

CHAPTER 1.3

IMPORTING ARMS RESPONSIBLY: THE ATT FRAMEWORK

Far more states import arms than export them. However, import considerations did not figure prominently in the process to negotiate the Arms Trade Treaty (ATT).¹ Export standards and practices received the bulk of attention in the negotiation process, resulting in several assessment obligations and criteria that apply solely to exports. However, the Treaty also contains important obligations and recommendations related to imports.

The principles given in the first pages of the ATT include 'respect for the legitimate interests of States to acquire conventional arms to exercise their right to self-defence and for peacekeeping operations and to... import' such arms. The ATT does not recognise this right to import arms as absolute, however. States' ability to import arms is contingent on the assessment that their (potential) suppliers must make in line with Treaty provisions in Articles 6 (Prohibition) and 7 (Export). Few States saw an additional need to incorporate import criteria into the Treaty. Most agreed that import procedures be determined principally at the national level.²



¹ | Control Arms. 2012. Import and Transit Considerations in an Arms Trade Treaty – Findings Based on Case Studies of Barbados, Estonia and Namibia (Technical study conducted for Control Arms by the Center for International Trade and Security – University of Georgia, Institute for Security Studies, and Project Ploughshares)

² | United Nations (UN) Doc. A/CONF.217/2. Compilations of Views on an Arms Trade Treaty, 10 May 2012

However, the ATT requires commitments not only from States Parties that export conventional arms. Commitments are also needed from States that solely or primarily import these arms. All States Parties must have or put in place an array of general provisions, some of which relate to registering and reporting on conventional arms transfers, be they imports, exports, transit or transshipment. States Parties are also held to recognise a responsibility in a global endeavour to help combat illicit transfers of conventional arms, and to take mitigating measures to prevent the diversion of authorised transfers. The import provisions of the ATT define parameters for importing States Parties vis-à-vis their military trade relations with exporters. These parameters enable importers to meet their side of responsible transfer commitments, so as to serve both global and national security interests.

THE IMPORT-EXPORT NEXUS

Even if the Treaty text refers to exports in far more instances than imports, and in more elaborate ways, the ATT does mention importation 17 times. The central commitment with respect to imports is contained in Article 8 (Import), reviewed in detail below. Several other Treaty provisions, such as those in Article 6, also impose obligations on importing State Parties.

Article 8 concerns import most explicitly. Its first paragraph, Article 8.1, obliges each importing State Party to take measures to ensure that it can provide information to, and otherwise assist, an 'exporting State Party in conducting its national export assessment'. The obligation to provide that information is not automatic, given that an importing State Party must only provide information 'pursuant to its national laws' and at the request of an exporting State Party. In addition, this first paragraph does not define the nature of the information, simply requiring that it be 'appropriate' and 'relevant'. This phrasing, which at first glance appears vague and weak, is qualified at the end of the first paragraph, where it is suggested that these measures 'may include end-use or end-user documentation'.

End-use documentation is not mandatory under the Treaty, but it does provide an important point of interplay between Article 8, the transfer prohibitions of Article 6 and the export assessments of Article 7. The use of this documentation could become a universal practice if exporting States consistently make it a requirement of their export assessment procedures under Article 7. As the Geneva Academy has noted, the reference to end-use or end-user documentation 'could be a step towards universalising their acceptance and use'.³ For years, UN sanctions panels and others have pointed to improving standards in such documentation as an important means to prevent weapons diversion.⁴ The reference in Article 8.1 is an opportunity for States Parties to agree to universal norms for end-use certificates.



³ | Geneva Academy, May 2013. *The Arms Trade Treaty – Academy Briefing No. 3*. Geneva: Geneva Academy of International Humanitarian Law and Human Rights

⁴ | Bromley, M. and Holtom, P. 2011. *Import Controls and an Arms Trade Treaty – SIPRI Background Paper*. Stockholm: SIPRI



**THE REQUEST FOR END-
USE AND END-USER
DOCUMENTATION COULD
BECOME A UNIVERSAL
PRACTICE IF EXPORTING
STATES CONSISTENTLY
MAKE IT A REQUIREMENT
OF THEIR EXPORT
ASSESSMENT PROCEDURES**

In particular, Article 8.1 provides an opportunity for exporting States to make it standard practice to request details on end-use and end-users. If an importing State fails to comply, the authorities of an exporting State Party should refuse the export licence. This practice would be in keeping with Treaty obligations in Article 7 and elsewhere, which direct exporting States Parties to authorise arms exports only following a comprehensive assessment. To assess fully the legality of an envisaged arms export – and especially the risks of the arms being diverted – information on end-use and end-users would be needed.

