major exporters that have joined the ATT, the standards that it sets in most cases mirror basic principles already in place in their regulatory systems but may also include some new elements or a new emphasis in certain areas. The challenge for these states will be to adjust existing national policies to align—as far as possible—with common interpretations of the ATT's obligations. The eight large exporters that have not yet joined the ATT—the United States, Russia, Israel, Ukraine, Turkey, the United Arab Emirates, Belarus and India⁶—already have transfer control systems of varying degrees of sophistication. If the 110 states parties to the ATT apply its standards in a consistent manner, these will in time come to be seen as customary norms.⁷ The major exporters that have not joined the treaty will then face growing international expectations not to deviate too obviously from these norms, even if they have not formally adopted the ATT's standards.

Thus, there are several reasons for ATT states parties to engage substantively on the practical application of articles 6 and 7 of the treaty, and on ways to promote improved and aligned national practices in this area. First, because strengthening the transfer control standards introduced by the ATT, and thereby also their international impact, is in line with the aim of promoting responsible control practices globally. Second, because all states parties—and not just exporters and importers—have a role to play in controlling the international trade in conventional arms. The control of transit and trans-shipment merits the same degree of attention as exports and imports in order to fulfil the object of the ATT: to 'Prevent and eradicate the illicit trade in conventional arms and prevent their diversion'.⁸

⁵ Vestner, T., *Prohibitions and Export Assessment: Tracking Implementation of the Arms Trade*, Geneva Paper no. 23/19 (Geneva Centre for Security Policy: Geneva, Mar. 2019).

⁶ Wezeman et al. (note 4). The 8 are ranked by volume of exports in 2016–20.

⁷ Worster, W. T., 'The Arms Trade Treaty in international institutional law', *University of Pennsylvania Journal of International Law*, vol. 36, no. 4 (2015), p.1072.

⁸ Arms Trade Treaty (note 1), Article 1.



This paper analyses the ATT's risk-assessment criteria and provides recommendations on how further work in this area could be strengthened.⁹ It begins (in section II) by highlighting states parties' positions on key issues underlying the treaty text, the significance of the ATT's risk-assessment criteria, and the salient features of articles 6 and 7 of the treaty. It then (in section III) provides a brief overview of ongoing efforts to clarify the practical application of these criteria and to promote improved and aligned national practices. ATT states parties are active in these efforts, but initiatives by other ATT stakeholders and experiences gained in other international transfer control forums are also relevant. The paper offers (in section IV) suggestions on how best to support and further strengthen efforts on this important topic, before concluding (in section V) with brief closing remarks.

II. The significance of risk-assessment criteria and salient features of articles 6 and 7

The ATT is a treaty between sovereign states. In practice, consensus is the norm for decision-making in the ATT's different bodies. The negotiations leading up to the ATT were conducted within the United Nations framework 'on the basis of consensus'.¹⁰ There was a strong view among governments that the treaty itself should also operate on this basis, not least in order to provide a stable treaty text as a basis for universalization efforts. However, some stakeholders called for the possibility for voting. Accordingly, a fallback voting procedure was introduced in the Rules of Procedure that were developed at the first ATT Conference of States Parties (CSP1), stating 'If all efforts to reach consensus have been exhausted, the Conference shall take the decision by a two-thirds majority of the States Parties present and voting'.¹¹ At the time of adoption, this was considered by most states parties to represent an additional incentive to reach consensus, rather than as a decision-making tool. In the six years that have passed since the Rules of Procedure were adopted, the CSP has never adopted a decision by vote.¹² The only occasion when a decision was reached by vote occurred at CSP1, before the Rules of Procedure were adopted, to select the location of the ATT Secretariat.¹³

The significance of consensus in the ATT's work is that, when attempting to identify the most effective ways to encourage further efforts on articles 6 and 7, states parties' basic concerns with regard to different aspects of the ATT need to be taken into account. Arms transfers are a particularly sensitive policy area for both exporting and importing states, and there are a number of reasons why the prospect of a strong, legally binding ATT was

⁹ Other aspects of the treaty are discussed in the other papers in this series: Holtom, P., 'Taking stock of the Arms Trade Treaty: Scope', Aug. 2021; Dondisch, R., 'Taking stock of the Arms Trade Treaty: Processes and forums', Aug. 2021; Stohl, R., 'Taking stock of the Arms Trade Treaty: Universalization', Aug. 2021; and Maletta, G. and Bauer, S., 'Taking stock of the Arms Trade Treaty: International assistance to support implementation', Aug. 2021.

¹⁰ UN General Assembly Resolution 64/48, 2 Dec. 2009, para. 5.

¹¹ Arms Trade Treaty, 1st Conference of States Parties, 'Rules of procedure', ATT/CSP1/CONF/1, 25 Aug. 2015, Rule 33(2).

¹² Head of the ATT Secretariat, Communication with author, 7 July 2021.

¹³ Arms Trade Treaty, 1st Conference of States Parties, Final report, ATT/CSP1/2015/6, 27 Aug. 2015, para. 27.



viewed with some concern by governments. Many importing states were not comfortable with the idea that their threat assessments and choices of military equipment might be questioned or undermined by a strong treaty with multilateral decision-making powers. Other importers saw a strong treaty as an opportunity to create ‘rights’ for the importer, overriding the sovereign decision-making prerogative of exporters. Such a possibility led exporting states with restrictive export policies to become aware of the risk that a strong treaty might force them to reverse the denial of an export application. Exporting countries that primarily view arms exports as an extension of foreign policy (e.g. in terms of bilateral relations with an importer or the maintenance of alliance relationships) felt the need to safeguard the option of weighing foreign policy requirements more heavily than other considerations in a risk assessment.

