

## CHAPTER 3: ATT IMPLEMENTATION: WHAT THE ATT INITIAL REPORTS REVEAL ABOUT PRACTICES AND CHALLENGES

Transparency and reporting are cornerstones of the Arms Trade Treaty (ATT), with universality of public reporting as an important Treaty objective. ATT Initial Reports are an important opportunity to understand good implementation practice and identify assistance needs. Without detailed public reports it will be far more challenging for States Parties and civil society to effectively analyse and understand the Treaty's implementation measures and gaps.

ATT Initial Reports serve three ends. They offer self-assessment of implementation and compliance with the Treaty, they highlight best practices and lessons learned, and they identify gaps and assistance needs for effective implementation.

However, while Initial Reports are critical for better understanding Treaty implementation, some of the submitted reports have not fulfilled their potential. Indeed, national reports provided to the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (PoA) and UN Security Council Resolution 1540 are often far more detailed and comprehensive than their Initial Report under the ATT.<sup>1</sup>

This chapter looks at the limits of what can be learnt about national implementation practice from ATT Initial Reports alone, how the information provided in the Initial Reports could be used to aid implementation efforts, as well as whether the Initial Report asks the right questions and elicits appropriate answers to identify good practice for ATT implementation.

This chapter does not cover all elements in the Initial Reports. Rather, it discusses a subset of key issues that illustrate the importance of reporting as well as the hazards of providing minimal information using the ATT reporting template. The chapter consists of four parts. First, it provides a summary of the current status of reporting on measures to implement the ATT submitted before 31 May 2017. Second, it offers a brief analysis of States Parties' national transfer-control systems

and highlights good practices detailed in the Initial Reports. Third, it highlights gaps in implementation as illustrated in the Initial Reports. Fourth, it identifies reporting synergies for the Initial Reports with other international, regional and multilateral reporting commitments.

### ARTICLE 13.1

Each State Party shall, within the first year after entry into force of this Treaty for that State Party, in accordance with Article 22, provide an initial report to the Secretariat of measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures. Each State Party shall report to the Secretariat on any new measures undertaken in order to implement this Treaty, when appropriate. Reports shall be made available, and distributed to States Parties by the Secretariat.

### CURRENT STATUS OF ATT INITIAL REPORTING

Eighty-two States Parties were required by Article 13.1 to submit an Initial Report on measures to implement the ATT before 31 May 2017. As of that date 59 had done so – a compliance rate of nearly 72 per cent.<sup>2</sup> Fifty-four of the submitted Initial Reports are publicly available on the ATT Secretariat's website, while five are private.<sup>3</sup> Of the publicly available reports:

- Forty-seven used the ATT reporting templates, including the provisional template
- Six used the ATT-Baseline Assessment Project (ATT-BAP) Survey<sup>4</sup>
- One used an own national format.

All States Parties that have submitted an Initial Report since the conclusion of the Conference of States Parties in 2016 (CSP 2016) have used the ATT reporting template endorsed at that meeting.<sup>5</sup> This chapter examines the information provided in the 54 publicly available reports that are posted on the ATT Secretariat's website.<sup>6</sup>

1 National reports on arms transfers or national control systems also often contain much greater detail than is reported in ATT submissions.

2 It should be noted that, of the 82 required to do so, 58 States Parties had submitted an Initial Report by 31 May 2017. Georgia was not required to submit one until August 2017, but did so early and is therefore captured in the overall count of submissions detailed in this chapter.

3 Burkina Faso, Mauritius, Nigeria, Senegal and Togo have submitted private reports.

4 ATT-BAP. 'Baseline Assessment Questionnaire'. [www.armstrade.info/the-survey/](http://www.armstrade.info/the-survey/)

5 ATT Secretariat (2016). 'Final Report of the Arms Trade Treaty Second Conference of States Parties, Geneva, Switzerland, 26 August 2016'. ATT/CSP2/2016/5, p. 6.

6 All data in this paragraph are from the ATT Secretariat and available at <http://thearmstradetreaty.org/index.php/en/2017-01-18-12-27-42/reports>

Initial reporting varies dramatically by region (see Table 3.1). Europe has the highest level, with only three of the 38 required Initial Reports from the region outstanding.<sup>7</sup> Africa and the Americas have the lowest reporting rates, with only half of their States Parties so far fulfilling their requirement.<sup>8</sup>

**Table 3.1: Initial Report submissions by region (as of 31 May 2017)**

Region	States Parties due to Report by 31 May	States Parties that have submitted reports	Regional reporting rate
Africa	18	9	50%
Americas	21	10	48%
Asia	1	1	100%
Europe	38	36*	95%
Oceania	4	3	75%

\* Includes Georgia, whose report was not due before 31 May 2017.

### WHAT THE INITIAL REPORTS REVEAL ABOUT NATIONAL IMPLEMENTATION

Close examination of the publicly available Initial Reports provides relevant information on trends regarding national implementation practice, as well as highlighting potential gaps and challenges. Through assessment of Initial Reports, it is also possible to identify the ways in which States Parties are interpreting Treaty obligations and to highlight some areas of confusion or ambiguity.