Based on recent evidence from self-assessments published online by the ATT Baseline Assessment Project (ATT-BAP),⁵ several importing States may be able (and willing) to meet the requirements of Article 8.1. The ATT-BAP established that as of October 2014, 84 per cent of the 44 countries that had participated in the self-assessment reported having relevant national measures in place to ensure they can inform and otherwise assist an exporting State Party in its national export assessment. The ATT-BAP revealed interesting regional differences in levels of compliance. Only 44 per cent of the respondent sample from the Americas – where the large majority of States are primarily or solely arms importers – reported having relevant measures in place. This figure – far below ATT-BAP respondents from other regions – is intriguing, particularly in comparison with African respondents to the ATT-BAP assessment, where compliance is estimated to reach 80 per cent. This last figure may not be representative, however, as less than 10 per cent of Africa's nations participated in the ATT-BAP. However, these States do include an arms-exporting nation (South Africa), as well as several which primarily import conventional arms (mainly small arms and light weapons). The relatively high level of compliance by the sample of African nations does appear congruent with the fact that sub-regional instruments affecting import practices (such as the 2006 Convention of the Economic Community of West African States⁶) already obliged several African nations to provide for such measures before the ATT came into force.

The request for end-use and end-user documentation could become a universal practice if exporting States consistently make it a requirement of their export assessment procedures.

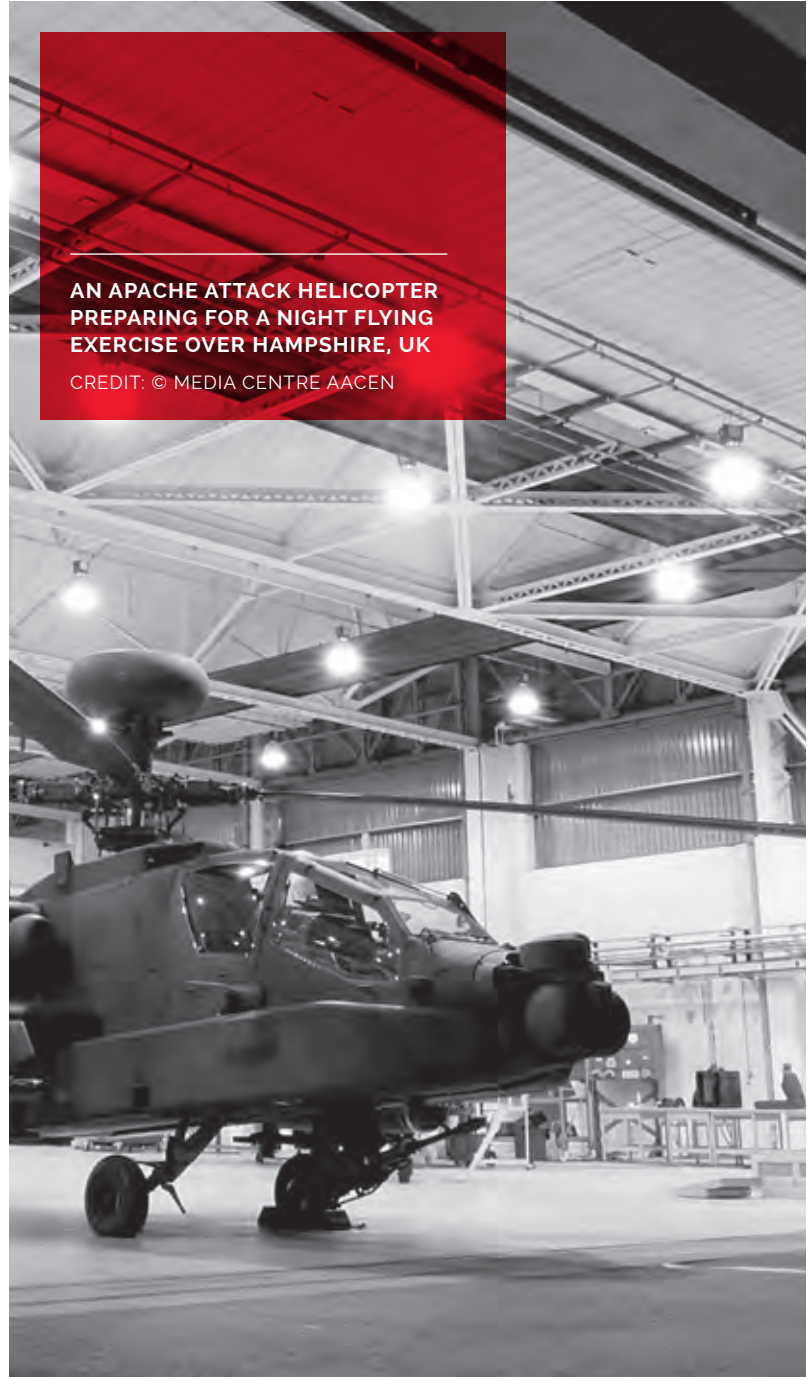
⁵ | ATT-BAP. October 2014. The ATT Baseline Assessment Project – Initial Finds and Current State Practice. Washington D.C.: Stimson Center, <http://www.armstrade.info/database>