It became clear during the negotiations that there was little appetite among governments, whether importing or exporting, to include in the treaty any form of supranational authority that might assume the role of determining how the assessment criteria should be interpreted in individual cases. Exporting states in particular emphasized their desire to reserve for themselves the right to interpret the treaty text and to assume the political responsibility at the national level for such interpretations.

For reasons such as those outlined above, many importing and exporting states approached the ATT negotiations with caution. While strongly welcoming the idea of an arms trade treaty, they simultaneously wished to limit possible negative foreign and security policy consequences by making sure that the text contained certain safeguards. The flexibility that has been built into the final wording of key elements in the treaty reflects how such mixed motives affected the final outcome. Articles 6 and 7 are one example. The remainder of this section introduces these articles and describes their salient features in order to highlight how either precision or flexibility has been introduced into the text in ways that can affect the uniformity of assessment work by individual states parties.¹⁴

Article 6: Prohibitions

The text of Article 6 reads,

1. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, 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 embargoes.
2. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, 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 arms.
3. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949,

¹⁴ Full analyses of articles 6 and 7 are available in e.g. C. da Silva and B. Wood (eds), *Weapons and International Law: The Arms Trade Treaty* (Larcier: Brussels, 2015); and Casey-Maslen, S. et al., *The Arms Trade Treaty: A Commentary* (Oxford University Press: Oxford, 2016).



attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.¹⁵

The text of Article 6(1) establishes that the article's obligations are applicable to 'any transfer'—a term defined in Article 2(2) as including 'export, import, transit, trans-shipment and brokering'—even though the treaty as a whole does not oblige states parties to operate a licensing system that covers all types of transfer. A state party therefore needs to ensure that legal control can be exerted over all types of transfer even if a licensing system is not always considered appropriate.

Article 6(2) introduces a 'shall not authorize' obligation for transfers that would violate a state's relevant obligations under international agreements, 'in particular those relating to the transfer of, or illicit trafficking in, conventional arms'. It is left to individual states parties to determine which international obligations and which treaties need to be taken into account.

Article 6(3) introduces a 'shall not authorize' obligation for situations when a state party 'has knowledge at the time of authorization' that the exported arms would be used in the commission of war crimes. Individual states parties must determine the level of awareness that constitutes 'knowledge' and how much certainty is implied by the concept of 'would be used'. The scope of the obligation is also affected by the international agreements and additional protocols that a state party has ratified.

Article 7: Export and export assessment

The text of Article 7 reads,

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

¹⁵ Arms Trade Treaty (note 1), Article 6.



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.¹⁶

Article 7(1) obliges states parties to conduct an assessment—based on criteria listed in the text—of arms subject to export authorization ‘pursuant to its national control system’ and ‘in an objective and non-discriminatory manner’ that takes into account relevant factors, ‘including information provided by the importing State’. Assessments are not linked directly to the situation in a recipient country, but to how a given type of arms could affect that situation and ‘contribute to or undermine peace and security’. Taken as a whole, this language provides individual states parties with a certain flexibility of interpretation that can affect the conclusions that can be drawn in individual licensing cases.

The idea expressed in Article 7(1)(a) that an arms export could ‘contribute to . . . peace and security’ represents a different approach than that used in many existing assessment criteria documents at the national or regional level. These have tended to focus exclusively on reasons to deny an export, thereby downplaying the fact that most producing and exporting governments also take arguments for approval of an authorization into account when assessing a transfer. Apart from clear-cut cases where a transfer can have a directly stabilizing effect (e.g. by correcting an imbalance between military forces in a volatile region), less direct approaches to the concept of positive effect, such as fulfilling alliance commitments, can also be part of an assessment. The inclusion of this element in the ATT’s assessment criteria should thus be welcomed as a form of increased transparency that lessens the gap between public perceptions and actual practice in the transfer control area.

The criteria listed under Article 7(1)(b) are broad in the sense that they cover both direct commission and indirect facilitation of certain acts, including violations of international humanitarian law and international human rights law. However, individual parties need to decide what types of action qualify as facilitation.

Article 7(2) introduces the concept of mitigating measures, such as confidence-building measures and programmes jointly developed and agreed by the exporting and importing states, that can reduce the risks assessed according to Article 7. This raises difficult questions related to the fact that licensing decisions are taken at a specific point in time, whereas the described types of mitigation measure might produce results only in a longer perspective. Also, the results of some mitigation measures might not be sustainable indefinitely. For instance, the provision of a delivery verification certificate by the importing state ensures the delivery of the arms to

¹⁶ Arms Trade Treaty (note 1), Article 7.



the legitimate end user, but it does not provide a long-term assurance against possible re-export.

Article 7(3) introduces the concept of ‘overriding risk’, indicating that an exporting state party is allowed to strike a balance between risks identified and possible positive factors, such as the mitigation of those risks or the possible contribution of the individual export to peace and security. In a sense, this new concept is a logical complement to the idea of taking into account an export’s potential to contribute to peace and security, introduced in Article 7(1). It becomes even more clear that governments may reach an assessment conclusion by balancing different factors against each other. At the same time the language of Article 7(3) underlines that negative impacts of a transfer cannot simply be ignored. They are an integral part of any assessment, and a state party is obliged to deny an export if the negative impacts are sufficiently serious. In addition to this, Article 6 defines situations in which a balancing of positive and negative effects is neither appropriate nor acceptable. Interpretative statements issued by some states parties and groups of states parties more narrowly juxtapose negative effects and mitigation measures. This, however, does not detract from the text of Article 7(1).

