

CHAPTER 2.1

IMPLEMENTING THE ARMS TRADE TREATY: PRACTICAL APPLICATION IN SIX STATES

Since the ATT opened for signature in June 2013, a steady flow of States have signed and ratified the Treaty. As the expanding group of States Parties prepares for the first Conference of States Parties, it is time to look beyond the victories won so far. What does practical application of ATT provisions look like on a day-to-day basis? In an attempt to illustrate how very different the ways of enacting ATT provisions can be, the ATT Monitor has put together a snap-shot study of six States Parties: The Bahamas, Mexico and Panama from Latin America and the Caribbean, and Malta, Norway and Serbia from Europe.

The chosen States represent different sizes, regions and trade profiles. Norway and Serbia are exporters of conventional arms, while Mexico aspires to grow its trade in high-tech industries tangentially related to the defence sector. The Bahamas is primarily an arms importer, while Malta and Panama are located on key points in the international trade chain and are interesting from the transit and transshipment perspectives. In a number of ways, the challenges and opportunities that these six States Parties are experiencing as they strive to become Treaty-compliant will resonate strongly with the vast majority of the ATT States Parties and Signatories. All signed the Treaty in summer 2013,¹ but there are few other commonalities among them – although the three European states do share some procedures for handling the international trade in conventional arms through their membership or collaboration with the European Union (EU).

The EU Common Position on Arms Exports², and the EU Common Position on the Control of Arms Brokering, are two of these instruments.³ The eight basic criteria included in the EU Common Position on Arms Exports help guide licensing officers when evaluating a decision over whether to permit an export. These correspond well with the ATT requirements for export and export assessment under Article 7. The EU User's Guide for arms exports gives countries further advice and best practice on how to use the Common Position on Arms Exports, including how to submit the annual reports required.⁴ The EU Common Military list applies to 22 detailed categories of goods, technologies and related software,⁵ and goes well beyond the ATT requirements related to the scope of goods covered by Article 2.1, as well as Articles 3 (ammunition and munitions) and 4 (parts and components). The EU legislative package for trade controls on conventional arms precedes the ATT requirements and gives detailed instructions for the handling of export, transit and transshipment, and brokering. However, there is not yet any EU instrument that controls the importation of these goods.

¹ | The Bahamas, Malta, Mexico, Norway and Panama signed the treaty 3 June 2013. Serbia followed a few months later on 12 August 2013. United Nations Treaty Collection Chapter XXVI Disarmament Arms Trade Treaty, accessed 23 June 2015 https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-8&chapter=26&lang=en

² | European Union Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, accessed 15 June 2015: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>

³ | European Union Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering, accessed June 15, 2015: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:156:0079:0080:EN:PDF>

⁴ | Council of the European Union 9241/09 PESC 545 COARM 25 User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, 29 April 2009, accessed 15 June 2015: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209241%202009%20INIT>

⁵ | The most recent updated list is the European Union Council Common Military List of the European Union, adopted by the Council on 9 February 2015 (equipment covered by the Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment), accessed 15 June 2015: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_2015_129_R_0001&from=EN

Many ATT States Parties have chosen to report on their implementation through the ATT Baseline Assessment Project (ATT-BAP).⁶ The ATT Monitor has therefore specifically selected States for this exercise that had not provided open reports through the ATT-BAP. This avoids duplication and enables the study to complement the ATT-BAP and provide a slightly different perspective.

METHODOLOGY

The methodology for this survey rests on the articles of the ATT. It seeks to discover whether the State in question has the legal and institutional framework to address its obligations under the Treaty. Whether these systems are effective will be a consideration for future editions of the ATT Monitor.

The survey was conducted in layers. The first step was to find data directly correlating to a State's implementation of the ATT. Where that was not found, the next phase was to review the State's existing legal and institutional framework for instruments or entities that would ensure obligations under the Treaty are met. For example, if no openly available data can be found to corroborate that a State has put in place legislation to implement the ATT, is there existing legislation through which the State otherwise controls the international trade in conventional arms? A natural source of data was the respective countries' open-source regulatory records and the websites of relevant ministries and departments. The study primarily draws on open-source data available on the internet. Consideration has been taken of the fact that the data available might not be the most recent.