⁶ | Economic Community of West African States (2006) Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials

NATIONAL REGULATION: A KEY ROLE

Article 8.2 obliges a State Party to take measures that will allow it to regulate imports of conventional arms under its jurisdiction. It indicates that this may be done by 'national import systems', which States Parties can develop from mechanisms they have in place or for which they may develop new mechanisms. The obligation is tempered by the phrase 'where necessary', suggesting that States have national discretion over whether and how to meet this obligation. Article 8.2 is also restricted to imports of arms covered under Article 2 and excludes ammunition, and parts and components, covered in Articles 3 and 4 respectively.

The ATT-BAP established that 91 per cent of the respondent countries reported having national legislation in place that allows them to regulate imports of conventional arms under their jurisdiction, in line with Article 8.2. Again, a slightly smaller proportion of countries from the Americas reported having relevant measures compared with the global aggregate. According to the collated results of the ATT-BAP, respondent countries grouped under Africa reported 100 per cent compliance with Article 8.2. However, a different appraisal of this level of compliance can be gleaned from baseline studies of 10 Francophone African nations, informed by field missions and desk reviews.⁷ Prior reports on arms control in some of these nations and of other countries on the African continent suggest a similar picture.⁸



**AN APACHE ATTACK HELICOPTER
PREPARING FOR A NIGHT FLYING
EXERCISE OVER HAMPSHIRE, UK**

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⁷ | *Groupe de recherche et d'information sur la paix et la sécurité* (GRIP) Mission reports 2014-15 (Côte d'Ivoire, Gabon, Mauritania and Niger) and case studies (2015) on Burkina Faso, Cameroon, Mali, Democratic Republic of Congo, Chad and Togo

⁸ | GRIP and Small Arms Survey (SAS). 2013. Final Report – Baseline Study for the African Union and EU project 'The fight Against the Illicit Accumulation and Trafficking of Firearms in Africa' and Annex II: Reports of country visits to Chad, Côte d'Ivoire, Democratic Republic of Congo, Kenya, Malawi, Rwanda, Somalia, South Sudan, Togo, Uganda and Zimbabwe



IMPORTERS AND EXPORTERS SHOULD IDEALLY TEAM UP AS RESPONSIBLE PARTNERS IN A GLOBAL ENDEAVOUR

The baseline studies revealed that these countries' import systems differ widely. They were seen to range from quite elaborate provisions (such as in Burkina Faso) to those which would result in far less impressive import control practices. While this may not be an obstacle per se, it is worth noting that in the majority of cases, the legal basis for these countries' arms transfer control practices pre-dates the ATT and, in many instances, relevant (sub-)regional conventions. In some cases, the systems in place are based on legislation devised in the first years after decolonisation or even earlier. For example, Chad ratified the ATT soon after it came into force, based on existing legislation that predates the Treaty by more than half a century. These baseline studies also show that pre-existing legislation tends to cover only a segment of the arms imported into the country, often excluding (among others) imports for use by government security forces. These cases suggest that the obligation set by Article 8.2 is being misinterpreted or implemented in a minimalist manner. Crucially, constructive interpretation of the phrase 'where necessary' may be key to establishing effective norms here.

TWO-WAY INFORMATION

The third and final paragraph in Article 8 asserts the right of each importing State Party to request information from the exporting State Party on any pending or actual import where it is the final country of destination, rather than a country of transit or transshipment. Article 8.3 does not create an obligation on any side, but it should be read in combination with other Treaty articles. Like Article 8.1, it concerns the relationship between importers and exporters of conventional arms. Ideally, these provisions (like several others in the ATT) will ensure importers and exporters team up as responsible partners in a global endeavour to detect and prevent unauthorised arms transfers or the diversion of legitimate imports.

The obligations and recommendations the ATT establishes on imports in Article 8 are not only goals in themselves. They are also instruments to help meet the principles and objectives of the Treaty, especially those that relate to restricting illicit trade and trafficking based on diversion from authorised transfers. The Article 8 import obligations are an important counterpart to the export and other obligations of the Treaty, and must be seen in that context. The transfer prohibitions defined by Article 6 in particular apply not just to exporting States Parties, but also to importing States Parties, as well as those where arms may be transited or transhipped. Importantly, the scope of Article 6 prohibitions also extends beyond the equipment of Article 8 (solely Article 2.1 goods) to include the ammunition, and parts and components, of Articles 3 and 4. With regard to Article 6, the effective implementation of Article 8 therefore requires wider and stronger measures than those suggested by a strict interpretation.