Article 7(4) adds a further risk factor for states parties to ‘take into account’: the risk of the materiel under assessment ‘being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children’. The explicit mention of gender-based violence breaks important new ground in the area of transfer controls for conventional arms. However, it has been added in a separate paragraph, outside the assessment procedure described in paragraphs 1–3 of Article 7, and it uses a weaker form of obligation than the ‘shall not authorize’ of Article 7(3). This raises questions of interpretation. For instance, does the separate treatment of gender-based violence and violence against women and children within Article 7 in some way weaken the standing of these issues as grounds for prohibition under Article 6?

The various aspects of articles 6 and 7 described above underscore two things that need to be taken into account when considering how to support further work on the practical application of the ATT’s assessment criteria, and how to promote improved and aligned national practices. On the one hand, the various types of ambiguity in the text of articles 6 and 7 illustrate the scope that currently exists for different assessment outcomes under the ATT and highlight the desirability of achieving understandings that would increase uniformity. On the other hand, the ambiguities introduced are no accident, but represent the desire of states parties to retain a certain flexibility for national decision-making on conventional arms transfers.

III. Efforts to clarify and strengthen application of articles 6 and 7

There is no lack of initiatives designed to encourage further work on various aspects of articles 6 and 7 of the ATT, mainly with the aim of generating common interpretations in order to lessen the scope for different assessment outcomes. This section gives a brief overview of such initiatives, starting



with the efforts of the states parties themselves, then looking at efforts by other stakeholders and finally at the influence of other international bodies.

Efforts by the states parties

During the first years after the ATT's entry into force, discussions at annual CSPs and the associated preparatory work tended to focus more on procedural aspects of treaty implementation, including compliance with financial and reporting obligations. Such efforts continue, but there has been a gradual increase in emphasis on the practical application of substantive provisions of the treaty, and articles 6 and 7 have been explicitly identified as one of several priority areas for such work.¹⁷

At CSP3, in 2017, a standing Working Group on Effective Treaty Implementation (WGETI) was proposed and articles 6 and 7 were identified as a priority area for work.¹⁸ At CSP4, in 2018, a sub-working group dedicated to articles 6 and 7 was created and work began on several relevant initiatives, including a guidance document on implementing Article 6(1) and a list of possible sources of relevance for risk assessment under articles 6 and 7.¹⁹ At CSP5, in 2019, the concept of a multi-year work plan for the sub-working group on articles 6 and 7 was proposed and endorsed, and a discussion on Article 7(4) on gender-based violence and violence against women and children was initiated with the aim of identifying common approaches.²⁰

In March 2021 a detailed multi-year work programme for the period 2020–23 was adopted for the sub-working group on articles 6 and 7. It identified the substantive topics to be treated during the four-year period.²¹ Ongoing and planned work of the subgroup covers key concepts in the two articles, including 'relevant international obligations under international agreements' (Article 6(2)); 'knowledge at the time of authorization' (Article 6(3)); 'transfer' (the relationship between Article 6.2 and articles 7–10); 'facilitate' (articles 7(1) and 7(4)); 'serious violation of international humanitarian law' (Article 7(1)(b)(i)) and 'serious violation of international human rights law' (Article 7(1)(b)(ii)); 'mitigating measures' (Article 7(3)); 'overriding risk' (Article 7(3)); and 'serious acts of gender-based violence or serious acts of violence against women and children' (Article 7(4)).

The first results of a 'key concepts' survey of the views of states parties were distributed during the preparatory work for CSP7 based on responses from 20 states parties, 1 regional organization and 3 civil society organizations.²² These results indicate different national approaches on important

¹⁷ Arms Trade Treaty, 3rd Conference of States Parties, Final report, ATT/CSP3/2017/SEC/184/Conf.FinRep.Rev1, 15 Sep. 2017, para. 21. On states' collaboration on this issue see Dondisch (note 9).

¹⁸ Arms Trade Treaty, ATT/CSP3/2017/SEC/184/Conf.FinRep.Rev1 (note 17), para. 21.

¹⁹ Arms Trade Treaty, 4th Conference of States Parties, Working Group on Effective Treaty Implementation, Chair's draft report, ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep, 20 July 2018.

²⁰ Arms Trade Treaty, 5th Conference of States Parties, Working Group on Effective Treaty Implementation, Chair's draft report, ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep, 26 July 2019.

²¹ Arms Trade Treaty, 7th Conference of States Parties, Working Group on Effective Treaty Implementation, Letter from the chair, ATT/CSP7.WGETI/2021/CHAIR/655/M.LetterWorkPlans, 31 Mar. 2021.

²² Arms Trade Treaty, ATT/CSP7.WGETI/2021/CHAIR/655/M.LetterWorkPlans (note 21), Annex A, Attachment 2.



issues, such as Article 7(4) on serious acts of gender-based violence. However, the work of drafting a voluntary guide to implementing articles 6 and 7 is expected to continue during the whole four-year period of the workplan.²³

Efforts by other stakeholders

Other stakeholders, such as individual states parties, civil society organizations, research institutes, international organizations and specialized UN bodies, have produced a large amount of teaching material, as well as guides to and surveys of states parties' interpretation and application of articles 6 and 7, or individual elements in these articles.²⁴ These surveys and guidelines have usually served three main purposes: (a) mapping states application of article 6 and 7; (b) pushing for wider interpretation of some of the more ambiguous aspects of articles 6 and 7, such as 'overriding risk' and 'international human rights law'; and (c) providing guidance on the type of information to draw from and questions to ask when conducting risk assessments. The target audience for these efforts has been the ATT states parties.