It is not possible to do justice to each of these States with just a cursory glance. Each country deserves a detailed study in its own right, but time constraints limited the depth of the data search. It was also a challenge to select a representative number of states. In the future the ATT Monitor hopes to conduct similar studies of countries from other regions of the world. The format of selecting a small number of states in a regional proximity will work well in other areas such as Asia-Pacific, South America, Northern Africa or Central Asia, for example. When the national reports on ATT implementation are made available, there will be a rich additional dataset to work with.

All six States have systems in place that cater or could cater to the ATT obligations. Some of their efforts can act as examples for others. This study aims to provide additional food for thought on implementation practices. It also illustrates how easy or difficult it is for legitimate traders to navigate the regulatory and institutional framework of a new trade partner, and reveals the access and capability of interested parties to monitor treaty implementation.

⁶ | Arms Trade Treaty Baseline Assessment Project, accessed 8 July 2015; <http://www.armstrade.info>



THE BAHAMAS USING BROAD DEFINITIONS OF GOODS



BACKGROUND

The Bahamas ratified the ATT on 25 September 2014, and was within the group of countries that triggered the Treaty's entering into force.⁷ The country is no major importer or exporter of conventional arms,⁸ but its location close to one of the world's major trade routes puts transit and transshipment concerns at the forefront, in particular with regard to illicit flows of small arms.⁹ Brokering issues are also relevant, considering The Bahamas' interests in the international banking sector.



REGULATORY APPROACH

There are a number of legal instruments¹⁰ that could potentially cater to The Bahamas' ATT obligations, but no evidence was detected indicating that specific ATT-related legislation has been instituted. However, the International Obligations (Economic and Ancillary Measures) Act of 1993 gives the Governor General the power to enact orders and regulations pursuant to The Bahamas' international obligations.¹¹

The Bahamas has a longstanding legal structure for controlling transfers of goods. The Bahamian Export Control Regulations Act gives the Minister of Finance broad authority to control export from and transshipment within The Bahamas. It also designates a competent authority to grant or deny permits, authorisations, licences or certificates to enable or restrict trade.¹² This law has a very broad definition of 'goods', covering anything capable of being exported from or transhipped within The Bahamas. In addition, it sets forward civil and administrative penalties in case of a violation of the law. The associated set of regulations further outlines what procedures should be followed or what goods are to be controlled. Conventional arms under the scope of the ATT are not present on these lists. The Bahamas also has a mirroring act and corresponding regulations controlling imports into the country. The Import Control Regulations Act shares the same type of broad definitions for goods as its export counterpart and it gives the Minister of Finance the mandate to act under the authority of the law.¹³

⁷ | 'Ratified and Signed', The Bahamas, The Arms Trade Treaty Negotiation Mapping Database, accessed 9 June 2015: <http://armstreaty.org/state/bahamas>

⁸ | Epps, K. 'CARICOM and the Arms Trade Treaty – Toward an effective convention', Project Ploughshares, May 2012, accessed 11 June 2015: http://ploughshares.ca/wp-content/uploads/2012/08/Caricom.ATT_Epps_1.pdf

⁹ | National Statement by The Hon. Frederick A. Mitchell, M.P. Minister of Foreign Affairs and Immigration of the Commonwealth of The Bahamas at the Sixty-Ninth Regular Session of United Nations General Assembly, 30 September 2014, United Nations, accessed 11 June 2015: <http://www.un.org/en/ga/69/meetings/gadebate/pdf/BS.en.pdf>

¹⁰ | The Bahamian Office of the Attorney-General and Ministry of Legal Affairs have made an online database of all current laws and regulations in The Bahamas. The database serves as an informational tool and is current as of December 2014. Please see: <http://laws.bahamas.gov.bs/cms/en>. The author used this tool for an overview of the country's legal framework, but acknowledges that The Bahamian authorities direct readers to the authoritative texts available in the Statute and Subsidiary Legislation of The Bahamas and in official gazettes printed by the government printing office.