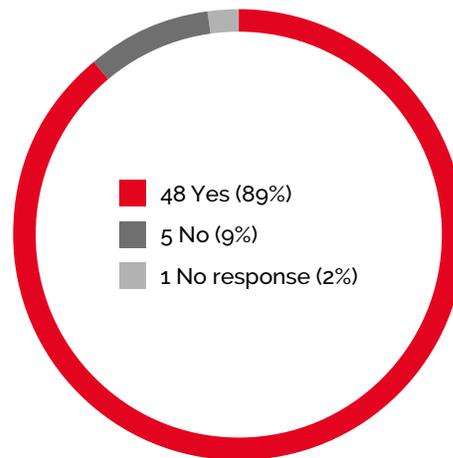
States Parties submit their report, and this information is made public, without any verification from the ATT Secretariat, other States Parties or civil society, however. Thus, some information in them may be incorrect or incomplete, or may not accurately reflect actual practice. This chapter relies on the information provided in the Initial Reports by States Parties, but does not independently verify the claims made in them. It examines three elements of a national system to regulate international arms transfers – exports, brokering, and enforcement. These themes are analysed because of their varied levels of implementation.

### EXPORTS

States Parties offered a wide range of information regarding their export-control system in the Initial Reports. Forty-eight of the 54 publicly reporting countries (89 per cent) indicated that their system applies to at least the eight categories of conventional arms covered by Article 2.1.

**Figure 3.1: National Control List scope**

- Number of States Parties who indicate that their national control system applies to all eight categories of conventional arms covered by Article 2(1) of the ATT



States Parties identified different national authorities responsible for implementing export controls. The most commonly cited were:

- Ministry of Defence
- Ministry of Foreign Affairs
- Ministry of Interior
- Ministry of Justice/National Police Service
- Ministry of Trade/Economic Affairs.

These institutions have developed and maintained procedures to meet the ATT's arms-export obligations.

- 87 per cent of reporting States Parties indicated that their national control system includes export authorization or licensing procedures.

<sup>7</sup> As of 31 May 2017, Initial Reports were still due from Greece, Malta and San Marino.

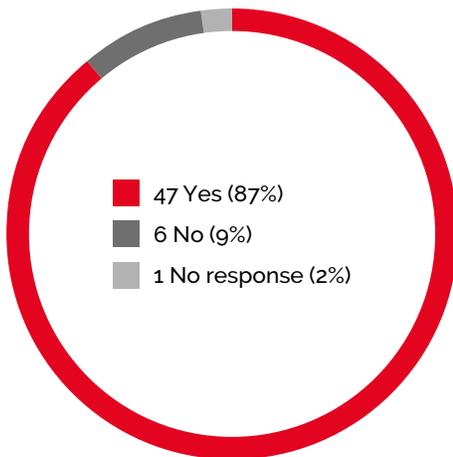
<sup>8</sup> Reports were still outstanding as of 31 May 2017 from the following. Africa: Central African Republic, Chad, Ghana, Guinea, Lesotho, Mali, Mauritania, Niger and Seychelles. Americas: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Paraguay, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines. Oceania: Tuvalu.

- 81 per cent said that they have a national control system that includes export assessment criteria.
- 81 per cent said that they have a process to conduct a risk assessment (though these States Parties differ from those that include export assessment criteria).
- 81 per cent indicated they can reassess an export authorization if new relevant information becomes available.

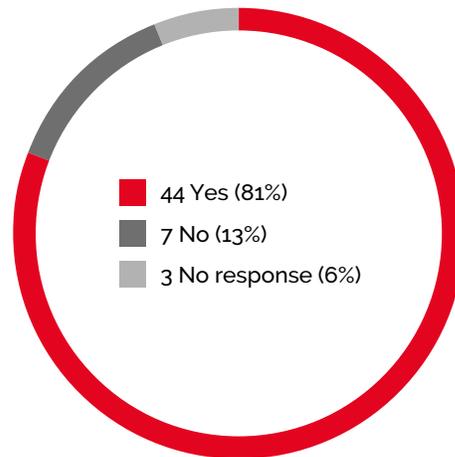
Critically, seven per cent of reporting States Parties indicated their system lacks export and risk assessment processes because they are not arms-exporting states, and therefore these factors are not applicable to their national system.<sup>9</sup> This is an unfortunate interpretation of an obligatory component of the ATT. The Treaty applies equally to all States Parties and requires them to have national systems to control exports, even if they do not regard themselves currently as exporters of conventional arms, ammunition or parts and components. Four other States Parties noted that such procedures do not currently exist in their national legislation.<sup>10</sup>

**Figure 3.2: Export and Risk Assessments**

- Number of States Parties who indicate that their national control system includes authorization or licensing procedures for exports.



- Number of States Parties who indicate that export authorization can be reassessed if new relevant information becomes available.



The Initial Reports provide other insights on States Parties' national export systems. Ninety-one per cent say that they can make information available, upon request, with either importing or transit/trans-shipment States Parties. However, for some, and particularly those with less developed systems, this may simply be a theoretical allowance because their system does not explicitly prohibit – or affirm – information sharing.