The materials have generally been published in printed form, often also available online, and sometimes in interactive formats specially designed for teaching situations (see table 1 for examples). Normally, they have been presented to states parties and other stakeholders on the margins of CSPs. Both states parties and stakeholders have attended these side events, and in a number of cases particular states parties have provided funding for the development of the materials or have acted as co-sponsors of the related side events. In some cases such materials have been brought into the ATT context and have been used as input for different working groups. However, there is no clear picture of the impact that the various proposals in these materials have had on the practices of states parties, nor any indication of a broad, unifying effect.

The influence of other multilateral transfer control bodies

Although the ATT is the first legally binding global instrument in the area of conventional arms transfer controls, there is a longer history of international cooperation in transfer control, primarily between exporting countries. Several transfer control bodies—including the Wassenaar Arrangement (WA) and the European Union (EU)—have indirectly influenced the shape of the ATT, not least because all or most of their respective participants are also states parties of the ATT. Such states have contributed not just national insights to the work of the treaty but also lessons learned from their participation in these bodies, which already have well-developed mechanisms allowing participating states to meet regularly and to engage in both substantive discussions and information exchange related to exports, export licence denials and common criteria for export assessments.

²³ Arms Trade Treaty, 6th Conference of States Parties, Working Group on Effective Treaty Implementation, Chair's draft report, ATT/CSP6.WGETI/2020/CHAIR/606/Conf.Rep, 17 July 2020, paras 7–8.

²⁴ Industry, an important stakeholder in a position to provide valuable input in many areas of ATT work, is not treated in this paper since the topic is licensing assessment criteria.

Table 1. Teaching material, guides and surveys on interpretation and application of articles 6 and 7 of the Arms Trade Treaty

Stakeholders arranged by type.

Stakeholder	Year	Material
Government of Switzerland	2018	Food for thought paper on practical measures to conduct likelihood assessments under articles 6 and 7 ^a
United Nations Office for Disarmament Affairs (UNODA)	2015	ATT implementation toolkit, modules on prohibitions and export assessment ^b
International Committee of the Red Cross (ICRC)	2016	Practical guide to applying international humanitarian law and international human rights law criteria in arms transfer decisions ^c
Geneva Centre for Security Policy (GCSP)	2019	Report on implementation of prohibitions and export assessment under the ATT ^d
International Peace Information Service (IPIS)	2017	E-learning modules on prohibited transfers (both on implementing existing treaty obligations and preventing international crimes), export risk criteria, and export decision-making and overriding risk ^e
Small Arms Survey	2016	Section on export controls in practical guide to national implementation of the ATT ^f
Amnesty International	2015	Guide to applying the ATT to ensure the protection of human rights ^g
Saferworld	2018	Briefing paper on undertaking an ATT arms transfer risk assessment ^h
Women's International League for Peace and Freedom (WILPF)	2019	Briefing paper on gender-based violence and the ATT, 2nd edition ⁱ
Control Arms	2018	Practical guide on how to address gender-based violence in risk assessment ^j

Note: The examples in the table are representative, not comprehensive. They are intended to illustrate the variety of contributors and approaches. A much broader collection of materials may be found in SIPRI's Arms Trade Treaty: Mapping ATT-relevant Cooperation and Assistance Activities document database, <<https://att-assistance.org/documents>>.

^a Arms Trade Treaty, Working Group on Effective Treaty Implementation, 'Food for thought paper on practical measures to conduct likelihood assessments under Articles 6 and 7 of the Arms Trade Treaty', Submitted by Switzerland, ATT/CSP4.WGETI/2018/CHE/255/M1.CHE.Arts6&7, 2 Mar. 18.

^b United Nations Office for Disarmament Affairs (UNODA), *Arms Trade Treaty Implementation Toolkit*, Module 5, *Prohibitions on Transfers*, and Module 6, *Export* (UNODA: New York, [2015]).

^c International Committee of the Red Cross (ICRC), *Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria—A Practical Guide* (ICRC: Geneva, Aug. 2016).

^d Vestner, T., *Prohibitions and Export Assessment: Tracking Implementation of the Arms Trade*, Geneva Paper no. 23/19 (Geneva Centre for Security Policy: Geneva, Mar. 2019).

^e International Peace Information Service (IPIS), 'E-learning: The Arms Trade Treaty', June 2017.

^f Parker, S. (ed.), *The Arms Trade Treaty: A Practical Guide to National Implementation* (Small Arms Survey: Geneva, Aug. 2016), pp. 49–73.

^g Amnesty International (AI), *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights* (AI: London, Feb. 2015).

^h Expert Group on ATT Implementation, *Implementing the ATT: Undertaking an Arms Transfer Risk Assessment*, Briefing no. 6 (Saferworld: Aug. 2018).

ⁱ Acheson, R., *Gender-based Violence and the Arms Trade Treaty*, 2nd edn (Women's International League for Peace and Freedom: Geneva, Mar. 2019).

^j Control Arms, *How to Use the Arms Trade Treaty to Address Gender-based Violence: A Practical Guide for Risk Assessment* (Control Arms: New York, Aug. 2018).

The Wassenaar Arrangement

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies was established in 1996 to contribute to regional and international security and stability by promoting transparency and greater responsibility, among other things, in transfers of conventional arms. The WA is open to any state that fulfils the criteria of being a significant producer, adhering to responsible non-proliferation policies



and maintaining effective export controls.²⁵ Of the current 42 participating states, only 5—India, Russia, Turkey, Ukraine and the USA—are not party to the ATT. However, these states were all among the 25 largest exporters of major arms in 2016–20.²⁶

From an ATT perspective, the WA has many potentially interesting features. Its work is consensus oriented. Like the ATT, it is a platform for cooperation between states exercising their own national controls over conventional arms transfers. It is not directed against any state or group of states.²⁷

The WA maintains a standard control list for conventional arms that is the most widely used among exporting countries.²⁸ The ATT has a narrower scope than the WA, but the text of the treaty encourages its states parties to apply a broader approach, and approximately one-third of the ATT states parties adhere to the WA control list or the EU Common Military List (which is derived from the WA list).²⁹ There is regular information exchange among states participating in the WA for the purpose of developing common understandings of transfer risks, and there is a specific system for the exchange of information on export licence denials. The flow of information between participating states is facilitated by the maintenance of a high level of confidentiality. Each participating state has a designated WA national contact point in order to, among other things, simplify bilateral exchanges.

