



IMPLEMENTING THE ARMS TRADE TREATY: BUILDING ON AVAILABLE GUIDELINES AND ASSISTANCE ACTIVITIES

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I. Introduction

The Arms Trade Treaty (ATT) entered into force on 24 December 2014, 19 months after it opened for signature.¹ The First Conference of States Parties (CSP1) of the ATT is due to take place on 24–27 August 2015.² The ATT is the first international legally binding agreement to establish standards for regulating the trade in conventional arms and preventing their illicit trade.³ The ATT creates a range of obligations for states parties in the field of arms transfer controls. Under the ATT, states parties are obliged to establish and maintain an effective transfer control system for conventional arms, to prohibit certain arms transfers and to not authorize certain arms exports. The provisions of the ATT apply, at a minimum, to the seven categories of weapons covered by the United Nations Register of Conventional Arms (UNROCA) as well as to small arms and light weapons (SALW); these weapon categories, including SALW, are hereafter defined as ‘conventional arms’.⁴ Certain provisions also apply to related ammunition, and parts and components.

During the process of negotiating the ATT many states highlighted the need for the treaty to include provisions for financial, technical and material assistance aimed at helping states to fulfil treaty obligations.⁵ In particular, states stressed the likelihood that many states would require assistance with

¹ Arms Trade Treaty (ATT), opened for signature 3 June 2013, entered into force 24 Dec. 2014. The full text of the ATT and other treaties discussed in this paper can be found at United Nations Treaty Collection, <<https://treaties.un.org/pages/CTCs.aspx>>.

² UN Office for Disarmament Affairs, ‘First Conference of States Parties to the Arms Trade Treaty’, <<http://www.un.org/disarmament/ATT/csp1>>.

³ While the 2001 UN Firearms Protocol is also legally binding, it only covers controls on the trade in firearms. UN General Assembly Resolution 55/255, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (UN Firearms Protocol), adopted 31 May 2001, entered into force 3 July 2005.

⁴ Each year all UN member states are requested to report, on a voluntary basis, information to UNROCA on their exports and imports of certain types of weapons in the previous year. These weapons are battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, and missiles or missile launchers. States are also invited to provide information on their transfers of SALW and on their holdings of major weapons.

⁵ Holtom, P. and Bromley, M., ‘Implementing an Arms Trade Treaty: mapping assistance to strengthen arms transfer controls’, SIPRI Insights on Peace and Security no. 2012/2, July 2012, <http://books.sipri.org/product_info?c_product_id=447>.

*The authors gratefully acknowledge the Swedish Ministry for Foreign Affairs for generously funding the production of this SIPRI Background Paper.

SUMMARY

● The Arms Trade Treaty (ATT) entered into force on 24 December 2014. The ATT creates a range of obligations for states parties in the field of arms transfer controls and many will require assistance with treaty implementation. Recognizing these needs, the ATT suggests areas where international cooperation and assistance might be focused and mechanisms through which it might be carried out.

This SIPRI Background Paper provides a framework for categorizing the areas where states parties to the ATT may require assistance in the field of arms transfer controls. Using this framework, the paper provides an overview of good practice documents and guidelines, and of past and ongoing cooperation activities aimed at improving states’ arms transfer controls. The paper aims to highlight areas where ATT implementation efforts can build on work that has already been done and address potential gaps that may need to be filled.



establishing and implementing effective arms transfer controls. Recognizing these needs, the final text of the ATT includes provisions on international cooperation and assistance that suggest areas where such assistance might be focused, who might provide it, and mechanisms through which it might be carried out.

There is a wide range of past and ongoing cooperation and assistance activities and good practice documents and guidelines aimed at helping states to establish and implement their arms transfer controls. When planning for and providing ATT-related cooperation and assistance activities in this field it will be important to build on these activities and tools so as to avoid duplication and maximize synergies. This SIPRI Background Paper aims to (a) set out a framework for categorizing the areas where states may require assistance to fulfil their ATT-related obligations in the field of arms transfer controls, (b) provide an overview of available good practice documents and guidelines which could help states to meet these obligations, and (c) raise awareness of relevant types of cooperation and assistance activities that have already occurred or are taking place in these areas. Section II provides an overview of previous cooperation and assistance efforts in the field of transfer controls as well as an analysis of how the issue is addressed by the ATT, and a brief summary of cooperation and assistance efforts that have been launched since the treaty was agreed. Section III details each type of obligation imposed by the ATT and gives examples of existing good practice documents and guidelines that can help states to fulfil these obligations.⁶ It also outlines relevant past and ongoing cooperation and assistance activities, highlighting areas where significant work has already been done. Section IV draws together some of the key conclusions and offers recommendations, focusing on areas where lessons can be learned from past activities and guidelines and where there are potential gaps that may need to be filled. An online appendix provides links to the good practice documents and guidelines cited in this paper as well as others that may be of relevance for assisting states with ATT implementation.⁷

II. Assistance and cooperation and the ATT

Assistance under the ATT

The ATT provides that states may request ‘legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Such assistance may include stockpile management, disarmament, demobilization and reintegration [DDR] programmes, model legislation, and effective practices for implementation’ (Article 16(1)). A wide range of international organizations support and implement conventional arms stockpile

⁶ In many cases, these types of documents have been described as ‘best practice’ documents. However, this term has been increasingly avoided in recent years, since it implies that there is a ‘best’ standard in arms transfer controls that is applicable to, and should be implemented by, all countries. To avoid this connotation, a number of other terms have been used, including ‘good practice’, ‘effective practice’ and ‘proven practice’. For the sake of clarity and simplicity, this paper uses the phrases ‘good practice documents’ or ‘guidelines’, unless referring to the name of a specific document.

⁷ ‘Relevant good practice documents and guidelines for ATT implementation’, Online appendix, SIPRI, Stockholm, May 2015, <<http://www.sipri.org/research/disarmament/dualuse/pdf-archive-att>>.



management and surplus destruction programmes, and numerous guidelines have been produced in this area.⁸ Various activities related to DDR programmes are also ongoing.⁹ Stockpile management and DDR issues are briefly discussed in section IV but are not examined in detail in this paper, which is primarily focused on arms transfer controls.

States parties in a position to do so shall provide the types of assistance outlined in Article 16(1) on request. States parties may request, offer or receive such assistance through, among others, ‘the United Nations, international, regional, sub-regional or national organizations, non-governmental organizations, or on a bilateral basis’ (Article 16(2)). The preamble to the ATT also notes that regional organizations can assist states parties in implementing the treaty, and civil society and industry can also support treaty implementation. In addition, the ATT provides that a voluntary trust fund will be set up to assist states with treaty implementation. The ATT notes that the Secretariat charged with assisting states parties in the effective implementation of the treaty will facilitate ‘the matching of offers of and requests for assistance for Treaty implementation’ (Article 18(3)).

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The ATT does not elaborate on what ‘legal or legislative assistance’, ‘institutional capacity-building’, or ‘technical, material or financial assistance’ might mean in practice. Past experience with implementing cooperation and assistance projects in the field of arms transfer controls can provide some guidance, although practical usage of the terms differs between donors and institutional/budgetary contexts.

Legal or legislative assistance could include reviewing and supporting the amendment or drafting of primary and/or secondary legislation and implementing regulations. This could also extend to not only arms transfer control legislation but also, for example, relevant customs codes, penal provisions such as criminal codes, provisions to enable mutual legal assistance, and procedural questions relating to issues such as the auditing of companies to ensure they are complying with export control requirements.

Institutional capacity building could include efforts to improve internal and inter-agency procedures, and strengthen administrative capacities and cooperation of the entities involved in national transfer controls, in particular licensing and enforcement functions. Depending on the national system, this could include departments in different ministries (such as foreign affairs, defence, trade and commerce, interior, and justice), the attorney general, prosecutors, customs administration, border agencies, police, security services, and parliament.

Technical assistance could be understood to cover a broad spectrum of activities. These could include training of the relevant authorities and

⁸ E.g. Regional Approach to Stockpile Reduction, <<http://www.rasrinitiative.org>>; and Organization of American States (OAS) Program of Assistance for Control of Arms and Munitions (PACAM), <<http://www.oepacam.org>>.