Although references to exports without a licence or simplified procedures (for temporary exports or exports to trusted partners) are not included explicitly within the ATT text, the voluntary sections of the template ask questions on this topic. Fifty-nine per cent of reporting States Parties stated that they maintain simplified procedures for certain types of arms exports. There are regional differences in this area. For example, 27 European States Parties declared that their export-control system provides for exports without a licence or simplified procedures. By comparison, every reporting State Party in the Americas noted their system does not contain provisions for simplified export procedures. Nineteen States Parties that said they have such procedures offered some explanation<sup>11</sup> and five provided a reference and/or a link to relevant legislation that establishes exemptions – which are not explicitly allowed in the Treaty. The template also combines questions for exports without a licence and simplified procedures into one 'yes/no' question, which makes it difficult to identify national practice in this area.

9 Dominican Republic, Panama, Samoa and Sierra Leone.

10 El Salvador, Jamaica, Liberia and Uruguay.

11 Seventeen of the 27 EU member states indicated above. The other two States Parties offering explanation were New Zealand and Samoa.

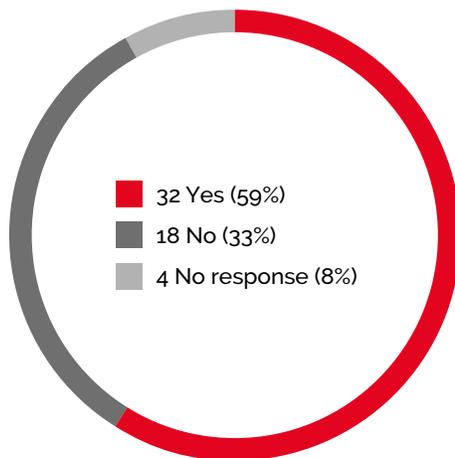
States Parties in their responses noted that exceptions pertained to:

- Their national armed forces.
- Participation in international exercises conducted on or outside national territory
- Structures of intergovernmental organizations such as the EU, NATO, the International Atomic Energy Agency or the Organization for Economic Co-operation and Development.
- Countries considered to be close allies.
- National peacekeeping forces abroad or other humanitarian or development aid, such as involvement in international humanitarian rescue operations.

While some of the conditions described by States Parties are not treated as exports for the ATT – for example, exports for own armed forces overseas or peacekeeping – they still listed such exceptions.

**Figure 3.3: Simplified export procedures**

- Number of States Parties that provide for simplified export procedures under certain circumstances



It is possible to draw some further conclusions about the ways in which States Parties' export-control systems operate in practice using information provided in their Initial Reports. The information provided on what is required in an export authorization application facilitates the development of good practices among countries. The types of information States Parties currently require for export authorizations vary (see Box 3). Most require details regarding the items being shipped (for example, quantity and value). Some exporting States Parties also require details regarding means of transport, potential third parties involved, and details about the seller/company and end-use/r.

#### BOX 3: RANGE OF INFORMATION/ DOCUMENTATION REQUIRED IN EXPORT AUTHORIZATION APPLICATIONS<sup>12</sup>

- Description of goods
- Type, quantity, make, calibre, identification number and other marks of weapons
- Details of applicant, exporter, consignee and end-user
- Country of origin
- Description of end use
- Name of vessel, ship or aircraft
- End use/r certificate
- Import licence/certificate or authorization from importing country

#### BROKERING

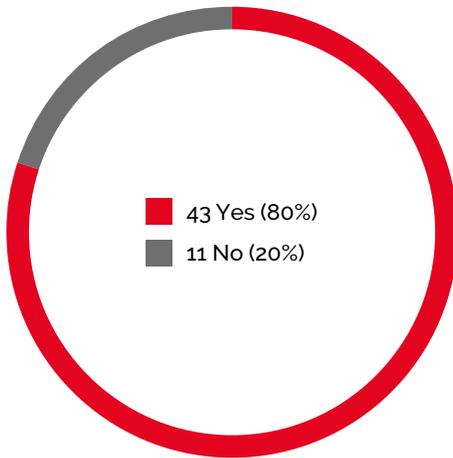
The initial reporting template asks States Parties to provide information on how they regulate brokering within their national control system. In the mandatory section, they are asked whether their system includes measures that allow the regulation of brokering of conventional arms, the brokering definition used in national legislation and the competent national authorities responsible for the regulation of brokering. Eighty per cent of reporting States Parties stated that they have measures to regulate brokering within their national system.

In the voluntary section, States Parties are asked about the exemptions contained in their regulation of brokering, even though no such exemptions are mentioned in the Treaty (though measures are 'pursuant to its national laws'). Twenty-one per cent of those States Parties with brokering measures reported that there are exemptions from their brokering regulations. Therefore, most states parties that regulate brokering do not provide for exemptions.