¹¹ | Chapter 16 of The Bahamas Statute, The International Obligations (Economic and Ancillary Measures Act of 2 September 1993, Bahamas Laws On-Line, accessed 12 June 2015: http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1993/1993-0017/InternationalObligationsEconomicandAncillaryMeasuresAct_1.pdf

¹² | Articles 2 and 3 under Chapter 299 of the Statute of The Bahamas Export Control Regulations Act of 20 June 1955 and since then amended, Bahamas Laws On-Line, accessed 10 June 2015: http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1955/1955-0002/ExportControlRegulationsAct_1.pdf

¹³ | Chapter 298 Import Control Regulations Act of 20 June 1955 and since then amended, Articles 2-5 of Bahamas Laws On-Line, accessed 10 June 2015: http://laws.bahamas.gov.bs/cms/en/legislation/laws/by-title.html?view=acts_alpha



THE BAHAMAS AT-A-GLANCE

Import and export control legislation provides for a broad definition of goods. This method of casting a wide net gives the authorities the ability to control goods without the burden of a detailed control list. But it also introduces room for discrepancy, giving the system a level of unpredictability.

The 2013 Customs Management Act provides for extensive and detailed definitions of concepts such as import, export and transshipment. It also includes lists of prohibited and regulated goods, as well as record-keeping requirements,¹⁴ but there is no visible connection to requirements under the ATT.

Specific legislation is dedicated to some categories of conventional arms such as firearms. The Firearms Act¹⁵ regulates the sale, purchase, manufacture and import of specific firearms, as well as ammunition and some parts and components.¹⁶ Control of export, and a more detailed definition of parts and components, were among areas integrated under the law in the latest amendment in May 2014.¹⁷ However these changes were made primarily because of the obligations under the United Nations Convention against Transnational Organised Crime. The Firearms Act designates the Commissioner of Police with licensing responsibilities. Firearms dealers need to be registered in order to conduct business related to transfers and import. Some weapons and ammunition are prohibited, but on a limited scale,¹⁸ and all imported firearms must be deposited into specially appointed warehouses prior to distribution.¹⁹ Here, there is a link to the Customs Management Act, which designates Customs as a comptroller for the warehouses' operational activities.²⁰ The Bahamian Penal Code also has references to import restrictions on explosives, as well as sanctions for violations.²¹ However, the link to any of the ATT requirements remains very weak.



SNAP-SHOT ANALYSIS

There is no current evidence that points to The Bahamas establishing a specific national authority for the implementation of the ATT. The Customs Department or the Commissioner of Police could both be possible candidates, but there is no sign that they have been assigned this duty. There is a need for further transparency over The Bahamas' practical application and implementation of Treaty provisions. The country has a wealth of legislative and institutional tools, but how it will use these to accommodate the ATT requirements remains to be seen.

¹⁴ | Chapter 293 of the Statute of The Bahamas, The Customs Management Act of 2011, Article 70 (includes the 2013 amendments), Bahamas Laws On-Line, accessed 12 June 2015; http://laws.bahamas.gov.bs/cms/en/legislation/laws/by-title.html?view=acts_alpha

¹⁵ | Chapter 213 of The Bahamas Statute Firearms Act of 17 July 1969 and since then amended, Bahamas Laws On-Line, accessed 12 June 2015; http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1969/1969-0012/FirearmsAct_1.pdf

¹⁶ | Firearms Act Part I, Preliminary 2, Definition of ammunition and firearms (including parts and components)

¹⁷ | Firearms (amendment) Act 2014, 6 May 2014, Article 2, Bahamas Laws On-Line, accessed 12 June 2015; <http://laws.bahamas.gov.bs/cms/images/LEGISLATION/AMENDING/2014/2014-0010/FirearmsAmendmentAct2014.pdf>

¹⁸ | Firearms Act, Section 30

¹⁹ | Firearms Act Article 3.2

²⁰ | Customs Management Act Article 24.1

²¹ | Chapter 215 of The Bahamas Statute The Explosives Act



MALTA NAVIGATING MULTI-LAYERED REGULATIONS



BACKGROUND

Malta ratified the ATT on 2 April 2014.²² Like The Bahamas, the country is primarily focused on transit and transshipment issues, and is neither a major importer nor exporter of conventional arms. It is, however, a member of the European Union and part of the extensive regulatory framework for the control of conventional weapons exports which the EU has had in place since the late 1990s. Since 2005 the country has been a member of the Wassenaar Arrangement (WA) – the only multilateral export control regime that governs conventional arms.²³



REGULATORY APPROACH

Malta has national regulatory requirements in addition to its EU obligations to control exports, transit and transshipment, and brokering of conventional arms. The National Interest (Enabling Powers) Act gives the Maltese government the general legislative tools to implement international treaties to which Malta adheres.²⁴ Subsidiary legislation under this act correlates to the EU and UN sanctions regimes. This includes the Military Equipment (Export Control) Regulations outlining the Maltese control list aligned with the WA and EU lists, as well as record-keeping requirements, and sanctions and penalty provisions in case of violation.²⁵ The regulations also designate responsibility for issuing or denying licences to the Director for Trade.