⁹ E.g. the EU has supported a range of disarmament, demobilization and reintegration (DDR) activities since the early 1990s. The bulk of this work has been funded by the European Development Fund (EDF) and the EU’s Rapid-Reaction Mechanism. European Commission and Council of the European Union, ‘EU concept for support to disarmament, demobilisation and reintegration (DDR)’, Brussels, Dec. 2006, <http://www.initiativeforpeacebuilding.eu/resources/EU_Joint_concept_DDR.pdf>.



also the provision of detection equipment for customs. There is therefore substantial scope for overlap between the activities covered by technical assistance and institutional capacity building as well as material assistance (discussed below). Technical assistance could also be understood to include the provision of technical experts for training activities or longer-term secondments, and capacity building for relevant stakeholders beyond the national authorities, such as producers, exporters and transport providers. Training of staff could focus on a range of issues, from risk management and detection of illegal transfers to the classification of goods and the technical details of a control list.

Material assistance could include resources such as software and databases for licensing, record keeping, reporting, marking and tracing, and information sharing; websites for industry outreach purposes; and detection equipment for identifying illegal transfers. The training that may go along with such material assistance may be classified as ‘technical’ assistance.

Financial assistance could relate to institutional funding, direct budgetary support, funding for ATT-related events and the provision of outside expertise, although it could also be broadly defined as an overarching term for any type of assistance that involves budgetary allocations by the donor state.¹⁰ It should be noted that donors are seldom willing to contemplate multi-year commitments such as funding regular operational budgets and are more likely to provide time-limited project support.

Cooperation and assistance activities in each of these areas could take a variety of different forms, such as seminars, workshops, peer visits, practical exercises, training, and use a wide range of tools, such as scenario-based table-top exercises, staff exchanges and working groups. They could also take place at the national, sub-regional, regional or other multi-country level.¹¹

These activities are often supported by the use of good practice documents and guidelines aimed at providing more detailed information about how to set up and/or implement some aspect of a transfer control system. In certain cases, these documents have been produced to specifically support a particular activity. However, in most cases the documents have been produced to provide more general guidance on the implementation of an export control regime or a set of regional or international standards. These include good practice guidelines produced by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, guidelines on the 2004 Nairobi Protocol on SALW by the Regional Centre on Small Arms (RECSA) and a handbook on SALW by the Organization for Security and Co-operation in Europe (OSCE).¹² In almost all cases

Cooperation and assistance activities in each of these areas could take a variety of different forms

¹⁰ Bauer, S., ‘Article 16: international assistance’, eds C. da Silva, T. Haeck and B. Wood, *Weapons and International Law: The Arms Trade Treaty*, Larcier Law Annotated (Larcier: Brussels, forthcoming 2015).

¹¹ Bauer, S., ‘Arms trade control capacity building: lessons from dual-use trade controls’, SIPRI Insights on Peace and Security 2013/2, Mar. 2013, <http://books.sipri.org/product_info?c_product_id=454>.

¹² Wassenaar Arrangement, ‘Guidelines and procedures, including the initial elements’, updated July 2014, <<http://www.wassenaar.org/guidelines/index.html>>; Regional Centre on Small Arms (RECSA), ‘Best practice guidelines for the implementation of the Nairobi Declaration and the Nairobi Protocol on SALW’, June 2005, <<http://www.poa-iss.org/RegionalOrganizations/RECSA/>>



these documents are easily and freely accessible and can thus be used in the provision of ATT-focused cooperation and assistance activities.

Cooperation and assistance in arms transfer controls

Prior to the adoption of the ATT, many states, international and regional organizations, and non-governmental organizations (NGOs) had been or were engaged in a range of cooperation and assistance activities aimed at strengthening states' transfer controls.¹³ For example, the United States and some European states, among others, have been involved in activities aimed at strengthening the transfer controls of other countries since the early 1990s.¹⁴ In addition, regional organizations such as, the European Union, the OSCE, the Organization of American States (OAS), and various UN agencies have provided assistance in this area, often using governmental and non-governmental experts. In particular, since the mid-2000s, the EU has become a major provider of assistance activities in the field of transfer controls, supporting a series of activities in South Eastern Europe, South East Asia and other regions. Assistance provided under the EU's various programmes has included legal review and revision, training for licensing and enforcement authorities, and outreach to industry.¹⁵ The EU has also funded activities that include assistance in the field of arms transfer controls carried out by other providers such as South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), the OSCE and the UN.¹⁶

Certain programmes, particularly a series of cooperation and assistance activities supported by the EU and aimed at promoting the standards laid down in the 2008 EU Common Position defining common rules governing control of exports of military technology and equipment, have been specifically focused on conventional arms export controls.¹⁷ However, the primary motive for most assistance efforts—particularly those carried out by the USA and the EU—has been to prevent the proliferation of weapons of mass destruc-

Nairobi%20Best%20Practice%20Guidelines.pdf>; and Organization for Security and Co-operation in Europe (OSCE), *Handbook of Best Practices on Small Arms and Light Weapons* (OSCE: Vienna, 1 Dec. 2003).

¹³ Holtom and Bromley (note 5); and Bauer, S., 'Enhancing export control-related CTR (Cooperative Threat Reduction) programmes: options for the EU', SIPRI Background Paper no. 6, Conference on strengthening European action on WMD non-proliferation and disarmament: How can Community instruments contribute?, Brussels, 7–8 Dec. 2005, <http://www.sipri.org/research/disarmament/dualuse/publications/papers_publications>.

¹⁴ Bauer (note 13). See also US Department of State, 'The EXBS program', [n.d.], <<http://www.state.gov/strategictrade/program/index.htm>>; German Federal Office for Economic Affairs and Export Control (BAFA), 'Outreach projects', [n.d.], <http://www.bafa.eu/bafa/en/export_control/eu-outreach/index.html>; and EU Outreach in Export Control, <<https://export-control.jrc.ec.europa.eu/>>.

¹⁵ Bauer (note 11); BAFA (note 14); and EU Outreach in Export Control (note 14).

¹⁶ European External Action Service (EEAS), 'The fight against excessive accumulation and illicit trafficking of SALW and their ammunition', [n.d.], <http://eeas.europa.eu/non-proliferation-and-disarmament/conventional_weapons/salw/index_en.htm>.

¹⁷ Council of the European Union, Council Common Position 2008/944/CFSP of 8 Dec. 2008 defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L335, 8 Dec. 2008. For more details see Holtom, P. and Mičić, I., 'European Union arms export control outreach activities in Eastern and South Eastern Europe', Non-proliferation Papers no. 14, EU Non-proliferation Consortium, Apr. 2012, <<http://www.non-proliferation.eu/activities/activities.php>>.



tion (WMD), often in the context of helping states to implement obligations under UN Security Council Resolution 1540.¹⁸ As a result, the main focus of these efforts has been on improving controls on transfers of dual-use goods and technologies.¹⁹ Other assistance efforts—particularly those carried out by SEESAC, the OSCE and the UN—have focused on helping states to tackle the illicit trafficking of SALW, often in the context of assisting states to

Assistance provided for controlling dual-use goods or SALW transfers is often also of direct relevance for ATT-related efforts

implement the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (POA) and regional instruments such as the 2009 Economic Community of West African States (ECOWAS) Convention on SALW.²⁰ As a result, their purpose has been improving controls on transfers of SALW as well as other areas, such as stockpile management, marking and tracing, and destruction of surpluses. Finally, organizations such as the World Customs Organization (WCO) and the UN Office of Drugs and Crime (UNODC) have focused on building enforcement capacities in customs organizations and strengthened risk management systems.²¹

In many states, the laws, administrative procedures, agencies, and staff responsible for transfer controls for dual-use goods and technologies overlap with those for conventional arms. In addition, controls on transfers of SALW are usually a subset of controls on conventional arms. As a result, assistance provided for controlling dual-use goods or SALW transfers is often also of direct relevance for ATT-related efforts. Moreover, generic assistance programmes aimed at strengthening enforcement capacities and risk management systems also support the development of effective transfer control systems and, hence, ATT implementation.

ATT-related cooperation and assistance efforts

Since the ATT text was agreed, a number of projects aimed at building support for the treaty, promoting early entry into force, have been launched. Examples of activities planned or already conducted include:

- A series of workshops for parliamentarians on ATT ratification and implementation;²²
- A guide for states that details how to sign and ratify the ATT,²³ and

¹⁸ UN Security Council Resolution 1540, 28 Apr. 2004.