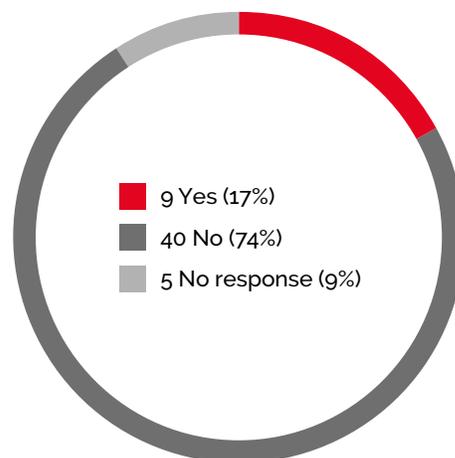
<sup>12</sup> Information for this table was taken from the Initial Reports of Austria, Belgium, Jamaica and South Africa, which together reflect an indicative cross-section of the range of information States Parties provided relating to documentation required in export authorization applications.

**Figure 3.4: Brokering**

- Number of States Parties who indicated that their national control systems includes measure to regulate brokering



- Number of States Parties who indicate that their brokering controls contain exemptions

**BOX 4. NATIONAL DEFINITIONS OF BROKERING****DOMINICAN REPUBLIC**

Arms brokers and ammunition intermediaries are defined as natural or legal persons that in exchange for economic or financial compensation, bonus, commission, or otherwise, act as an agent in negotiating or arranging a contract of sale, exchange or payment in kind for the acquisition or transfer of weapons and conventional ammunition; the provision of documentation, payment, transportation or freight, or any combination of these in relation to the purchase, sale or transfer of any conventional firearm, and act as an intermediary between any manufacturer or supplier of conventional arms or service provider or any buyer or recipient of them.

Brokering: The action taken by any person who from his position is involved in the negotiation or settlement of a contract of sale, exchange or given payment for the acquisition or transfer of conventional arms, or facilitating, transfer of any document, payment, transportation or freight or a combination of these in relation to the purchase, sale or transfer of any conventional firearm, including any manufacturer or supplier of conventional arms or service provider or any buyer or recipient they *[sic]*.

**FINLAND**

To bring parties into contact with each other for the purpose of concluding an agreement to export defence material between countries outside the EU or to transfer defence material between countries in the EU, a brokering licence is required to engage brokering within Finnish territory. Finnish citizen or permanent resident are required to have a brokering licence to engage in the brokering outside Finnish territory.

**LIBERIA**

This definition will be expanded to include extraterritorial element in a comprehensive national control system. However, the Firearms & Ammunition Control Act defines Brokering as work carried out as an intermediary between any manufacturer, supplier or distributor of small arms and light weapons and any buyer or user; which includes the provision of financial support and the transportation of small arms and light weapons.

**NEW ZEALAND**

The specifics of New Zealand's mandatory legislative brokering control regime are still being developed. However, it is anticipated that the legislation will include a definition of brokering (as negotiating, arranging or facilitating the international movement of arms and military equipment from one foreign country to another foreign country) and require all brokering activity by New Zealand citizens or entities to first obtain a permit. It is expected that the legislation will have extraterritorial application.

The majority of reporting States Parties (76 per cent) provided their definition of brokering in their Initial Report. These vary in terms of the level of detail, with some providing explicit definitions and others referencing relevant legislation (see Box 4 for examples). In addition, some noted that they are in the process of drafting legislation and regulation to align with their Treaty obligations. The Initial Report responses thus provide potential guidance on best practice and can be used to identify trends in implementation of Article 10.

States Parties provided information on which agencies are responsible for implementing their brokering controls. The most commonly cited agencies were:

- Ministry of Defence
- Ministry of Economy/Commerce
- Ministry of Foreign Affairs
- Ministry of Interior
- Ministry of Justice/National Police Service.

Finance ministries and national security and intelligence agencies were also named by some reporting States Parties as being involved in the implementation of brokering controls. Many of these agencies are the same as those responsible for regulating arms exports. States Parties also provided insights on information and/or documentation that they require in their brokering applications (see Box 5).

#### **BOX 5: RANGE OF INFORMATION/ DOCUMENTATION REQUIRED IN APPLICATION RELATED TO BROKERING**

- Registration in a national register
- Copy of import/export licence
- Criminal records, etc.
- Customs documents
- Description of goods
- Quantity and value
- Description of previously granted licences
- End use/r certificate
- Financial data (for financial liability)
- Means of transport
- Transit routes

## **ENFORCEMENT**

Most States Parties have not provided detailed information in their Initial Report regarding specific enforcement measures. The lack of detail could be due to vague language on enforcement in the ATT text and in the questions on enforcement in the reporting template. In the mandatory section of the template, there are only two questions regarding enforcement, regarding the following.

- Measures that are in place that provide the ability to enforce the national laws and regulations that implement the provisions of the ATT.
- National legislation that allows the provision to another State Party of jointly agreed assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to the Treaty.

Both are 'yes/no' questions and States Parties are only asked to elaborate if the answer is negative. This means there is relatively little information about the steps they have taken or the measures they have in place to enforce the ATT. It is therefore unclear if States Parties have robust enforcement systems or simply maintain a minimal number of enforcement elements.

In the voluntary section of the template, some States Parties have provided information on national laws and regulations that enforce the Treaty, and on potential consequences of violations of these laws and regulations, including:

- Customs checks and border patrols
- Punitive measures including fines, criminal proceedings and imprisonment
- Audit checks
- Anti-corruption cooperation with other agencies and/or States Parties and multilateral organizations.