The deeper significance of the import measures put in place by States Parties under Article 8 will not be demonstrated by the extent to which those States meet the vague and minimal terms of the Treaty. Rather, it will be determined by the effectiveness with which States interpret these terms to balance and strengthen export and other types of transfer obligations across all relevant articles of the Treaty. This is especially so for Articles 6 and 7, but also Article 9 (transit and transshipment), Article 10 (brokering) and Article 11 (diversion), and the more technical aspects covered in Article 12 (record keeping) and Article 13 (reporting). Additionally, because all States Parties import weapons and the majority will likely be primarily weapons importers, the import obligations of the Treaty are important to both the universalisation and effective implementation of the ATT. Meeting the obligations for import may be the Treaty point of entry for many States Parties.



**AMMUNITION COLLECTED
FROM MILITIAS IN GUIGLO,
COTE D'IVOIRE**

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BEYOND SELF-REPORTING: MONITORING IMPLEMENTATION

Self-reporting by States Parties is not sufficient to fully assess the implementation of obligatory and other provisions of the ATT. Numbers and trends cannot be sufficiently documented from national reports. The quality of Treaty implementation is far more difficult to measure and can only partly be ascertained from the number of States Parties which tick boxes on minimum requirements, such as having legislation in place to meet the obligation of Article 8.2. (The legislation which some States claim meets this obligation is incomplete, unspecified, obsolete or all three.)

It is not enough merely to establish whether laws are in place that provide for the import requirements set out in Article 8. The effectiveness of these provisions, and progress towards improving them, should be monitored as well, for example, on the basis of reports on 'any new measures undertaken in order to implement this Treaty'. States Parties are obliged to communicate this to the Secretariat (albeit only when deemed 'appropriate'), according to ATT Article 13. Good practice documents, guidelines and other instruments used by States Parties but not referred to in the text of the Treaty have recently been analysed for their relevance to enable and improve implementation.⁹ States may also seek international assistance to improve their legislation and put more effective administrative procedures in place. Mechanisms for international cooperation and assistance are covered under Articles 15 and 16 of the Treaty. The latter also suggests areas where such assistance might be focused, who might provide it and mechanisms through which it might be carried out. As noted above, an early assistance mechanism for imports would be universal norms and standards for end-use and end-user certificates, as well as certification to verify deliveries, and mechanisms to ensure agreed norms are complied with.



**A SOLDIER FROM THE DEMOCRATIC
REPUBLIC OF CONGO (DRC) ARMED
FORCES STANDS GUARD AS A UN
HELICOPTER CARRYING A DRC
GOVERNMENT MINISTER LANDS
NEAR KANYABAYONGA COB IN
JUNE 2014**

CREDIT: © UN PHOTO / SYLVAIN LIECHTI

⁹ | Bauer, S. and Bromley, M. May 2015, Implementing the Arms Trade Treaty: Building on Available Guidelines and Assistance Activities – Stockholm International Peace Research Institute (SIPRI) Background Paper. Stockholm: SIPRI



For obligatory measures and voluntary provisions to be effective, detailed and qualitative monitoring of efforts to avoid illicit trafficking and diversion is needed. An inherent methodological problem is clear: it is notoriously difficult to ascertain and monitor 'what is avoided'; consequently such monitoring does not take place. However, part of the appraisal could be based on reports that States Parties are encouraged to make to other States Parties, through the Secretariat. These include measures taken to address the diversion of transferred conventional arms (Article 11.6), or other information provided by importers to help detection and possible prevention of irresponsible or illicit deals. For this, it is necessary that all States Parties accept they have a common target in preventing the supply of conventional arms to actors such as non-state groups, which may one day threaten their own territory.

It would also be useful in this respect to monitor the evolution of the assistance that States Parties afford one another in investigations, prosecutions and judicial proceedings related to violations of national measures established to implement the ATT. This is in line with Article 15.5 (on cooperation).

Although not on its own sufficient, national reporting by States Parties is key to monitoring implementation of the ATT import requirements. The accuracy and completeness of reporting on imports, which is implied in Article 13, would be a valuable indicator of the extent to which States Parties overcome their reluctance, in the name of national security, towards public reporting. The amount and value of the military equipment they import does reveal aspects of their military strength which not all would wish to disclose openly and unprompted. However, this sensitivity should not prevent them from complying with obligatory reporting on imports.

In addition, it would be useful to assess States Parties' practice of the voluntarily reporting which several other articles in the Treaty encourage, for example, on measures taken against illicit trafficking and to detect and avoid diversion of authorised arms transfers. All States Parties to the ATT, including those that solely or primarily import conventional arms, accept obligations to do whatever is within their competence, and capacity, to assist in reaching all of these Treaty objectives.