¹⁹ Dual-use items have both civilian and military applications, in contrast to military equipment and technology, which are items specially designed, developed or modified for military use. For more information see Bauer (note 11).

²⁰ United Nations, Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, A/CONF.192/15, 20 July 2001; and Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials, adopted 14 June 2006, entered into force 29 Sep. 2009, <<http://www.ecosap.ecowas.int/index.php?Itemid=84>>.

²¹ See WCO website, in particular the Columbus programme, <http://www.wcoomd.org/en/topics/capacity-building/activities-and-programmes/cb_columbus_programme_overview.aspx>; and UN Office of Drugs and Crime (UNODC), <<http://www.unodc.org/>>.

²² Parliamentarians for Global Action (PGA), 'PGA global parliamentary campaign for universalism and implementation of the Arms Trade Treaty', [n.d.], <<http://www.pgaction.org/campaigns/arms-trade-treaty.html>>.

²³ UN Office for Disarmament Affairs, 'Signature and ratification: Arms Trade Treaty, robust standards for responsible transfers', 2013, <http://www.un.org/disarmament/ATT/docs/ATT_info_kit.pdf>.



- A series of African regional and sub-regional meetings on ATT ratification and implementation.²⁴

Other projects have focused on helping states with aspects of ATT implementation. This has included drafting good practice documents and guidelines, and carrying out cooperation and assistance activities. Examples of documents and activities planned or already conducted or produced include:

- An assessment project to assist states to understand the measures they need to take in order to implement the ATT;²⁵
- Legal commentaries on the content of the ATT;²⁶
- An ATT model law for Pacific Island states;²⁷
- An ATT legal assistance training course in Asia;²⁸
- ATT implementation capacity-building courses in Geneva;²⁹
- An ATT implementation training course in Latin America;³⁰ and
- Guidelines for African states on the harmonization of national legislation with the ATT and regional and sub-regional instruments on SALW.³¹

Many of these projects have been funded by the UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR), which was established to support ATT ratification as well as implementation of both the ATT and the POA.³² UNSCAR is hosted by the UN Office for Disarmament Affairs (UNODA) and to date has had two rounds of funding that have supported 26 different projects.³³ Direct funding has also been provided by a number of states, including Germany, New Zealand and the United Kingdom.

In December 2013 the EU adopted Council Decision 2013/768/CFSP which provides funding to support the EU ATT Outreach Project.³⁴ The programme, co-financed by Germany, will assist non-EU member states with

²⁴ E.g. RECSA, Validation workshop on a study on the Arms Trade Treaty (ATT), [n.d.], <<http://www.recsasec.org/index.php/en/8-recsa/28-validation-workshop-on-a-study-on-the-arms-trade-treaty-att>>; and West African Action Network on Small Arms (WAANSA), 'WAANSA high level visit to Nigeria, 9–14 March 2015', 13 Apr. 2015, <<http://www.waansa.org>>.

²⁵ Arms Trade Treaty-Baseline Assessment Project (ATT-BAP), <<http://www.armstrade.info>>.

²⁶ Geneva Academy of International Humanitarian Law and Human Rights, Arms Trade Treaty Project, <<http://www.geneva-academy.ch/policy-studies/ongoing/arms-trade-treaty-project-in-weapons-in-international-law>>; and eds da Silva, Haeck and Wood (note 10).

²⁷ New Zealand Government and Small Arms Survey, *Arms Trade Treaty: Model Law*, 2014, <<http://www.smallarmssurvey.org/about-us/highlights/highlights-2014/att-model-law.html>>.

²⁸ UN Regional Centre for Peace and Disarmament in Asia and the Pacific (UNRCPD), Regional legal assistance workshop on the Arms Trade Treaty, Siem Reap, Cambodia, 18–19 Nov. 2014, <<http://unrcpd.org/event/regional-legal-assistance-workshop-att/>>.

²⁹ Geneva Centre for Security Policy, Building capacities for effective implementation of the Arms Trade Treaty (ATT), Geneva, 13–17 Apr. 2015, <<http://www.gcsp.ch/Emerging-Security-Challenges/Courses/Building-Capacities-for-Effective-Implementation-of-the-Arms-Trade-Treaty-ATT>>.

³⁰ UN Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC), Arms Trade Treaty (ATT) implementation training course, [n.d.], <http://www.unlirec.org/att00_eng.aspx>.

³¹ UN Regional Centre for Peace and Disarmament in Africa (UNREC), 'Current and recent UNREC activities', Apr. 2015, <<http://unrec.org/docs/Flyer.pdf>>.

³² To date, the UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR) has received funding from Australia, Denmark, Finland, Germany, Ireland, the Netherlands, Spain, Switzerland, Sweden and the United Kingdom. For more information see UNSCAR, <<http://www.un.org/disarmament/UNSCAR/>>.

³³ UNSCAR (note 32).

³⁴ Council Decision 2013/768/CFSP of 16 December 2013 on EU activities in support of the implementation of the Arms Trade Treaty, in the framework of the European Security Strategy, *Official Journal of the European Union*, L341, 18 Dec. 2013, pp. 56–67.



strengthening their arms transfer control systems in line with the requirements of the ATT. A number of activities have taken place in this context. For example, in November 2014 the Colombian Ministry of Foreign Affairs and the EU ATT Outreach Project co-hosted the first regional seminar for countries in Latin America and the Caribbean, and several bilateral activities in the region have taken place since then.³⁵ In May 2015 Senegal hosted the first regional outreach seminar for countries in West Africa under the EU ATT outreach project.³⁶

III. Obligations under the ATT and relevant guidelines and activities

The obligations which the ATT creates for states parties in the field of arms transfer controls can be broadly divided into eight different areas: (a) establish and maintain an arms transfer control system; (b) prohibit certain arms transfers and not authorize certain arms exports; (c) regulate arms imports; (d) regulate arms transit and trans-shipment; (e) regulate arms brokering; (f) establish and maintain enforcement mechanisms; (g) share information with other states parties; and (h) maintain records on arms transfers.³⁷ Each of these areas of focus could be the potential subject of cooperation and assistance efforts aimed at supporting states' implementation of the ATT. In addition, to a greater or lesser extent, they have already been the focus of good practice documents, and of cooperation and assistance activities in the field of arms transfer controls.

Under the ATT, states parties are also obliged to 'take measures' to prevent the 'diversion' of transfers of conventional arms (Article 11(1)). Diversion refers to cases in which transferred arms are diverted to an undesirable end-user or end-use.³⁸ Diversion can take place during delivery or after delivery and can be a result of theft, the falsification of documentation, or re-transfer by the intended end-user.³⁹ The ATT lists a range of measures that states can consider taking to prevent and address diversion, including 'assessing the risk of diversion of the export' and 'examining parties involved in the export,

³⁵ EU-Outreach Newsletter, no. 59, Dec. 2014, <http://www.bafa.eu/bafa/en/export_control/eu-outreach/publications/newsletter_archives/2014/newsletter_2014_12.pdf>; and EU-Outreach Newsletter, no. 62, Apr. 2015, <<https://export-control.jrc.ec.europa.eu/News/Newsletter/Newsletters-2015>>.

³⁶ EU Outreach in Export Control, Regional seminar to support the implementation of the Arms Trade Treaty for ECOWAS members and neighboring countries, [n.d.], <<https://export-control.jrc.ec.europa.eu/News/ArtMID/481/ArticleID/241/Regional-Seminar-to-Support-the-Implementation-of-the-Arms-Trade-Treaty-for-ECOWAS-Members-and-Neighboring-Countries>>.

³⁷ Area (a) could be seen as encompassing all areas, since areas (b) through (h) all broadly relate to establishing and maintaining an arms transfer control system. However, areas (b) through (h) also reflect specific obligations in the ATT, and create particular challenges in establishing and maintaining an arms transfer control system and are therefore treated separately.

³⁸ 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, <<http://register.consilium.europa.eu/doc/srv?!=EN&t=PDF&gc=true&sc=false&f=ST 9241 2009 INIT>>.