Malta has established a legislative network and corresponding institutional framework to address its unique position between several of the world's major trade arteries, and to accommodate its role as an EU border state. The Customs Ordinance and its subsequent subchapters further provide a legislative framework for transfer control of conventional arms. They also prescribe penalties and sanctions related to violations of the act. Under Part IV Art 30.1 of the Ordinance, the import of arms, ammunition or other utensils of war which are not required for the Maltese armed forces must have a permit from the minister responsible for customs. Unlicensed import of these types of goods can be forfeited.²⁶

²² | Positions and Quotes 'Ratified and Signed', Malta, The Arms Trade Treaty Negotiation Mapping Database, accessed 9 June 2015: <http://armstreaty.org/state/malta>

²³ | Statement of the Plenary Chair of the Wassenaar Arrangement, 29 June 2005, Wassenaar Arrangement, accessed 12 June 2015: http://www.wassenaar.org/publicdocuments/2005/2005_newstates.html

²⁴ | Chapter 365, National Interest (Enabling Powers) Act, 3 August 1993 and since then amended, accessed 16 June 2015: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8835&l=1>

²⁵ | Subsidiary legislation 365.13 Military Equipment (Export Controls) Regulations of 1 January 2002 and since then amended, Government of Malta – Ministry for Justice, Culture and Local Government, accessed 16 June 2015: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10384&l=1>

²⁶ | Chapter 37, Customs Ordinance of 16 September 1909 and since then amended, Part IV, Art 30.1-2, Government of Malta – Ministry for Justice, Culture and Local Government, accessed 16 June 2015: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8596&l=1>



MALTA AT-A-GLANCE

With its broad definitions of key concepts and its comprehensive control lists, Malta's multi-layered legislative network for the control of transfers of conventional arms corresponds largely to the technical requirements for export, transit and transshipment, and brokering under the ATT. But it is opaque in the sense that there are several different instruments covering the same thing. It is also unclear how assessments are carried out or which institution has the lead.

The Exportation of Arms and Ammunition Regulations assign to the customs minister the authority to prohibit or regulate the export of 'arms, ammunition or other utensils of war, not required for the Armed Forces of Malta'.²⁷ These regulations also mandate inspection by Customs before a shipment leaves Maltese jurisdiction.²⁸ In addition, Malta has specific regulation for the control of exports of gunpowder,²⁹ while the Maltese Arms Act³⁰ and its subsequent regulations³¹ set up a system for the control of international transfers of firearms and related ammunition. The minister responsible for the police and the Commissioner of Police are the responsible authorities under this Act, with the Commissioner of Police issuing the licences. The Weapons Board, an advisory body, provides guidance to the Commissioner in licensing decisions,³² and the Customs Department provides additional necessary documentation.³³



SNAP-SHOT ANALYSIS

With its broad definitions of key concepts and comprehensive control lists, Malta's multi-layered legislative network for the control of transfers of conventional arms corresponds for the most part to technical requirements under the ATT. But the system is opaque in the sense that several different instruments appear to cover the same thing and it is unclear how assessments are carried out or which institution has the lead. This could be potentially confusing for actors unfamiliar with the Maltese system. It also makes it much harder to evaluate and monitor Malta's trade in conventional weapons. More transparency is recommended.

²⁷ | Customs Ordinance Part IV, Art. 30.3

²⁸ | Subsidiary Legislation 37.02 Exportation of Arms and Ammunition Regulations of 11 March 1910 and since then amended, Government of Malta – Ministry for Justice, Culture and Local Government, accessed 16 June 2015: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9134&l=1>

²⁹ | Subsidiary legislation 37.01 Exportation of Gunpowder Regulations, 17 December 1909, Government of Malta – Ministry for Justice, Culture and Local Government, accessed 16 June 2015: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9133&l=1>

³⁰ | Chapter 480 Arms Act of 15 August 2006, and since then amended, Government of Malta - Ministry for Justice, Culture and Local Government, accessed 16 June 2015: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8946&l=1>