In addition to the annual plenary meeting—the WA’s decision-making body—several different working groups meet regularly, for example to update the common control lists or to allow for direct exchanges between licensing and enforcement officials of participating states. Using the established system of working groups, the WA participating states have also developed and agreed a series of consensus-based best practice and guideline documents for export control work. These are publicly available and are valuable as reference material for any country that wishes to establish or further refine a national transfer control system.³⁰

The European Union

The EU also has a collaborative forum for its member states: the Working Party on Conventional Arms Exports (COARM). Arms transfer control was an early example of cooperation between EU member states in the area of foreign and security policy, beginning in 1991 and gradually evolving into the current COARM.³¹

COARM is a forum for information exchange and policy discussions between EU member states, including sharing of information on their policies on arms exports to non-EU countries. There is also a formalized system

²⁵ Wassenaar Arrangement, ‘About us: How the WA works’, [n.d.].

²⁶ Wezeman et al. (note 4).

²⁷ Wassenaar Arrangement Secretariat, *Public Documents*, vol. I, *Founding Documents* (Wassenaar Arrangement: Vienna, Dec. 2019), ‘Initial elements’, p. 4.

²⁸ Wassenaar Arrangement Secretariat, *List of Dual-Use Goods and Technologies and Munitions List* (Wassenaar Arrangement: Vienna, Dec. 2020).

²⁹ On the states adhering to the two lists see Holtom (note 9).

³⁰ Wassenaar Arrangement Secretariat, *Compendium of Best Practice Documents* (Wassenaar Arrangement: Vienna, Dec. 2019).

³¹ Bauer, S., Bromley, M. and Maletta, G., *The Further Developments of the Common Position 944/2008/CFSP on Arms Exports Control* (European Parliament: Brussels, July 2018).



for the exchange of information on national denials of export licences to non-EU countries. As in the WA, electronic information-sharing systems are in place to ensure confidentiality.

An important long-term effort in COARM has been to develop and further refine common criteria for export assessments by member states. A Code of Conduct on Arms Exports was adopted by the EU in 1998.³² This was replaced 10 years later, in 2008, by the legally binding EU Common Position defining common rules governing the control of exports of military technology and equipment.³³ An extensive User's Guide (first published in 2009) has also been developed to assist member states in applying the criteria of the Common Position.³⁴ The User's Guide provides a series of questions and lists a series of sources that EU member states can consider and consult during a risk-assessment process. After a review process that ended in 2019, revisions were made to both the Common Position and the User's Guide.³⁵

Additionally, COARM deals with EU engagement in outreach activities and political dialogue with non-EU countries on export control. COARM was also the forum in which EU member states prepared for meetings in the UN negotiating process that led to the ATT, as well as for ATT outreach efforts that were maintained in parallel with the negotiations. Since the treaty's entry into force, an important EU programme to support ATT implementation has been endorsed and monitored by COARM, alongside continued general ATT outreach efforts.³⁶

IV. Supporting further work on the implementation of articles 6 and 7

As underlined in section II above, many governments opted for an enthusiastic-yet-cautious approach when negotiating the text of the ATT and, as a result, introduced different degrees of both precision or flexibility in the text of articles 6 and 7. The consensus format that was adopted for the negotiations in order to facilitate the creation of a universally acceptable treaty gave this approach additional leverage.³⁷

How does this background and the resulting text affect current efforts within the ATT framework to further develop different aspects of the treaty? Should states parties be expected to maintain exactly the same positions that they held during the treaty negotiations? Looking at ongoing ATT-related

³² Council of the European Union, 'European Union Code of Conduct on Arms Exports', 8675/2/98 Rev 2, 5 June 1998.

³³ Council of the European Union, Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L 335, 13 Dec. 2008.

³⁴ Council of the European Union, 'User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment', 9241/09, 29 Apr. 2009.

³⁵ Council of the European Union, Council Decision (CFSP) 2019/1560 of 16 September 2019 amending Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L 239, 17 Sep. 2019; and Council of the European Union, 'User's Guide to Council Common Position 2008/944/CFSP (as amended by Council Decision (CFSP) 2019/1560) defining common rules governing the control of exports of military technology and equipment', 12189/19, 16 Sep. 2019.

³⁶ On the EU ATT Outreach Project see Maletta and Bauer (note 9).

³⁷ UN General Assembly Resolution 64/48 (note 10), para. 5.



work, not least in the area of articles 6 and 7 (see section III), the answer would seem to be both ‘yes’ and ‘no’. The duality in government positions that determined the outcome of the text negotiations is now to some extent working in reverse.