³⁹ McDonald, G. et al., 'Who's buying? End user certification', eds E. G. Berman et al., *Small Arms Survey 2008: Risk and Resilience* (Cambridge University Press: Cambridge, 2008); and Bromley, M. and Dermody, L., *Addressing the Unauthorized Re-export or Re-transfer of Arms and Ammunition* (SEESAC, June 2014).



requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures' (Article 11(2)). These measures are already covered by (a) and (b) above and are not treated as separate areas in this paper.

In many cases, the exact steps that states need to take in order to be in compliance with the ATT are unclear or open to different national interpretations. For example, states are obliged to have an 'effective and transparent national control system' for regulating the transfer of conventional arms and related ammunition and parts and components (Article 5(5)). The treaty defines 'transfer' as including 'export, import, transit, trans-shipment and brokering' (Article 2(2)). Hence, the control system that states have in place should be capable of regulating the 'export, import, transit, trans-shipment and brokering' of conventional arms and related ammunition and parts and components. However, the specific obligations on regulating import, transit or trans-shipment, and brokering covered by articles 8, 9 and 10 only apply to conventional arms. The treaty also includes repeated use of phrases such as 'pursuant to their national laws', 'where necessary', and 'may include'. This type of language allows states a significant level of leeway in terms of how to apply key provisions in the ATT.⁴⁰

This lack of clarity reflects the political trade-offs that were a necessary part of the negotiation process. However, it also reflects the fact that, in the field of arms transfer controls, one-size-fits-all solutions are likely to fail. Rather, every country has to find its own approach, depending on its size, geography (e.g. landlocked or island states), industrial structure (e.g. major or minor arms producers), trading patterns (e.g. trans-shipment hubs or major importers or exporters), legal system and institutional set-up.⁴¹ To a certain extent, the lack of precision in the language used in various provisions of the ATT can be seen as an opportunity, since it allows each state party to develop a national transfer control system appropriate to its own situation, and flexibility in the type and focus of cooperation and assistance activities. If handled correctly, ATT-focused cooperation and assistance activities can therefore help states to create and implement arms transfer controls that meet the requirements of the ATT as well as their own national needs and priorities. Building on such implementation experiences, agreed interpretations of the treaty text can hopefully be developed over time.

The ATT also includes obligations that go beyond establishing and maintaining an effective arms transfer control system—in the narrow sense—but which could potentially be the subject of cooperation and assistance activities. These obligations are not discussed in detail in this paper. For example, states parties are obliged to provide a report to the ATT Secretariat on 'measures undertaken in order to implement' the treaty, including 'national laws, national control lists and other regulations and administrative measures' (Article 13(1)). Any new measures should be reported 'when appropriate' (Article 13(1)). States parties are also required to submit an annual report

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⁴⁰ See Parker S., 'The Arms Trade Treaty: a step forward in small arms control?', *Small Arms Survey Research Notes*, no. 30 (June 2013); and Geneva Academy of International Humanitarian Law and Human Rights (note 26), p. 32.

⁴¹ Bauer (note 11).



to the Secretariat by 31 May on ‘the authorization or actual exports and imports’ of conventional arms (Article 13(3)). In the run-up to CSPI, states are developing templates to be used when submitting each of these reports. Finally, each state party is required to ‘designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty’ and ‘notify the Secretariat . . . of its national point(s) of contact and keep the information updated’ (Article 5(6)).

The remainder of this section examines each of the eight obligations mentioned above; it briefly outlines their content before giving examples of good practice documents and guidelines as well as past and ongoing cooperation and assistance activities of relevance in each area.

Establish and maintain an arms transfer controls system

Under the ATT, states parties are required to have an ‘effective and transparent national control system’ for regulating the transfer of conventional arms and related ammunition and parts and components (Article 5(5)). States must also designate competent national authorities responsible for maintaining this system (Article 5(5)), establish and maintain a national control list (Article 5(3)) and make that control list available to other states parties (Article 5(4)).

Relevant guidelines and activities

A number of ATT-specific guides have been produced, detailing the mechanisms through which states can establish a transfer control system that is consistent with the requirements of the ATT (see above). In addition, a range of earlier guidelines have been produced outlining the key components of a transfer control system, either for all arms, one category of arms, or for dual-use items. These include sets of guidelines for all areas of SALW controls, including national controls on international transfers of SALW, drafted by the UN Coordinating Action on Small Arms (CASA) and the OSCE.⁴² Other guidelines and reference tools that states can draw on include a US State Department document issued in 2004, which specifies nine elements needed to create the legal basis for an effective export control system, and the control lists drawn up by the Wassenaar Arrangement.⁴³

These documents all point to an emerging consensus on the elements that comprise an effective transfer control system

In different ways and to varying degrees, these documents all point to an emerging consensus that an effective transfer control system comprises the following elements: (a) clear and comprehensive legislation that (i) sets out the requirements and processes for obtaining a licence to export and import arms, including the agency or agencies responsible for licensing, (ii) establishes the national control list, and (iii) imposes penalties for non-compliance; (b) a policy-making mechanism, for example, to take decisions on legal and institutional options; (c) a licensing system through which risk assessments and decision making on individual transfers are done in

⁴² UN Coordinating Action on Small Arms (CASA), CASA Project on international small arms control standards (ISACS); and OSCE (note 12).

⁴³ US State Department, ‘Legal authorities for an effective export control system’, 23 Oct. 2004, <<http://www.state.gov/strategictrade/documents/organization/162001.pdf>>; and Wassenaar Arrangement, ‘Munitions list’, <<http://www.wassenaar.org/controllists/>>.



coordination or consultation with the relevant ministries and agencies; (d) outreach to industry to inform them of their obligations; (e) international information exchange and cooperation; and (f) an enforcement system.

A large number of cooperation and assistance activities have also been carried out focusing on the main elements needed for an effective transfer control system, including a number of seminars and conferences organized by certain EU assistance programmes and the US Export Control and Related Border Security (EXBS) programme. While often focused on dual-use transfer controls, the main elements of these programmes, to a certain extent and in adapted form, are also applicable to arms transfer controls.⁴⁴ For example, the EU programme 'Cooperation in Dual-use Export Control' organized seminars on key elements of an effective dual-use export control system in countries in Eastern and South Eastern Europe and the Caucasus, the Middle East, North Africa and South East Asia.⁴⁵ US EXBS has organized numerous seminars on similar topics in Africa, Asia, Europe and Latin America.⁴⁶

Some of these cooperation and assistance activities use or build upon existing regional and international guidelines. However, a key element for the development of an effective control system is the sharing of specific national and common practices through presentations, bilateral discussions and practical exercises. Currently, these are often presented purely from the perspective of, and benefit for, local officials and draw on documents that are available only in the local language. The content of these presentations and bilateral discussions is usually tailored to meet the needs of particular states and regions and the presentations themselves are often not made publicly available.

Prohibit certain arms transfers and not authorize certain arms exports

Under the ATT, a state party must prohibit transfers of conventional arms and related ammunition and parts and components if such transfers would violate a UN arms embargo, contravene the states' international obligations, or if the state party 'has knowledge at the time of authorization' that the arms would be used in the commission of 'genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, 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' (Article 6(1), 6(2) and 6(3)). It is important to note that these obligations apply not only to exports, but also to imports, brokering, and transit and trans-shipment. States parties are also required to assess various risks related to exports of conventional arms and related ammunition and parts and components (Article 7(1)). Exports shall not be authorized if the assessment determines that there is an overriding risk that the exported arms will undermine peace and security or could be used to commit or facilitate a serious violation of international humanitarian law, international human rights law or an act constituting an

⁴⁴ Bauer (note 11).

⁴⁵ See BAFA (note 14); and EU Outreach in Export Control (note 14).

⁴⁶ See US Department of State (note 14).

offence under international conventions or protocols relating to terrorism or organized crime to which the exporting state is a party (Article 7(1), 7(2) and 7(3)). Furthermore, states parties must take into account the risk that exports of conventional arms and related ammunition and parts and components could be used to commit or facilitate serious acts of gender-based violence or violence against women and children (Article 7(4)). In addition, states parties are obliged to assess the risk of diversion for exports of conventional arms (Article 11.2).