States Parties sometimes provide links to the relevant legislation that covers violations. However, although some identify relevant legislation, they do not offer interpretation or analysis of how it is applied to the ATT's obligations or how their laws fulfil these obligations. Without insight on States Parties' understanding of their relevant legal frameworks, it is difficult to assess how the ATT is being enforced at the national level. In other words, outside reviewers could read through States Parties' laws without necessarily understanding how they are applying and enforcing their laws. This information is therefore of only limited utility to understanding the impact of the ATT.

Further, without supplementary prosecutor statistics – which are not required in the reporting template (but could appear in other national reports) – it is impossible to gauge whether such legislation is used to prosecute violators. Indeed, a lack of understanding of the seriousness in which violations of arms-exports laws are taken into account makes evaluation of adherence to the Treaty more challenging.

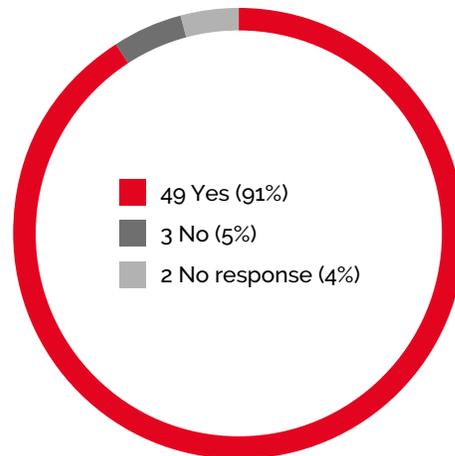
Ninety per cent of States Parties reported that they have measures in place to enforce national laws and regulations to implement the ATT. Numerous agencies are responsible for enforcing these measures, including:

- National Police Services
- Customs
- Ministry of Economy
- Ministry of Defence
- Ministry of Foreign Affairs
- Ministry of Interior.

Eighty-seven per cent of States Parties indicated that their national legislation facilitates the provision of assistance for investigations, prosecutions and judicial proceedings to support ATT enforcement measures. One, Australia, indicated it 'did not know' if legislation to facilitate assistance for investigations and other proceedings existed in its national system, but indicated that it intends to pursue such cooperation.

**Figure 3.5: Enforcement**

- Number of States Parties that indicated they have measures in place to enforce national laws and regulations that implement the Treaty

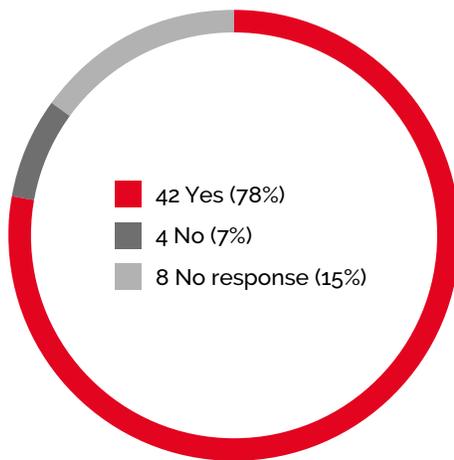


Seventy-eight per cent of reporting States Parties indicated that they have measures in place to facilitate cooperation with others to prevent corruption in the international arms trade. Although scant information exists on the specific measures employed, the responses in the Initial Reports can provide some guidance for those that seek to put such measures in place. For example, Dominican Republic indicated its participation in regional programmes such as Central American Program on Small Arms and Light Weapons Control, the General Secretariat Central American Integration System and Regional Operations Against Arms, as well as cooperating with organizations such as the US Bureau of Alcohol, Tobacco, Firearms and Explosives, the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean and Germany's Federal Office for Economic Affairs and Export Control. Multilateral measures to prevent corruption can support additional information exchange and identify common trends and risks.

While a diligent State Party could contact those agencies and determine the ways in which countries could work together to prevent violations of the ATT, identify useful intelligence and prosecute offenders, a lack of specific information on enforcement efforts may undermine these efforts. In the long term, weak cooperation could undermine support for joint efforts to stop diversion.

**Figure 3.6: Preventing corrupt practices**

- Number of States Parties that indicated that national measures have been taken to prevent, in cooperation with other States Parties, the transfer of conventional arms covered under Article 2(1) of the Treaty becoming subject to corrupt practices



### CHALLENGES TO, AND POTENTIAL GAPS IN, IMPLEMENTATION

The structure of the initial reporting form makes it challenging to develop a comprehensive picture of ATT implementation. Appendix 2 provides a snapshot of implementation by cataloguing States Parties' responses to questions from the publicly available Initial Reports. While Appendix 2 offers a simplified overview of how they have described their implementation efforts, it should be noted that the information captured in the table is not insightful enough to serve as a robust analytical tool for adequately measuring implementation. Discrepancies exist between States Parties' responses to check box questions compared to open-form explanations, which complicate assessments of implementation. Additionally, States Parties appear to have taken varying approaches in responding to questions in the template. For example, some used their Initial Report to indicate what mechanisms, systems, processes and national regulations are currently in place or not to support implementation. Other States Parties appear to have used their Initial Report to signal intent to establish the mechanisms necessary to implement the Treaty in accordance with their obligations. Thus, it is difficult to understand how (and to what extent) the ATT is being implemented.