³¹ | Subsidiary Legislation 480.2 Arms Licensing Regulations of 25 August 2006 and since then amended, Government of Malta – Ministry for Justice, Culture and Local Government accessed 16 June 2015: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11315&l=1>

³² | Arms Act Part X, Art 49-50

³³ | Malta – Report on implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons, Executive Summary 2010, United Nations Programme of Action Implementation Support System (PoA-ISS), accessed 16 June 2015: <http://www.poa-iss.org/CASACountryProfile/PoANationalReports/2010@122@PoA-Malta-2010.pdf>



MEXICO ENACTING UMBRELLA LEGISLATION



BACKGROUND

Mexico ratified the ATT on 25 September 2013.³⁴ Throughout the negotiations, it was a very strong promoter of the ATT and a driver in many of the issues involved.³⁵ The country has a growing high-tech industry and is making strides towards an expanding export market in high-value-added sectors related to the defence equipment industries.³⁶ It is also of interest from an import and transit perspective.

In recent years, Mexico has made significant changes to its strategic trade control system. Spurred primarily by its interest in joining some of the multilateral export control regimes – the Wassenaar Arrangement (WA) in particular – Mexico adopted a new legislative framework in 2011. On 25 January 2012, Mexico joined the WA as its 41st member, and as a result, is obliged to administer a control list for the trade in conventional arms that goes beyond the ATT categories of controlled goods.



REGULATORY APPROACH

Incoming and outgoing trade is primarily governed by the External Trade Law,³⁷ which gives the Ministry of the Economy the licensing function, in coordination with other ministries.³⁸ This ministry also manages the Import and Export General Tariff Act (LIGIE), which contains tariff codes for items under control using a similar coding system to that of the World Customs Organisation. Chapter 93 of the LIGIE covers conventional arms, and these codes are used in the licensing process.³⁹ Mexico links its trade control lists to the customs' nomenclature and general tariff numbers,⁴⁰ a fact that potentially offers guidance for other countries attempting to merge their trade control obligations with their day-to-day trade management.

³⁴ | Positions and Quotes 'Ratified and Signed' – Mexico, The Arms Trade Treaty Negotiation Mapping Database, accessed 9 June 2015: <http://armstreaty.org/state/mexico>

³⁵ | Statement at the United Nations Diplomatic Conference on the Arms Trade Treaty delivered by Dr. Roberto Dondisch Glowinski, Chief Negotiator of Mexico on 5 July 2012, United Nations, accessed 9 June 2015: http://www.un.org/disarmament/ATT/statements/docs/20120705/Member%20States/20120705_Mexico_E&S.pdf

³⁶ | Hernandez O., Emiliano C. and Morales P.F.G., "A milestone in Mexico's export control evolution", Center for International Trade & Security at The University of Georgia 1540 Compass, Issue 3 Spring of 2013, accessed 18 June 2015: <http://cits.uga.edu/uploads/compass/03-07-ochoa.pdf>

³⁷ | The External Trade Law (*Ley de Comercio Exterior*) adopted on 27 July 1993 and since then amended, Chamber of Deputies (Mexico), accessed 18 June 2015: <http://www.diputados.gob.mx/LeyesBiblio/pdf/28.pdf>

³⁸ | External Trade Law, Chapter 2

³⁹ | The Import and Export General Tariff Act (*Ley de los Impuestos Generales de Importacion y de Exportacion* – LIGIE) adopted on 18 June 2007 and since then updated, Chamber of Deputies (Mexico), accessed 18 June 2015: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LIGIE.pdf>

⁴⁰ | Hernandez O., p 24



MEXICO AT-A-GLANCE

The Mexican experience of establishing an umbrella style of non-proliferation legislation for its strategic trade control system makes it adaptable to the requirements of the ATT by tying in existing mechanisms. This way of building an overarching mechanism to bridge existing institutions could be of use in other countries.