Relevant guidelines and activities

There are a number of documents aimed at providing guidance on how states should carry out risk assessments in connection with arms export licensing. Many of these are linked with existing sets of export criteria, particularly those attached to the EU Common Position on Arms Exports and the various guidelines agreed by the Wassenaar Arrangement. In particular, EU member states have developed and regularly updated a publicly accessible user's guide to clarify how each of the eight criteria of the EU Common Position should be interpreted.⁴⁷ These criteria already take into account most of the issues covered by articles 6 and 7 of the ATT, and those criteria that do not—particularly with regard to gender-based violence—are being included in an updated version of the user's guide that is due to be released in 2015. The Wassenaar Arrangement has produced a range of guidelines relating to decision making on arms export licensing, including guidance focused on avoiding transfers that might contribute to a destabilizing accumulation of conventional arms (as well as specific guidance on SALW).⁴⁸

A number of other organizations and NGOs have also produced documents focused on different aspects of arms export licensing. The International Committee of the Red Cross has produced guidelines highlighting the international humanitarian law considerations that apply to arms export decision making, while Amnesty International has published guidance on the human rights issues relevant to this area.⁴⁹

Finally, some guidelines focusing on the effective implementation of end-use or end-user controls as part of the export licensing process may be of relevance. End-use or end-user controls aim to impose restrictions on how, where, and by whom exported goods and items are used after delivery, and are widely seen as a key mechanism for preventing diversion.⁵⁰ However, while Article 8(1) mentions 'end use or end user documentation', the ATT does not specifically refer to end-use or end-user controls. A number of documents provide guidance in this area, including the international standards covering national controls on the end-use of internationally transferred

⁴⁷ Council of the European Union (note 38).

⁴⁸ Wassenaar Arrangement (note 12).

⁴⁹ International Committee of the Red Cross (ICRC), *Arms Transfer Decisions: Applying International Humanitarian Law Criteria* (ICRC: Geneva, June 2007); and Amnesty International, 'How to apply human rights standards to arms transfer decisions', Amnesty International, Oct. 2008, <http://www.amnesty.org.uk/sites/default/files/how_to_apply_human_rights_standards_to_arms_transfer_decisions.pdf>.

⁵⁰ In particular, they are aimed at ensuring that 'exported equipment is not diverted to unintended end users or end uses'. Wassenaar Arrangement, 'Introduction to end-user/end-use controls for exports of military-list equipment', 3 July 2014.



SALW drafted by CASA.⁵¹ Moreover, the Wassenaar Arrangement has published an introductory guide to the issue of end-use/end-user controls on arms exports, and SEESAC has produced a set of guidelines on preventing unauthorized re-exports and re-transfers of arms and ammunition.⁵²

Arms export risk assessments have also been a key part of numerous cooperation and assistance activities.⁵³ Since 2005 EU-supported cooperation and assistance efforts in the field of arms transfer controls have involved participants discussing case studies drawing on real licensing decisions.⁵⁴ The use of case studies was also included in the second of two rounds of regional ATT seminars—funded by the EU and carried out by the UN Institute for Disarmament Research (UNIDIR)—aimed at supporting the preparatory process leading up to the UN Conference on the ATT.⁵⁵

Regulate arms imports

When importing conventional arms, states parties to the ATT must provide information—pursuant to their national laws—to the exporting state party in order to assist it in conducting its national export assessment (Article 8(1)). These measures ‘may include end use or end user documentation’ (Article 8(1)). States parties must also take measures—where necessary—to regulate conventional arms imports (Article 8(2)). These measures ‘may include import systems’ (Article 8(2)).

Relevant guidelines and activities

Few good practice documents or guidelines have been produced that lay out the practicalities of establishing and implementing arms import controls. For example, the ‘best practice’ guidelines produced by the Wassenaar Arrangement do not mention import controls. In addition, the various documents on how to establish and maintain an arms transfer control system contain comparatively little detail on import controls. A number of guidelines on SALW transfer controls describe systems of import controls, but these do not apply to all conventional arms.⁵⁶ The lack of detailed guidance in this area reflects the fact that states’ practices with regard to import controls differ significantly. Many states maintain systems of import licensing as a way of controlling the movement of arms into their national territories. However, many states do not, and instead maintain controls by way of regulations on the domestic possession of arms or through

Arms export risk assessments have also been a key part of numerous cooperation and assistance activities

⁵¹ UN Coordinating Action on Small Arms (note 42).

⁵² Wassenaar Arrangement (note 50); and Bromley and Dermody (note 39).

⁵³ Holtom and Bromley (note 5); and Council Decision 2012/711/CFSP of 19 Nov. 2012 on support for Union activities in order to promote, among third countries, the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP, *Official Journal of the European Union*, L321, 20 Nov. 2012.

⁵⁴ Holtom and Mičić (note 17).

⁵⁵ UN Institute for Disarmament Research (UNIDIR), ‘Supporting the Arms Trade Treaty negotiations through regional discussions and expertise sharing’, <http://www.unidir.org/bdd/fiche-activite.php?ref_activite=537>.

⁵⁶ E.g. OAS, ‘2008 proposed model legislation and commentaries for strengthening controls at export points for firearms, ammunition, explosives and other related materials’, 9 May 2008. <http://www.oas.org/dsp/english/cpo_armas_claves.asp>.



customs controls.⁵⁷ In certain cases, states maintain systems of import licensing for particular types of arms and specific end-users. For example, in many cases, import licences are only required for certain categories of weapon, such as firearms or SALW.

Much more effort has been invested in the development of guidelines for the production of standardized end-use or end-user documentation, particularly end-user certificates (EUCs). EUCs are documents issued by, or on behalf of, the intended end-user that, at a minimum, provide information on the items being transferred, the destination country and the end-user.⁵⁸ The recirculation of poorly produced and easily forgeable EUCs has played a role in many cases of diversion.⁵⁹ Several guidelines seek to establish agreed standards in the production, issuing and use of EUCs.⁶⁰ In particular, the OSCE has developed and circulated an electronic end-user certificate template, which contains guidance aimed at improving standards among importing states in this area.⁶¹

Regulate arms transit and trans-shipment

Under the ATT, each state party is obliged to ‘take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction’ of conventional arms ‘in accordance with relevant international law’ (Article 9). The ATT also encourages international information sharing regarding exports to transit and trans-shipment states parties (Article 7(6)), which may also help to prevent diversion (Article 11(3)). Importantly, the ATT does not provide any definition of ‘transit’ or ‘trans-shipment’, and there are no internationally agreed definitions of the terms. However, transit generally refers to the movement of internationally traded goods through the territory of a state that is neither port of origin nor destination port, while trans-shipment also involves a change of means of transport.⁶² Moreover, the phrase ‘relevant international law’ is not clearly defined but can be taken

⁵⁷ Bromley, M. and Holtom, P., ‘Import controls and an arms trade treaty’, SIPRI Background Paper, July 2011, <http://books.sipri.org/product_info?c_product_id=428>.

⁵⁸ Bromley, M. and Griffiths, H., ‘End-user certificates: improving standards to prevent diversion’, SIPRI Insights on Peace and Security no. 2010/3, Mar. 2010, <http://books.sipri.org/product_info?c_product_id=398>.

⁵⁹ Bromley and Griffiths (note 58).

⁶⁰ See e.g. Wassenaar Arrangement, ‘End-user assurances commonly used: consolidated indicative list’, adopted in 1999, revised in 2005, <<http://www.wassenaar.org/publicdocuments/>>.

⁶¹ OSCE, ‘Template for end user certificates for small arms and light weapons’, 28 Sep. 2011, <<http://www.osce.org/fsc/83178>>.