Having secured the necessary assurances of flexibility and national primacy in the ATT text, states parties are now (as described in section III) clearly prepared to discuss more precise common interpretations of key elements of the text, including interpretations of articles 6 and 7 in order to increase the ATT’s real-world impact. They are working deliberately but cautiously to clarify important articles of the ATT.³⁸

In another example of recent decisions not quite in line with governments’ positions during the negotiations—in this case the decision then to establish a limited secretariat in order to avoid any form of supranational authority in the treaty—states parties have agreed to a limited expansion of the number of staff of the ATT Secretariat to allow it to carry out new responsibilities that go beyond the bare minimum foreseen in the treaty text.³⁹

Each step, if achieved smoothly, could arguably create the necessary confidence to move even further. This effect can clearly be seen in the development over time of the EU’s collaborative efforts in COARM. The same, but to a lesser degree, can be said of the work in the Wassenaar Arrangement, with its more diverse circle of participating states.

The signs of movement that can be observed should not be over-interpreted. The challenges underlying the cautious approach during the negotiations are still there, so there will no doubt be limits to how far some states parties will want to go. But there is also a genuine preparedness to look at ways to increase the effectiveness of the ATT that should be encouraged and supported. The question is how best to do that.

This section seeks to identify possible ways forward for work on articles 6 and 7 that appear most likely to strengthen the ATT’s ability to contribute to responsible transfer control and effective measures against illegal or unregulated flows of conventional arms. It looks in turn at possible amendments to the treaty, ATT-related work by states parties, experiences from other multilateral transfer control bodies and contributions of other stakeholders. It also looks at two key issues: information exchange and confidentiality and the inclusion of technical experts in ATT efforts in many areas.

Amendments to the treaty

The most dramatic approach to clarifying article 6 or 7 of the ATT would be to amend the treaty text. Although, like most international treaties, the ATT includes an amendment clause, its phrasing is quite restrictive since amending the text of any treaty may be described as the ‘nuclear option’.⁴⁰ The ATT’s amendments clause does not even allow proposals for amendment until six years after the entry into force of the treaty. That deadline was passed on

³⁸ Arms Trade Treaty, ATT/CSP6.WGETI/2020/CHAIR/606/Conf.Rep (note 23), annexes A–C.

³⁹ Arms Trade Treaty (note 1), Article 18; and Arms Trade Treaty, Voluntary Trust Fund, Report on the work of the ATT Voluntary Trust Fund (VTF) for the period August 2017 to July 2018, ATT/VTF/2018/CHAIR/359/Conf.Rep, 20 July 2018, para. 28 and annex G.

⁴⁰ Arms Trade Treaty (note 1), Article 20.



25 December 2020. An additional requirement is that proposals for amendment must be submitted at latest 180 days before the following CSP. That deadline expired on 28 February 2021 and no proposal was submitted.⁴¹ To date there is no sign of work on any proposal to amend the treaty text.

This is not really surprising as there are significant risks associated with amendments to a treaty. The national legal systems of most, if not all, states include specific formal procedures for accepting or rejecting changes to treaties that the state has joined. This is to ensure that changes to a treaty text or additional protocols do not upset the balance of the treaty from a national perspective. Legal requirements at the national level obliging state parties to revisit a treaty in order to approve or reject a particular change (or the treaty as a whole) should not be taken lightly. The ATT itself is a good practical example: it was built on a unique set of circumstances, not the least important being the political momentum generated by the negotiations and the subsequent quick entry into force of the treaty. Eight years later there is a greater awareness of the fact that it will take a long time to reap the treaty's expected benefits, and of the hard work and resources required to sustain national transfer control systems. Political priorities have shifted to new issues, and a number of states parties may have experienced changes of government with uncertain effects on national support for the ATT. Even if agreement on modifications or additions to the text were to be reached by consensus within the CSP, the net effect on adhesion cannot be predicted with any certainty due to these background changes.

ATT-related work by states parties

As described in section III, states parties are already actively engaged in precisely the sort of discussions that could lead to better common understandings of how key elements of articles 6 and 7 should be interpreted. This should be encouraged and supported. It is likely that these efforts will result in informal agreements among states parties, rather than additional protocols that would require ratification. Even if informal agreements cannot be reached, it is possible that the peer-to-peer nature of the process itself could increase consistency by influencing daily work in a significant number of national transfer control systems.

In addition to articles 6 and 7 themselves, there is the question of whether or how assessment criteria should be applied to transit and trans-shipment cases (a transfer type covered by Article 9 of the treaty). The applicability of Article 6 to transit and trans-shipment is made clear in the way its text is drafted, stating in effect that states parties need to be able to act on all types of transfer that contravene Article 6, whether or not there is a licensing system in place. In contrast, the applicability to transit and trans-shipment of Article 7 obligations is not immediately obvious since its explicit focus is on export controls. But the question nevertheless merits consideration since Article 9 contains little in the way of specific guidance. An example can show what such consideration might entail: the national regulations of some exporting countries treat outbound transit shipments as a form of export, but often limit the application of export assessment criteria because

⁴¹ Head of the ATT Secretariat, Communication with author, 7 July 2021.



of overlapping jurisdictions (since a legitimate transit shipment is the outcome of another sovereign country's export authorization).⁴² So the question can fairly be posed: to what extent should the assessment criteria in Article 7 be applied to the control of transit trade? Efforts in this direction will be pursued as part of the work of the WGETI sub-working group on Article 9. According to its multi-year working plan, the sub-working group will explore the relationship between Article 9 and articles 6 and 7.⁴³

Imports and brokering are also included in the ATT's definition of transfers.⁴⁴ However, the criteria outlined in articles 6 and 7 are drafted in such a way that they are not, except in some brokering instances, directly applicable to these forms of transfer. Thus, Article 8 (on imports) and Article 10 (on brokering) are not considered further in this paper.

Experiences from other multilateral transfer control bodies

It is instructive to note that many of the features found in other relevant transfer control bodies are already reflected in the ATT and its organizational practices. This is perhaps not so surprising, given the overlap in participation between the ATT and these bodies, and the fact that a significant proportion of the current ATT states parties drew on their experiences in other international transfer control forums during the ATT negotiations. They continue to draw on this background when contributing to ongoing ATT-related efforts.