Trade in conventional arms is also covered by the Federal Law on Firearms and Explosives and its subsequent regulations. The law states that all weapons, munitions and material exclusively intended for warfare is for the sole use of the Army, Navy and Air Force. Civilians are prohibited from handling, as well as trading in, weapons of a certain calibre and size. It also designates the Ministry of National Defence as the authority to issue import and export permits.⁴¹ Under the Customs Act, Customs also has a role to play beyond its enforcement function, as it contributes to list updates.⁴²

Mexico's recent reforms crystallised into the adoption of a new overarching decree on 16 June 2011. This is anchored to the External Trade Law and institutes a general control mechanism for licensed trade in conventional arms, as well as dual-use goods (those which can be used both for a civilian and a military purpose). In addition to a broad definition of the goods under control and a comprehensive list of actions covered, the decree contains requirements for record-keeping and a process for the revocation of licences.⁴³ It also establishes the National Committee for Export Control, which brings together all of Mexico's licensing agencies.⁴⁴



SNAP-SHOT ANALYSIS

Mexico's efforts to reform the national trade control system over the last three years have, albeit not primarily, focused on ATT implementation. This is the indirect consequence of Mexico having the practical tools for reform (through membership of export control regimes) and it provides a good foundation to build on. The inter-agency communication strategies through the National Committee and the umbrella-style legislation could go a long way to meeting the ATT requirements, but a more clearly stated intent that the tools are intended for ATT purposes would be useful.

⁴¹ | The Federal Law on Firearms and Explosives (*Ley Federal de Armas de Fuego y Explosivos*) adopted 11 January 1972 and since then amended, art 8-9, 11, Chamber of Deputies (Mexico) accessed 18 June 2015: http://www.diputados.gob.mx/LeyesBiblio/pdf/102_220515.pdf

⁴² | Customs Law (*Ley Aduanera*), adopted 15 December 1995 and since then updated, Chamber of Deputies (Mexico), accessed 18 June 2015: http://www.diputados.gob.mx/LeyesBiblio/pdf/12_291214.pdf

⁴³ | Directive subjecting to the requirement of a prior permit by the Ministry of the Economy for export of arms, parts and components thereof, dual-use goods, software and technologies likely to be misused for the proliferation and manufacture of conventional arms and weapons of mass destruction, adopted 16 June and since then amended, Chamber of Deputies (Mexico) accessed 18 June 2015: http://www.diputados.gob.mx/LeyesBiblio/dof/2011/jun/DOF_16jun11.pdf

⁴⁴ | The following agencies currently participate in the Committee: Ministry of Economy (the primary institution for licensing), Ministry of National Defense, Ministry of Foreign Relations, Ministry of Energy, National Commission for Nuclear Safety and Safeguards, Ministry of Health, Federal Commission for Protection against Public Health Risks, Ministry for the Environment and Natural Resources, Ministry for Property and Public Credit, Tax Service Administration, Ministry of the Interior, Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food



NORWAY PIONEERING ARMS CONTROL



BACKGROUND

Norway ratified the ATT on 12 February 2014.⁴⁵ Throughout the Treaty negotiations, it was one of the ATT's strongest advocates and has remained actively engaged in a number of issues related to the Treaty's effective implementation. It has a sizeable defence industry⁴⁶ and exports to a broad range of countries.⁴⁷ It also imports military equipment and contributes as a member to different NATO operations. In recent decades, Norway has built a comprehensive strategic trade control system, and it collaborates with international, regional and bilateral partners to ensure its effective implementation. The country has also issued an annual report to parliament since 1996 covering national strategic trade control policies, as well as statistical data on transfers.⁴⁸ Norway was one of the founding members of the Wassenaar Arrangement and has therefore, like Malta and Mexico, incorporated various mechanisms for export control available under the arrangement. These include guidelines, information on best practice and detailed control lists for military goods, technologies and software.



REGULATORY APPROACH

In the Norwegian system, exports of strategic goods are controlled under the Export Control Act⁴⁹ and its corresponding regulations.⁵⁰ The decision to put in place export control mechanisms goes back as far as 1959.⁵¹ Strategic goods, services and technologies can only be exported from Norway with a licence from the Ministry of Foreign Affairs, and only if the transfer follows Norwegian security and defence policies. The Norwegian government has therefore issued a set of specific guidelines related to the export procedures for defence-related goods, technologies and services.⁵² Norway has also aligned itself to the EU Common Position on arms exports, whose eight criteria are therefore applicable in the Norwegian export licensing system and incorporated into the guidelines. In the most recent revision of the Norwegian guidelines, from 28 November 2014, specific reference to the ATT was added. Article 6 on Prohibition and Article 7 on Export and Export Assessment are now explicitly referenced in those sections that cover how a licence should be assessed, granted or refused. For instance, under the guidelines Article 2.3.e, ATT Article 6 is referred to as grounds for a licence refusal if 'knowledge is available at the time of authorisation that the arms or items would be used in the commission of genocide, crimes against humanity or war crimes'.⁵³