⁶² The International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention) is the only international convention that contains a definition of the terms transit and trans-shipment. Its Specific Annex E defines transit as: ‘The Customs procedure under which goods are transported under Customs control from one Customs office to another’; while trans-shipment is defined as: ‘The Customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation’, <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/instruments.aspx>. Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures, opened for signature 26 June 1999, entered into force 6 Feb. 2006. However, since the Specific Annexes have only been ratified by a small number of states, this can hardly be considered as a consensus international definition. See also Council of the European Union (note 38), p. 23.



as a reference to the right to ‘innocent passage’ through a states’ territorial waters.⁶³

Relevant guidelines and activities

Few guidelines have been produced that set out the practicalities of developing and implementing controls on arms transit and trans-shipment. In addition, the various guidelines on how to establish and maintain an arms transfer control system contain comparatively little detail on transit and trans-shipment controls. While some guidelines on SALW transfer controls do describe such controls, they do not apply to all conventional arms.⁶⁴ Recently, states and organizations have begun to produce guidelines on how controls on the transit and trans-shipment of dual-use goods can work in practice. For example, the Nuclear Suppliers Group (NSG) adopted a Good Practice Guide on Brokering and Transit/Transshipment during its June 2014 plenary.⁶⁵ The document contains a number of components that could usefully be carried across to conventional arms.⁶⁶ The lack of detailed guidelines in this area reflects the fact that—as with import controls—states’ practices in the field of transit and trans-shipment controls vary significantly. Differences in practices can depend upon whether the state is, for example, a small island with limited enforcement capacities but with vast air and sea territories to police, or a major transit hub. Controls may be enforced in various ways, including through licensing or customs controls or—particularly with regard to the overflight of arms—controls relating to the passage of dangerous goods.⁶⁷

The ongoing expansion of transfer controls to include transit and trans-shipment has also increased the number and type of private sector actors potentially affected by transfer control provisions. Actors in the supply chain, such as shippers, traders and freight forwarders, are now more likely to be subject to national control provisions as a result of this expansion. Several guidelines have been produced focusing on the responsibilities of shippers, traders and freight forwarders with regard to transfer controls, particularly in relation to the implementation of arms embargoes.⁶⁸ However, to date no ATT-focused guidelines have been produced for these actors.

The ATT does not provide any definition of ‘transit’ or ‘trans-shipment’, and there are no internationally agreed definitions of the terms

⁶³ According to international maritime law, ‘passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State’. UN Convention on the Law of the Sea (UNCLOS), opened for signature 10 Dec. 1982, entered into force 16 Nov. 1994.

⁶⁴ E.g. OAS (note 56).

⁶⁵ NSG, ‘Good practices for the implementation of brokering and transit/transshipment controls’, 2014, <http://www.nuclearsuppliersgroup.org/images/Files/National_Practices/National_Good_Practices.pdf>.

⁶⁶ In particular, the document notes the many types of law that make up the legal environment for transit and trans-shipment controls. These include laws on export control, customs, national security, transportation, aviation/seafaring, freight forwarders/shipping companies and penal codes. It also lists the different ways that controls in this area can be established, and highlights the need for flexible systems that reflect the different costs and benefits of restricting different goods and activities.

⁶⁷ Holtom, P. and Bromley, M, ‘Transit and trans-shipment controls in an arms trade treaty’, SIPRI Background Paper, July 2011, <http://books.sipri.org/product_info?c_product_id=427>.

⁶⁸ E.g. British International Freight Association (BIFA), ‘Export control—a forwarders perspective’, [n.d.], <http://www.bifa.org/_attachments/Resources/1344_S4.pdf>; and Bureau of Industry and Commerce, US Department of Commerce, ‘Freight forwarder guidance’, [n.d.], <<https://>



Trans-shipment has been a key topic of discussion at international export control conferences

Controls on transit and trans-shipment have not featured prominently in cooperation and assistance activities in the area of arms transfer controls. However, they have been a feature of such activities with regard to dual-use transfer controls over the past decade. A number of regional and country-specific events on transit and trans-shipment have been conducted in the framework of the EU cooperation programme on dual-use export controls, including a regional seminar for South East Asia in August 2014 and seminars in Malaysia and Thailand. The US-funded EXBS programme—which covers both arms and dual-use items—has funded international trans-shipment conferences, for example in Morocco in 2008. Trans-shipment has been a key topic of discussion at international export control conferences, such as the 2014 international conference in the United Arab Emirates (UAE). EXBS has also organized separate interdiction training sessions tailored to the specific challenges at seaports, airports and land borders.⁶⁹ In addition, the WCO has raised awareness of issues related to transit and trans-shipment as part of its training and capacity-building events.⁷⁰

Regulate arms brokering

The ATT requires each state party to take measures, ‘pursuant to its national laws, to regulate brokering taking place under its jurisdiction for’ conventional arms (Article 10). Such measures may include obliging brokers to register or obtain written authorization before engaging in brokering (Article 10). The ATT does not define the term ‘brokering’. Some guidance is offered by the 2007 final report of the UN Group of Governmental Experts on illicit brokering in small arms and light weapons, which defines a broker as ‘a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise’.⁷¹ This document provides the most widely accepted definition of brokering but not an internationally accepted standard.

Relevant guidelines and activities

A significant number of good practice documents and guidelines have been produced setting out the potential content of a state’s controls on arms brokering.⁷² Some of these are focused on controls on transfers of

www.bis.doc.gov/index.php/compliance-a-training/export-management-a-compliance/freight-forwarder-guidance.

⁶⁹ US Department of State, ‘The EXBS Program’, Conference presentation, [n.d.], <<http://www.state.gov/documents/organization/113710.pdf>>.

⁷⁰ WCO, Communication with authors, May 2015.

⁷¹ United Nations, General Assembly, Report of the Group of Governmental Experts established pursuant to Resolution 60/81 of 8 Dec. 2005 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, A/62/163, 30 Aug. 2007, para. 8.

⁷² Wassenaar Arrangement, ‘Elements for effective legislation on arms brokering adopted by 10–12 Dec. 2003 plenary meeting of the Wassenaar Arrangement’, <http://www.wassenaar.org/2003Plenary/Brokering_2003.htm>; Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering, *Official Journal of the European Union*, L156, 25 June 2003, p. 79; OAS, Inter-American Drug Abuse Control Division (CICAD), ‘Amendments to the model



SALW, while others are aimed at all conventional weapons. Furthermore, the various documents on how to establish and maintain an arms transfer control system include sections dealing with brokering controls. States have also begun to develop guidance on developing brokering controls for certain types of dual-use goods.⁷³ In terms of their definition of brokering transactions and the structure of the control systems they recommend, the documents are largely similar in nature. However, many elements of brokering control—particularly the application of extra-territorial controls, the control of brokering-related activities, and the requirement for brokers to register—are presented as optional. Certain documents go further and note that establishing a licensing system is not necessarily an essential part of an effective system for controlling arms brokers and that controls can be exerted by prohibiting brokering by private companies and individuals.⁷⁴ This reflects the extent to which the brokering controls in different states vary in terms of their coverage and content.⁷⁵

Cooperation and assistance activities regarding the development and implementation of controls on arms brokering have taken place in Africa, Europe and Latin America in recent years. For example, in 2009–10 the UNODA Regional Centre for Peace and Disarmament in Africa (UNREC) and RECSA carried out cooperation and assistance activities aimed at helping Burundi, Kenya, Rwanda, Tanzania and Uganda to develop and enforce controls on SALW brokering.⁷⁶ In addition, brokering has been the subject of regional seminars funded by the EU and the USA over the past decade, for example in Eastern and South Eastern Europe, where the EU has been particularly active in supporting legal reviews on issues related to brokering controls. Such issues have also been discussed in the context of dual-use export control assistance licensing events organized by the EU and the USA.

Establish and maintain enforcement mechanisms

The ATT requires states parties to ‘take appropriate measures to enforce national laws and regulations to implement the treaty’ (Article 14). Relevant ATT enforcement functions include (a) preventing, detecting and denying transfers that lack authorization or are in contravention of the ATT;

regulation for the control of the international movement of firearms, their parts and components and ammunition—broker regulations’, 13 Nov. 2003; and OSCE Forum for Security Cooperation, ‘OSCE principles on the control of brokering in small arms and light weapons’, Decision no. 8/04, 24 Nov. 2004.

⁷³ NSG (note 65).

⁷⁴ E.g. the *Arms Trade Treaty: Model Law for the Pacific Region* notes that the provisions it lays out ‘are provided to guide those states that wish to regulate brokers’ and that an alternative option ‘is for a state to prohibit brokering within its jurisdiction altogether’. New Zealand Government and the Small Arms Survey (note 27).

⁷⁵ Tricot O’Farrell, K., ‘Le contrôle du courtage en armements: Quelle mise en oeuvre au sein de l’UE?’ [Control of arms brokering: How is it being implemented within the EU?], GRIP, 2013.