Some of these issues have already been illustrated in the discussion of how enforcement measures are (or are not) detailed in Initial Reports. Two particular areas also require additional measures to ensure effective implementation: transit/trans-shipment and international assistance. These two areas

are addressed in a limited fashion in the reporting template, although greater efforts have been undertaken to address these two areas from other sources.

### TRANSIT/TRANS-SHIPMENT

The ATT does not provide definitions for transit and/or trans-shipment. Though transit is generally meant to refer to items that pass through or across a territory and trans-shipment refers to the transfer of goods from one means of transportation to another, States Parties utilize national understandings and definitions of transit and transshipment that could lead to differences in terms of the types of transit/ and trans-shipment that are subject to regulation.

The template does not explicitly ask States Parties to provide their national definitions of transit and/or trans-shipment in their Initial Report, yet some took the initiative to do so or to reference relevant legislation that contains such definitions. However, the information provided varies in depth and detail, with some providing detailed definitions, others listing specific legislation and relevant national policies and practices, and others still providing general references to laws and procedures. For example, Belgium indicated that it does not include measures to regulate the transit of conventional weapons because its national laws only cover trans-shipment. Liechtenstein, by comparison, noted that both are regulated because trans-shipment is treated the same as transit. Conversely, Dominican Republic claims that trans-shipment transactions do not take place, and therefore indicated that its national system does not currently include measures to regulate it, but that a new draft law was in development that would cover such transactions if they did occur.

States Parties are required to implement transit/trans-shipment controls, in large part to prevent diversion. However, the Initial Reports do not provide sufficient information to fully understand how national systems regulate these. The gaps in information likely result from the way the questions on transit and trans-shipment are phrased in the template, which does not differentiate between the regulation of transit and trans-shipment by air, land and sea. As a result, States Parties do not provide differentiated information on for the regulation of transit and trans-shipment by the three. Although there is one question that asks for 'yes/no' responses on control measures for the regulation of transit and/or trans-shipment covered through land territory (including internal waters), through territorial waters or through national air space, the preceding questions on measures that allow the regulation of transit or trans-shipment do not differentiate between air, land and sea. Notable exceptions are Liechtenstein, Montenegro, New Zealand and Serbia, which provided information on the different ways in which they regulate transit and trans-shipment activities via air, land and sea (see Box 6).

**BOX 6. REGULATION OF TRANSIT AND TRANS-SHIPMENT ACTIVITIES VIA AIR, LAND AND SEA****LIECHTENSTEIN**

According to the War Material Act [WMO], the transit of war material through Swiss/Liechtenstein territory or airspace has to observe international law, Switzerland's international obligations and the principles of Swiss foreign policy. This includes, in particular, respect of Swiss neutrality. The transit of war material by land or water is subject to the same legal requirements as the export of war material. Transits through Swiss/Liechtenstein airspace by a private aircraft with war material on board take into account the criteria used to assess exports of war material (Art. 5 WMO).

**MONTENEGRO**

Transit of controlled goods by land and water is conducted based on prior approval of the ministry responsible for internal affairs. Transit of controlled goods by air is performed based on the approval of the authority responsible for civil aviation. The method and procedure of issuing licences for transport and transit of controlled goods by land and water are closely regulated by an act of the ministry responsible for internal affairs, respectively, for the transport and transit by air, by an act of the ministry responsible for transport.

**NEW ZEALAND**

New Zealand's Strategic Goods regime applies to all goods exported from New Zealand's territory, including goods transiting through New Zealand's territorial sea and air space. Whether enforcement action is taken in relation to goods in New Zealand's territorial sea or national air space depends on what information is available in relation to the goods, and whether any enforcement action would be consistent with New Zealand's other international obligations such as the United Nations Convention on the Law of the Sea and the Chicago Convention on International Civil Aviation.

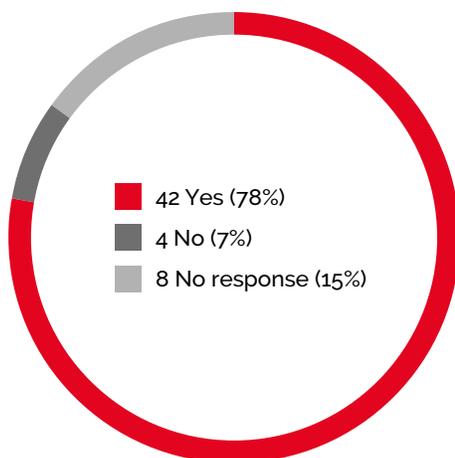
**SERBIA**

The transit of arms by land or inland waterways shall be done in a prescribed manner and upon the approval of ministry in charge of internal affairs, and with the approval of the ministries in charge of defence and foreign affairs activities.

The transit of arms by air shall be done in a prescribed manner and upon the approval of the competent authority in charge of air traffic – Civil Aviation Directorate, and with the approval of the ministries in charge of defence and foreign affairs activities.