⁴⁵ | List of ATT State Parties, Norway, Control Arms, accessed 9 June 2015: <http://controlarms.org/en/universalization-tracker/>

⁴⁶ | Defence and Security by Norway Exports, Nortrade, accessed 19 June 2015: <http://www.nortrade.com/sectors/publications/norway-exports/>

⁴⁷ | Between 2010-2014 Norway ranked 16 among the world's top arms exporters, according to the Stockholm International Peace Research Institute, SIPRI, accessed 19 June 2015: http://www.sipri.org/googlegmaps/2015_of_at_top_20_exp_map.html

⁴⁸ | Norwegian Annual Report to Parliament (Stortinget) No 8, Regjeringen, accessed 19 June 2015: <https://www.regjeringen.no/no/dokumenter/Meld-St-8-20142015/id2342492>

⁴⁹ | Export Control Act No. 93 adopted 18 December 1987 and since then amended, Lovdata, accessed on 19 June 2015: <https://lovdata.no/dokument/NL/lov/1987-12-18-93>

⁵⁰ | Regulations on Export of Defence Equipment, Dual-Use, Technologies and Services no 718 adopted 19 June 2013 and since then amended, Lovdata, accessed 19 June 2015: <https://lovdata.no/dokument/SF/forskrift/2013-06-19-718>

⁵¹ | Norwegian Annual Report to Parliament (Stortinget) No 8, page 10

⁵² | Guidelines of 28 February 1992 for the Ministry of Foreign Affairs when dealing with applications concerning the export of defence-related products, as well as technology and services for military purposes, most recent revision from 28 November 2014, Regjeringen, accessed 19 June 2015: <https://www.regjeringen.no/no/tema/utenrikssaker/Eksportkontroll/om-eksportkontroll/lovgivning/id2008484>

⁵³ | Guidelines Article 2.3.e in English translation



NORWAY AT-A-GLANCE

The Norwegian authorities have integrated the prohibitive and assessment mechanisms under the ATT into what they are already doing. This way of infusing the ATT into daily work could serve as guidance for other countries with established systems that have yet to integrate the ATT requirements in a more specific way.

The regulations related to the Export Control Act have two primary national control lists. The first contains 20 broadly defined categories of goods such as arms, ammunition, other military equipment and components and related technologies. The second list covers dual-use goods. Norway also has a specific way of dividing controlled military goods into two special categories intended to indicate their possible use. Category A includes arms, ammunition, certain types of military equipment and components. It also covers equipment with the strategic capacity to influence the military balance of power beyond the immediate vicinity. Category B includes other defence-related products which could not be used the same way as goods in category A.

Norway also uses a system of country groups to determine suitable end destinations. The first and second categories include countries to which shipments of Category A items are allowed. The third group of countries cannot receive shipments of goods under Category A, but can after an assessment receive goods in Category B. The final group of countries cannot receive goods in Category A or B. When necessary, the Ministry of Foreign Affairs can consult with the Ministry of Defence on technical and other matters.

Norway has also established specific legislation catering to the control of small arms and light weapons (SALW). The Ministry of Foreign Affairs is the country's point of contact for SALW issues related to the UN Programme of Action for SALW.⁵⁴ The Firearms and Ammunition Act sets in place a control system for possession, purchase, trade and import of SALW, with the Ministry of Justice and Public Service as the responsible authority. The law does, however, exclude firearms intended for the armed forces or the police, as well as their part and components.⁵⁵ The Ministry of Defence is mandated to supervise the procurement of defence equipment for the armed forces according to the Law on Public Procurement and the specific Regulatory Framework for Procurement for the Defence Sector.⁵⁶ There currently appears not to be any additional import control in the Norwegian system that would correspond to the ATT provisions on import control.



SNAP-SHOT ANALYSIS

Norway has an established trade control system for conventional weapons, based on principles of non-proliferation. The recent adaptation of its licensing guidelines is infused with the spirit and purpose of the prohibition in Article 6 of the ATT and the export assessment required by Article 7. The Norwegian system provides a platform that fits well with full and comprehensive implementation of the ATT and is possibly adaptable to additional stronger instruments, for instance, related to import control.