In section III the multilateral transfer control bodies in focus are the Wassenaar Arrangement and the EU's COARM. The following two examples of work in these forums show how such work could be useful in the development of understandings related to ATT articles 6 and 7.

The WA Compendium of Best Practice Documents contains a number of documents of practical relevance.⁴⁵ For instance, factors relevant to assessment work are listed in the Elements of Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons; the Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW) focus on considerations particularly relevant in the context of SALW; and the Best Practice Guidelines on Subsequent Transfer (Re-export) Controls for Conventional Weapons Systems provide an introduction to the effective application of one of the most widely used forms of mitigation measure—end use and end user assurances.

The EU's COARM elaborated the User's Guide to support the implementation of the EU Common Position on arms export controls.⁴⁶ It is extensive and multifaceted. Articles 6 and 7 of the ATT include a number of elements that express similar concerns to those included in the EU Common Position. The User's Guide could thus provide useful input on a number of

⁴² Stohl, R. and Holtom, P., *Reviewing Initial Reports on ATT Implementation: Analysis and Lessons Learned* (Arms Trade Treaty–Baseline Assistance Project: Coventry, 2016), p. 29.

⁴³ Arms Trade Treaty, ATT/CSP7.WGETI/2021/CHAIR/655/M.LetterWorkPlans (note 21), Annex B.

⁴⁴ Arms Trade Treaty (note 1), Article 2(2).

⁴⁵ Wassenaar Arrangement Secretariat (note 30).

⁴⁶ Council of the European Union, 'User's Guide to Council Common Position 2008/944/CFSP' (note 35).



issues relevant for the practical application of the ATT's assessment criteria and for the promotion of improved and aligned national practices.

Other stakeholders' contributions

As described in section III, civil society organizations, international organizations and individual states parties have been active in the ATT's regular work programme and have produced a considerable body of useful materials related to the workings of the ATT. The interpretation and application of articles 6 and 7 have been a particular focus area.

There are obvious uses for this wealth of material in implementation support activities, in which many of the stakeholders are actively engaged. Much of the available material was in fact generated with that particular purpose in mind. However, in the context of implementation support it is worth noting that some of the material sets out ambitious standards when it comes to the organization of transfer control work and the conduct of assessment procedures. Such high standards risk being counterproductive in states parties where needs are limited, resources tight, and political engagement has begun to fade with the passage of time and the appearance of other prioritized issues.

Another important use for material generated by other stakeholders, not least in the case of articles 6 and 7, is in supporting ongoing ATT-related work, as food-for-thought inputs or in support of concrete proposals. There are two challenges in this regard.

The first is to ensure that states parties make full use of the material available. That involves being open to such materials and having them presented in the relevant working groups and not just at side events. Presentations by external experts have in the past been made in relevant working groups, and such practices should be further encouraged. A positive development in this regard is that the recently adopted terms of reference for the new Diversion Information Exchange Forum (DIEF) include provisions for non-state experts to participate in the forum.⁴⁷

The second challenge is that civil society organizations need to accept that, at some stages of ATT-related work, there may be a need for closed meetings. Ultimately, the ATT is a treaty between states, and governments at times need to be able to exchange information or work towards outcomes in a more limited setting. Actively providing inputs while at the same time accepting the need for confidentiality in certain circumstances could in fact be seen as an important way to support further development of the treaty. It may be noted in this context that other multilateral transfer control forums also allow for both confidentiality and the possibility of the participation of external experts.

⁴⁷ Arms Trade Treaty, 6th Conference of States Parties, Working Group on Transparency and Reporting, 'Terms of reference (ToR) concerning the Diversion Information Exchange Forum', ATT/CSP6.DIEF/2020/CHAIR/632/Conf.DIEFToRS, 23 July 2020.



Key issues

Information exchange and confidentiality

An area where more should arguably be done within the ATT is that of dialogue and information exchange on the application of articles 6 and 7. Experience in other forums—not just the Wassenaar Arrangement and the EU, but also the Australia Group, the Nuclear Suppliers Group and the Missile Technology Control Regime—has demonstrated both the traditional reticence of governments even towards each other, and the potential for building trust and greater openness between participants. A key issue is the extent to which states parties are prepared to share information with each other. Here the experiences in other multilateral transfer control bodies can provide some idea of the possibilities and sensitivities that need to be addressed also in an ATT context.

In terms of general transparency, the trend over time among exporting states has been towards increased openness. Public or more limited (e.g. to national parliaments) reporting of statistics on arms transfer flows has increased and was also an accepted part of the ATT.⁴⁸ However, certain forms of transparency still remain sensitive. The decline in government-to-government sales in favour of industry-led (but government-regulated) efforts has led to a more pervasive need to protect commercially sensitive information. Information on denials of arms transfers remains particularly sensitive. A denial represents a political embarrassment for the denied recipient state. For the state issuing the denial, there can be a negative impact on various other aspects of the bilateral relationship. Beyond the obvious risks—possible trade and foreign policy repercussions—there is the paradox that many governments consider maintaining active bilateral relations to be particularly important in the case of countries deemed ineligible for arms exports. Simply put, maintaining good relations on subjects other than arms transfer may help when attempting to manage possible threats to peace and security.

On the topic of confidentiality, there are at least four types of information that states parties will probably continue to insist are not suitable for public disclosure.