**Figure 3.7: Transit/trans-shipment**

- Number of States Parties that indicated that their system allows information to be made available, upon request, to the importing State Party and/or transit or transshipment States Parties



States Parties reported multiple agencies involved in implementing transit and trans-shipment controls, including:

- Ministry of Defence
- Ministry of Foreign Affairs
- Customs
- National Police
- Ministry of Economy.

Some States Parties reported on measures, including laws, regulations, policies and procedures, that their national agencies undertake to implement transit/trans-shipment controls (see Box 7 for examples). Such measures range from licensing procedures to customs and border enforcement measures. Most reporting States Parties did not provide much detail on their specific transit and trans-shipment controls, and thus trends and best practices with regard to this area are difficult to ascertain from Initial Reports.

**BOX 7. IMPLEMENTING TRANSIT/TRANS-SHIPMENT CONTROLS****GERMANY**

According to the Act Implementing Article 26 (2) of the Basic Law (War Weapons Control Act) a transit licence is generally required for all war weapons contained in Part B of the War Weapons List. Control measures are undertaken on land, i.e. in random road checks, or during a stopover of a plane or ship.

**JAMAICA**

There is an approved and established regime in place for the systematic control of these items which includes inspections, declarations, receipt and assessment of any pertinent information and the grant of the requisite permits/ authorization, subject to favourable consideration.

**JAPAN**

Transshipment requires re-export authorization while transit control is conducted in accordance with relevant national law.

**ROMANIA**

Transit or trans-shipment activities are authorized by means of individual transit/ trans-shipment license.

**SWEDEN**

Transit controls apply to all items on the national control list. Transiting goods are treated as exports when they pass out of Swedish territory, i.e. license requirements apply.

**INTERNATIONAL ASSISTANCE**

Although States Parties provided information regarding their current transfer-control practices, the reporting template does not lend itself to reporting on their provision of, or need for, international assistance. To be sure, a thorough completion of the Initial Report will give them the tools they need to identify their assistance needs. States Parties can then use this information as part of their national process for identifying priorities, developing proposals and requesting assistance. However, without a global mechanism for matching needs with assistance available, States Parties make ad hoc determinations for their own prioritization of what to fund, when and where.

Knowledge gaps on assistance needs and available resources may also be a consequence of limited questioning in the reporting template itself. The mandatory section simply asks if national regulations allow for the provision of implementation assistance to other States Parties, but it does not inquire as to what type(s) of assistance a given one would be willing and able to provide. The voluntary section of the reporting template only questions if national regulations and policy allow for the provision of financial resources to the Voluntary Trust Fund (VTF) established under Article 16.3. The voluntary section also gives States Parties the opportunity to provide additional information on the provision or receipt of international assistance in an open-ended format. Thus, any listing of assistance needs or assistance that is available would have to be derived and analysed from other sections of the reports or other resources.

In general, there is an information gap in providing a comprehensive analysis of the type(s) of assistance needed as well as the type(s) of assistance that are available to

support effective Treaty implementation that could streamline available resources and help donors coordinate their efforts. States Parties can apply for VTF support and work with civil-society partners to implement such requests for support. However, civil society must be aware of assistance needs in order to provide such support.

With these shortfalls, it is still possible to glean some assistance-related information from the existing Initial Report submissions. For example, some States Parties noted that they are willing to provide assistance even when there is no specific national legislation in place to regulate such assistance. Others noted they provide assistance through the EU, the United Nations and the Organization for Security and Cooperation in Europe. Additionally, States Parties pointed to assistance made available through the UN Trust Facility Supporting Cooperation on Arms Regulation and the EU ATT Outreach Project.

Additionally, a few exceptions where States Parties were specific about assistance required/available are worth noting. Liberia, for example, indicated that it is seeking technical and financial assistance across a range of activities as identified in the 'Assessment report on Liberia's compliance with the ATT. New Zealand noted the model law that it drafted, together with Small Arms Survey, and which is freely available online for States Parties to use, as well as its border-control capacity-building assistance. Norway also noted that it can provide assistance for destruction and management of stockpiles through organizations with whom it partners, such as Norwegian People's Aid, the Mines Advisory Group and Saferworld. Understanding specific assistance requests and/or provision of assistance offers greater insights into implementation challenges as well as potential opportunities and trends, and could demonstrate good practice for the distribution for more targeted assistance.

## REPORTING SYNERGIES

States Parties have expressed concerns about weak reporting rates in several regions. During meetings of the Working Group on Transparency and Reporting in 2017, government and civil-society representatives repeatedly highlighted the need to better understand and address reporting challenges.<sup>13</sup> Both sides recognize that potential reporting synergies between the ATT and other international instruments could be better utilized to reduce the reporting burden and strengthen all reporting mechanisms. Such synergies could also assist with implementation of reporting obligations and strengthen national processes and systems.

When completing their Initial Report, States Parties may find relevant information in their national reports on implementation of the PoA on Small Arms as well as their UN Security Council Resolution 1540 reporting matrices.<sup>14</sup> There are overlaps in answers to questions on legislation and regulations, policy guidelines and procedures.<sup>15</sup> On exports, the PoA requests information on the laws, regulations or administrative procedures that govern arms exports as well as on specific

documentation required for exports. Similar overlap exists for imports. The PoA asks for information on transit controls while the 1540 matrix requests information on transit controls and trans-shipment controls. The PoA report contains a question about the regulation of brokering as part of national control systems, as does the 1540 matrix, which asks about 'control of brokering, trading in, negotiating, otherwise assisting sale of goods and technology'.