⁷⁶ United Nations, General Assembly, ‘United Nations Regional Centre for Peace and Disarmament in Africa’, Report of the Secretary-General, A/66/159, 19 July 2011; UNREC, ‘Project report, regulating small arms brokering in Eastern Africa’, Aug. 2011, <<http://unrec.org/docs/Small%20Arms%20Brokering%20in%20Eastern%20Africa.pdf>>. As part of this project UNREC has developed software for the registration of arms brokers in Burundi, Djibouti, Kenya, Rwanda, Tanzania and Uganda.



(b) investigating and, if laws so provide, prosecuting suspected violations; and (c) supporting other states parties in ATT enforcement cooperation (see also Article 6, 7 and 15(5)).

Relevant guidelines and activities

There are few guidelines on establishing and maintaining enforcement mechanisms for arms or dual-use transfer controls, although the Wassenaar Arrangement did agree enforcement guidance in 2000.⁷⁷ An important and detailed addition to the body of documents available is the WCO's 2014 *Strategic Trade Control Enforcement (STCE) Implementation Guide*, which includes detailed guidance on national enforcement measures for the whole range of WMD- and conventional arms-related trade control obligations and specifically refers to the ATT.⁷⁸ In different ways and to varying degrees these documents all point to an emerging consensus as to the main components of an enforcement mechanism for arms or dual-use transfer controls. These include specific procedures, the allocation of responsibilities

and tasks, and a clear legal basis for the different functions.

While the organizational distribution of legal powers to perform these tasks and their implementation vary, enforcement typically involves customs, police, border police and other country-specific enforcement agencies, as well as prosecutors and intelligence services. While it is generally accepted that effective enforcement requires some form of penalization for breaches, the nature of these penalties is not proscribed, and

they vary significantly from country to country. In many cases states have systems that combine administrative and penal provisions. Moreover, the experiences, including mistakes and lessons learned, gained by states that have established and tested robust enforcement systems can serve as useful reference points when shared with other countries. This can be done in the framework of assistance and cooperation activities.

The WCO adopted the *SAFE Framework of Standards to Secure and Facilitate Trade* (SAFE Framework) in 2005, which has been updated several times, most recently in 2012.⁷⁹ It includes the introduction of risk management systems, although these are not specific to the detection of illegal arms transfers. The WCO maintains the Columbus capacity-building programme, which aims to support the implementation of, among other things, the WCO's SAFE Framework documents. As the Columbus programme is a needs assessment and training activity, it could also support the enforcement of national laws implementing the ATT by establishing and strengthening risk management systems. It could even contain modules that are tailored to arms trafficking if so requested by the WCO member state.⁸⁰ More broadly,

The experiences gained by states that have established and tested robust enforcement systems can serve as useful reference points when shared with other countries

⁷⁷ Wassenaar Arrangement, 'Best practices for effective enforcement', 1 Dec. 2000, <http://www.wassenaar.org/publicdocuments/2000/2000_effectiveenforcement.html>.

⁷⁸ WCO, *Strategic Trade Control Enforcement (STCE) Implementation Guide*, June 2014, <<http://www.wcoomd.org/en/media/newsroom/2014/june/-/-/media/WCO/Public/Global/PDF/Topics/Enforcement%20and%20Compliance/Tools%20and%20Instruments/STCE%20Implementation%20Guide/STCE%20Implementation%20Guide%20-%20E%20-%20small.ashx>>.

⁷⁹ WCO, *SAFE Framework of Standards to Secure and Facilitate Global Trade*, June 2012, <<http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/-/media/55F00628A9F94827B58ECA90C0F84F7F.ashx>>.

⁸⁰ WCO (note 21).



activities that support overall risk management or provide detection and information technology equipment will assist in ATT implementation. WCO member states established a WCO Small Arms and Light Weapons Project in 2014, which seeks to help WCO member states' customs administrations in the implementation of their international SALW commitments, including the ATT.⁸¹

The UN Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC) has implemented a number of projects supporting the enforcement of arms transfer controls, particularly for SALW. For example, UNLIREC's Inter-institutional Training Course on Combating Illicit Trafficking in Firearms, Ammunition and Explosives aims to improve coordination, cooperation and transparency among the relevant agencies. Since 2004 more than 3300 staff have participated in these training courses.⁸²

A number of other organizations, such as the International Criminal Police Organization (Interpol), also provide (or facilitate the provision of) law enforcement assistance.⁸³ Enforcement training (both customs detection and investigation and prosecution of offences) has been a key pillar of the EU's cooperation programme on dual-use export controls since 2005, offering such activities to partner countries in Asia, Eastern and South Eastern Europe, the Middle East and North Africa. Enforcement aspects have also been included in the EU's assistance programmes on conventional arms control for countries in the immediate European neighbourhood and in the scope of the EU's newly established ATT implementation assistance programme, which includes countries in Africa, Asia and Latin America.

The US EXBS programme, which covers both dual-use items and conventional arms, is broad in geographical scope, well funded and comprises a wide range of enforcement training activities. SIPRI's Dual-Use and Arms Trade Control Programme has also provided technical expertise for capacity-building projects for licensing, customs and prosecution services in Asia, Europe and the Middle East.⁸⁴

Share information with other states parties

The importance of sharing information with other states parties is emphasized in several parts of the ATT. An exporting state party is required to share 'appropriate information' with importing states parties and transit or trans-shipment states parties about particular authorizations for arms exports subject to the exporting state party's national laws, practices or policies (Article 7(6)). An importing state party is required to 'take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment'

⁸¹ WCO, Internal Enforcement Committee document, no. EC0404E1a, [n.d.].

⁸² United Nations, General Assembly, 'United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean', Report of the Secretary-General, A/66/140, 14 July 2011.

⁸³ Interpol, 'Training and capacity building', [n.d.], <<http://www.interpol.int/en/INTERPOL-expertise/Training-and-capacity-building>>.

⁸⁴ SIPRI, 'Dual-use and arms trade control', <<http://www.sipri.org/research/disarmament/expcon>>.



(Article 8(1)). States parties are also encouraged to provide information to other states parties, through the ATT Secretariat, on measures taken that have been proven effective in addressing diversion (Articles 11(5), 13(2), and 15(4)). This may include ‘information on illicit activities, including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion’ (Article 11(5)). Finally, states parties are encouraged to ‘consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty pursuant to their respective security interests and national laws’ (Article 15(3)).

Relevant guidelines and activities

Arms transfers are a cross-border activity and the importance of sharing information among states as a means of assisting with the effective implementation of transfer controls is emphasized in the various good practice documents and guidelines on how to establish and maintain an arms transfer control system. However, there is little in the way of specific guidance on how this should be carried out. Guidelines that do exist are primarily focused on mechanisms for sharing information among exporting states on cases where export licences have been denied, something that is not specifically mentioned in the ATT. For example, the User’s Guide for the EU Common Position includes detailed information about the mechanisms through which EU member states share information about export licence denials.⁸⁵

Creating effective mechanisms of information sharing at the regional and subregional level among groups of officials that are engaged in implementing arms transfer controls has been the focus of several cooperation and assistance activities. In 2009 SEESAC launched the Regional Information Exchange Process (RIEP). These bi-annual regional meetings, nine of which have taken place thus far, bring together representatives from Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia to discuss different issues relating to arms transfer controls.⁸⁶ Additionally, the EU cooperation programme on dual-use export controls and the US EXBS programme have routinely included sessions on inter-agency and international information sharing in their capacity-building activities.⁸⁷ Cooperation within the ATT is likely to lead to the creation of formal and informal information sharing opportunities, both through ATT conferences and events, and through assistance activities.

Maintain records on arms transfers

The ATT requires each state party to ‘maintain national records, pursuant to its national laws and regulations, of its issuance of export authorizations or its actual exports of’ conventional arms (Article 12(1)). States parties are also encouraged to maintain records on actual imports and transit/transshipment authorizations for conventional arms (Article 12(2)), and to include

⁸⁵ Council of the European Union (note 38).

⁸⁶ SEESAC, ‘Regional Information Exchange Process (RIEP)’, [n.d.], <<http://www.seesac.org/project.php?l1=126&l2=154&l3=176>>.