1. Export licence denials. As noted above, information on denials of arms transfers remains particularly sensitive. At the same time, this type of information is extremely useful if shared among exporting and transfer states as it can increase awareness of risk factors that not all states parties may be aware of. This type of information has been shared so far in plurilateral bodies such as the WA and COARM that, unlike the ATT, were conceived as forums for cooperation among exporters. The sharing of denials has gained acceptance in these narrower settings but is still considered extremely sensitive and limited to national government use only, partly to avoid the leaking of information to competing industries that could lead to the undercutting of shared denials. While the practice of sharing information on export licence denials is extremely useful, the inherent limitations of a broad forum such as the ATT lie not only in the traditional confidentiality issue, but

⁴⁸ Arms Trade Treaty (note 1), Article 13(3).



also in potential opposition to sharing of denials from states parties either subject to denials or, by their own assessment, at risk of being the subject of export denial.

2. Information about ongoing efforts to counter diversion. Governments as a rule have no difficulty sharing information on cases of diversion after investigations and legal proceedings have been concluded. For operational reasons and because of national legal constraints, they do not wish to, or cannot, share this information earlier. This is understandable but unfortunate because interesting leads and links that become apparent when information is finally shared may arrive too late to be of use. The simplest alternative solution is to share such information not in the ATT, but through other legal channels where appropriate safeguards already exist. The new DIEF will be a test case to see if it is possible to move beyond traditional perceptions of what the appropriate channels for sharing are.

3. Sharing information on ongoing prosecutions. The solution in this area is similar to the case of efforts to counter diversion. It is worth noting that some other forums established groups of intelligence and enforcement officials for information exchange of this kind, with strict rules on confidentiality, no minutes taken at meetings and no information provided outside the group. However, the experience of such efforts has been that, since there are already alternative information-sharing bodies in the intelligence and law enforcement world, there was only limited interest in engaging in a new and unfamiliar setting.

4. Commercial confidentiality. This is a real issue with serious real-world consequences if the wrong information is made public at the wrong time. In practice, most states have strict rules protecting commercial information that cannot be circumvented just because the setting is multilateral. But, just as with military secrecy, there is a tendency to restrict commercial information on a blanket basis—for safety's sake. States parties could be encouraged to take a more nuanced approach in this area and base their withholding of information on actual risk assessments. In most cases this would place additional demands on available resources, but perhaps governments could weigh this against the benefits of an additional transparency effort. Many have already done this to some extent in the area of arms transfer statistics.

In the ATT context, the establishment of the DIEF as a one-of-a-kind body for informal voluntary exchanges between states parties or signatory states could, if it is reasonably successful, serve as a confidence-building exercise.⁴⁹ It will perhaps also be a way forward for information exchange in other areas, such as risk-assessment work under articles 6 and 7. In the area of risk assessments, however, the importance of a broad range of inputs means that a DIEF-type body can only be part of the solution. Governments are not always aware of where important information may be found.

On ATT transparency, the fulfilment by states parties of their legally binding reporting obligations has not been satisfactory at all. However,

⁴⁹ Arms Trade Treaty, 6th Conference of States Parties, Working Group on Transparency and Reporting, Co-chairs' draft report, ATT/CSP6.WGTR/2020/CHAIR/607/Conf.Rep, 17 July 2020, p. 7; and ATT Secretariat, 'Diversion Information Exchange Forum (DIEF)', [n.d.]. See also Arms Trade Treaty, ATT/CSP6.DIEF/2020/CHAIR/632/Conf.DIEFToRS (note 47).



this appears to be a different kind of problem to those described above. In this context, lack of skills and resources, weak administrative settings and the fact that traditional attitudes to secrecy can continue to hold sway in the absence of clear political signals to the contrary all pose barriers to the fulfilment of reporting obligations.

Inclusion of technical experts

A separate issue, which affects the ATT's work on risk assessment among other areas—such as enforcement practices and classification issues (the determination of exactly which products are covered by the scope of the treaty⁵⁰)—is the challenge of involving transfer control professionals and technical experts in the ATT's collaborative efforts. These professionals and experts can bring the benefits of their experience in both national and international settings.

The ATT is headquartered in Geneva and most meetings take place there. Many states parties are represented by non-specialists from resident missions in Geneva, for reasons of economy and practicability, since experts attending from distant capitals will be absent for significant periods of time from their day jobs. These representatives are skilled diplomats, knowledgeable in disarmament affairs and broadly familiar with the topic of transfer controls. While they are well-qualified to handle many of the issues that arise within the ATT framework, technical topics are more difficult to master. National experts are needed, and not just from states parties geographically close to Geneva.

One of the few positive side effects of the Covid-19 pandemic may prove useful in this context: virtual and mixed meeting formats are now much more familiar and acceptable. Initiatives could be taken to explore the possibility of expert meetings in virtual or mixed format to tackle some of the more technical issues that deserve the attention of states parties. The immediate (and usually expensive) stumbling block is the need for secure communications. Here, solutions developed for intergovernmental work during the pandemic and secure solutions for information exchange developed by or for other transfer control forums could provide shortcuts and savings without necessarily compromising security in their original uses.

V. Conclusions

This paper primarily focuses on describing a state party perspective on various aspects of the ATT and how this both limits and provides opportunities for encouraging further work related to articles 6 and 7 (and more generally). Although relevant, this is hardly the only perspective. It is therefore not appropriate to attempt to draw any definite conclusions. Rather, the author would like to express the hope that the input provided can inform further reflection and discussion among all stakeholders in the ATT process.

⁵⁰ The scope is defined by Arms Trade Treaty (note 1), articles 2(1), 3 and 4. On the scope of the ATT see also Holtom (note 9).

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TAKING STOCK OF THE ARMS TRADE TREATY: APPLICATION OF THE RISK-ASSESSMENT CRITERIA

PAUL BEIJER

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