With regard to prohibitions, the 1540 matrix provides examples of relevant international agreements for each of the questions relating to Article 6 prohibitions. For export assessments, the PoA report and the 1540 matrix request information on the internal processes undertaken for transfer decisions. To prevent diversion, the PoA report and the 1540 matrix ask specific questions about end-use(r) controls, including documentation, with the 1540 matrix also asking about re-export controls. On enforcement, while the PoA report does not contain relevant questions, the 1540 matrix asks for the ways in which violations are punished and what agencies are involved in enforcement actions.



**A MAN HOLDS A LIST OF CASUALTIES FOLLOWING AN AIRSTRIKE BY THE SAUDI-LED COALITION ON A RESIDENTIAL COMPOUND HOUSING EMPLOYEES OF THE MOKHA POWER PLANT AND THEIR FAMILIES, KILLING 65 PEOPLE IN MOKHA, YEMEN, ON 24 JULY 2015.**

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<sup>13</sup> ATT Working Group on Transparency and Reporting (2017). 'Issues Paper for the Group's Second Meeting'. 15 February 2017. [www.thearmstradetreaty.org/images/CSP3\\_Documents/WG\\_documents/170214\\_ATT\\_WGTR-\\_Issues\\_Paper\\_for\\_the\\_Groups\\_Second\\_Meeting.pdf](http://www.thearmstradetreaty.org/images/CSP3_Documents/WG_documents/170214_ATT_WGTR-_Issues_Paper_for_the_Groups_Second_Meeting.pdf)

<sup>14</sup> UN Programme of Action on Small Arms and Light Weapons (N.D.). 'National Reports': <http://www.poa-iss.org/Poa/poa.aspx>. UN Security Council 1540 Committee (N.D.). 'Committee Approved Matrices': [www.un.org/en/sc/1540/national-implementation/1540-matrices/committee-approved-matrices.shtml](http://www.un.org/en/sc/1540/national-implementation/1540-matrices/committee-approved-matrices.shtml)

<sup>15</sup> Specific questions demonstrating the overlap between the reporting forms can be found in the ATT-BAP Guidance for Completing the Initial Report on Implementation Measures, available at [www.armstrade.info](http://www.armstrade.info)

## CONCLUSION

As States Parties are now carrying out the critical work to implement the ATT, one of the best ways to assess and explore progress currently available to them and civil society alike is through Initial Reports. Universal reporting with 100 per cent compliance should be a realistic goal for the Treaty. Yet compliance in terms of providing an Initial Report is insufficient for extensive analysis and understanding of its implementation. Assessing progress also requires States Parties to update their implementation reports – which is required in Article 13.1. None has yet updated its Initial Report to reflect changes in their national system and implementation of their obligations. Furthermore, anecdotally, when discussed with States Parties in detail – including in workshops and closed-door meetings – national practice is often more comprehensive and complex than what is reported in ATT submission. Thus, there is a critical gap between what is being reported and what is being practiced and implemented on the ground.

The conclusion of this chapter is that multiple shared challenges exist across submitted Initial Reports that impact the usefulness of the information provided to assess implementation efforts and needs. These include the following.

- A lack of a verification mechanism resulting in few checks on accuracy or comprehensiveness of information submitted by States Parties.
- In many cases the reporting template does not allow for more detail in responses and results in simple 'yes/no' replies.
- The template often bundles several obligations together, making it hard to discern implementation of individual obligations.
- Submitted reports often contain discrepancies between check-box responses and open-form explanations.
- States Parties have varying approaches in responding to questions in the template, with some signalling intent to act instead of actual existing practice.



**COMPLIANCE IN TERMS OF PROVIDING AN INITIAL REPORT IS INSUFFICIENT FOR EXTENSIVE ANALYSIS AND UNDERSTANDING OF ITS IMPLEMENTATION. ASSESSING PROGRESS ALSO REQUIRES STATES PARTIES TO UPDATE THEIR IMPLEMENTATION REPORTS.**

A major contributor to the challenges in analysing ATT implementation is the reporting template itself. Its inherent limitations stifle useful analysis and require researchers to go beyond the Initial Report and search out national reports, other documentation and interviews. The template suffers from a confusing structure – the form is split between binding and non-binding obligations – that has been interpreted by some States Parties to mean they only need to report on the binding ones. In many cases several obligations are listed together in one 'yes/no' question, making it difficult to ascertain which element is included in the response. Separate elements of Treaty obligations are not differentiated, making it difficult to develop a comprehensive picture of implementation efforts. In addition, the template includes issues and items that are not included in the Treaty text, such as exemptions or licence-free transfers.

Transparency is a core objective of the ATT and comprehensive reporting is fundamental to ensuring greater transparency in the global arms trade. As such, serious effort should be focused on improving the reporting template, encouraging universal reporting and identifying ways in which reporting can be strengthened in the Treaty process. Such measures should be a priority in advance of the next Conference of States Parties.