⁸⁷ US Department of State (note 14); BAFA (note 14); and EU Outreach in Export Control (note 14).



in these records information on the quantity, value, model/type, details of exporting state(s), importing state(s), transit and trans-shipment state(s), and end-users, (as appropriate) (Article 12(3)). States parties are required to maintain these records for a minimum of 10 years (Article 12(4)).

Relevant guidelines and activities

There are very few guidelines that include specific guidance on how to maintain records on arms transfers. Detailed guidance has been produced with regards to marking and record keeping, which—to a certain extent—can be of assistance in this area.⁸⁸ There also exist a number of guidelines aimed at helping states to generate reports for international, regional, and multilateral reporting mechanisms in the field of arms transfers that include information and guidance on record keeping. For example, the UNODA has produced an information booklet to guide states' practices in compiling and submitting data to UNROCA. The most recent version was published in 2007 and is available in English, French and Spanish.⁸⁹ In addition, the OSCE has published a set of 'voluntary guidelines' aimed at improving practices in the collection and submission of data on SALW exports and imports under the OSCE's document on SALW.⁹⁰ The guidelines recommend that states provide information about the sources used when compiling their national reports and give more detailed descriptions of transferred items.

Maintaining records of arms transfers has also featured as part of cooperation and assistance activities in the field of arms transfer controls. Since 1993 the UNODA has held 20 outreach seminars to raise awareness of UNROCA and explain the purpose and practicalities of compiling and submitting reports.⁹¹ SEESAC has carried out projects since 2006 aimed at assisting states in South Eastern Europe (primarily Albania, Bosnia and Herzegovina, Croatia, Montenegro, the former Yugoslav Republic of Macedonia, and Serbia) to improve control systems in line with EU norms and standards.⁹² This has included work on record keeping and generating national and regional reports on arms exports. In addition, as part of its EXBS programme, the USA has provided over 20 states with the 'Tracker' software system. The Tracker system helps states to maintain records on export licence applications and 'to record data on the submitting, processing, monitoring, assessing and decision making of applications'.⁹³

⁸⁸ UN Coordinating Action on Small Arms (CASA), 'Marking and recordkeeping', Draft International Small Arms Control Standard, ISACS/05.30, Version 1.0, 27 Aug. 2012, <<http://www.smallarmsstandards.org>>.

⁸⁹ United Nations, Department for Disarmament Affairs, *Guidelines for Reporting International Transfers: Questions & Answers* (United Nations: New York, 2007); and United Nations, Department for Disarmament Affairs, *United Nations Register of Conventional Arms: Information Booklet 2007* (United Nations: New York, 2007).

⁹⁰ OSCE, 'Voluntary guidelines for compiling national reports on SALW exports from/imports to other participating states during the previous calendar year', Vienna, 2014.

⁹¹ Holtom, P. and Bromley, M., *Implementing an Arms Trade Treaty: Lessons on Reporting and Monitoring from Existing Mechanisms*, SIPRI Policy Paper no. 28, July 2011, <<http://books.sipri.org/files/PP/SIPRIPP28.pdf>>, p. 6.

⁹² SEESAC, 'Arms export controls', [n.d.], <<http://www.seesac.org/ACP>>.

⁹³ US State Department, Office of Export Control Cooperation (ECC), <<http://www.state.gov/t/isn/offices/c55412.htm>>.



IV. Conclusions and recommendations

This paper highlights that there are a large number of guidance documents, and past and ongoing cooperation and assistance activities carried out by governments, the EU, the UN and other international and regional organizations aimed at helping states to strengthen their transfer control systems. Although many of them have not been specifically developed within the ATT framework, a large number of them can be of direct relevance in helping states to fulfil their ATT-related obligations in the area of arms transfer controls. To date, there has been no attempt to comprehensively and systematically collate and map these activities. As a result, providers and recipients of cooperation and assistance are often unaware of similar ongoing activities and unnecessary duplication of efforts is common. With a range of new actors engaging in ATT-related assistance efforts, this knowledge gap will become increasingly problematic.

This paper also reveals a number of gaps that will need to be addressed in order to help states to effectively implement particular aspects of the ATT. In particular, there is a clear lack of useful guidelines and good practice documents focused on how to establish and implement effective controls on import and transit and trans-shipment. Furthermore, there is a potential need to develop guidelines that target aspects of export licensing decision making that are referenced in the ATT but which are not covered by existing documents in this area, particularly gender-based violence. The issue will be included in the next update of the EU User's Guide for the EU Common Position on Arms Exports, but it will likely still be necessary to develop more detailed guidance on how states should take the risk of such violence into account when assessing arms exports. Finally, there is also a potential need to generate documents aimed at other actors in the supply chain—such as shipping companies and freight forwarders—that have a growing role to play in the implementation of arms transfer controls, particularly with the expansion of controls on transit and trans-shipment.

The development of user-friendly online tools to assist states parties with aspects of ATT implementation may also be necessary. The range of documents aimed at helping states to develop and implement effective arms transfer controls are useful and detailed, but they largely consist of static PDF documents that are not regularly updated. Greater thought could be given to recording such information in regularly updated online resources. These online systems could draw more actively on open sources, particularly when it comes to helping states carry out risk assessments in connection with arms export decision making. For example, they could highlight sources of information that could be used by states when carrying out risk assessments in connection to arms exports, and provide examples of EUCs and links to states' export control authorities. The EU User's Guide for the EU Common Position emphasizes the value of open-source information when applying the criteria of the EU Common Position. However, the sources listed are limited and are only updated when the document is periodically revised. In developing these tools, it will be important to review and consider the actual use and utility of current tools in the daily work of officials and take into account technical and time constraints.



When developing guidelines and planning cooperation and assistance activities, states, NGOs, international and regional organizations must take into consideration the range of different options that states have at their disposal for developing and implementing effective arms transfer control systems that are in line with ATT commitments. The planning and implementation of ATT-related activities also requires flexibility and sensitivity. Ongoing efforts that are focused on comparing the benefits and limitations of different approaches in particular national and regional contexts are quickly becoming essential. Such efforts will need to be supported by guidelines and documents detailing certain standards and models, and be drawn from experiences in different countries and regions.

A number of gaps will need to be addressed in order to help states to effectively implement particular aspects of the ATT

The volume and range of relevant guidelines and cooperation and assistance activities also pose both an opportunity and a challenge for the ATT Secretariat as it takes steps to facilitate ‘the matching of offers of and requests for assistance for Treaty implementation’ (Article 18). There is a clear opportunity since there already exists a solid foundation to build on and experience to draw from. However, there is also a risk of duplication, particularly if there is limited awareness of what has been done or is being done. Previous attempts to create a central location for coordinating the planning and implementation of cooperation and assistance activities in transfer controls—particularly by the UN Security Council Committee established pursuant to Resolution 1540 (2004) (1540 Committee) and through the POA’s online Implementation Support System (POA-ISS)—demonstrate that this is a challenging task.⁹⁴ The way in which transfer controls touch on, and overlap with, so many different areas of government activity makes it hard to create a single location for channelling all efforts in this area. Moreover, many states have traditionally been unwilling to abandon their own bilateral mechanisms for coordinating and channelling assistance.

Finally, if the ATT Secretariat, POA-ISS and 1540 Committee all run parallel efforts to match offers and requests for assistance in transfer controls this risks creating overlapping mechanisms that will further drain national capacities and increase confusion. The issue becomes potentially more complex if the ATT Secretariat seeks to match offers and requests for assistance in stockpile management and DDR programmes, issues that are also covered by the POA-ISS. Connecting stockpile management and DDR activities with ATT-assistance work could serve to channel resources more effectively, avoid duplication of efforts and build political support in beneficiary states. However, there is also a risk that it will create a parallel process for matching offers and requests for assistance that will duplicate, rather than complement, existing efforts by the POA-ISS. All of these issues underline the need for close coordination between the implementation of the ATT and other existing instruments with overlapping or closely aligned obligations and commitments, particularly the POA.

⁹⁴ Holtom and Bromley (note 5).

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SIPRI BACKGROUND PAPER

IMPLEMENTING THE ARMS TRADE TREATY: BUILDING ON AVAILABLE GUIDELINES AND ASSISTANCE ACTIVITIES

SIBYLLE BAUER AND MARK BROMLEY

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