⁵⁴ | Norway National Report to the UN Programme of Action on Small Arms and Light Weapons 2014, United Nations Programme of Action Implementation Support System (PoA-ISS), accessed 19 June 2015: <http://www.poa-iss.org/CASACountryProfile/PoANationalReports/2014@148@2014-PoA-ISS%20Norway-E.pdf>

⁵⁵ | Act no. 1 of 9 June 1981 Relating to Firearms and Ammunition (Firearms Law), English translation available at: <http://www.ub.uio.no/ujur/ulovdata/lov-19610609-001-eng.html> (*Lov om skytevåpen og ammunisjon m.v. (våpenloven) nr 1* adopted 9 June 1961 and since then amended, Lovdata, accessed 19 June 2015: <http://www.lovdatab.no/all/hl-19610609-001.html>)

⁵⁶ | Act on Public Procurement, adopted 16 July 1999 and since then amended, Lovdata, accessed 19 June 2015: <https://lovdatab.no/dokument/NL/lov/1999-07-16-69>, and Regulatory Framework for the Procurement for the Defence Sector, adopted 25 October, accessed 19 June 2015: <https://lovdatab.no/dokument/INS/forskrift/2013-10-25-1411/'#>



PANAMA USING EXISTING TOOLS



BACKGROUND

Panama ratified the ATT on 11 February 2014.⁵⁷ Transit and transshipment issues are at the forefront for this country situated on one of the world's most important trade routes. It is of particular interest in light of the ongoing expansion project for the Panama Canal.⁵⁸ The canal management falls under the Panama Canal Authority. Panama is also host to the Colon Free Zone, the second largest duty-free zone in the world after Hong Kong.⁵⁹ Panama neither imports nor exports conventional weapons in large quantities, nor does it produce arms.



REGULATORY APPROACH

Under the Panamanian Constitution it is only the government that can possess arms and so-called implements of war.⁶⁰ Panama does not have an army, and protection of life and property is a police responsibility.⁶¹ The import and export of arms and implements of war require permission from an Executive Authority. The same article of the Constitution also indicates that the import of arms that are not considered arms of war shall be defined and regulated by law, but it does not mention export, brokering or transit.⁶²

General trade and industrial policies are formulated, coordinated and implemented by the Ministry of Trade and Industry and are governed by a framework of legislation.⁶³ The ministry has several different vice-ministries, one of which – the Vice Ministry of International Trade Negotiations and its National Directorate of Administration of International Trade Treaties and Trade Protection – has responsibility for ensuring the proper implementation of trade treaties and agreements which Panama has ratified.⁶⁴ This office could potentially have a role to play with ATT implementation, but no open-source data has been found to support that assumption.

⁵⁷ | United Nations Treaty Collection, Chapter XXVI, Disarmament ATT, Panama, United Nations, accessed 23 June 2015: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mdsg_no=XXVI-8&chapter=26&lang=en

⁵⁸ | Panama Canal Expansion Project, accessed 24 June 2015: <http://www.pancanal.com/eng/expansion>

⁵⁹ | "About the Colon Free Zone", accessed 23 June 2015: <http://colonfreezone.com/about-the-colon-free-zone>

⁶⁰ | *Constitución Política de la República de Panamá* of 15 November 2004, Article 312, accessed 25 June 2015: <http://pdba.georgetown.edu/Constitutions/Panama/vigente.pdf>

⁶¹ | *Constitución Política de la República de Panamá*, Art. 310

⁶² | *Constitución Política de la República de Panamá*, Art. 312

⁶³ | World Trade Organisation, Trade Policy Review Report by the Secretariat on Panama, 18 June 2014, page 27, accessed 25 June 2015: https://www.wto.org/english/tratop_e/tpr_e/s301_e.pdf

⁶⁴ | *Decreto Ejecutivo N°46* (14 July 2008) *Por el cual se reglamenta el Decreto Ley N°6 de 15 de febrero de 2006, que reorganiza el Ministerio de Comercio e Industrias y dicta otras disposiciones*, Art. 103, accessed on 25 June 2015: http://www.mici.gob.pa/imagenes/pdf/decreto_ejecutivo_no_46_de_2008.pdf



PANAMA AT-A-GLANCE

Panama does not yet have a comprehensive strategic trade control system in place that could fully implement the ATT, apart from a general prohibitive legislative framework with regards to larger weapons categories. However, work in recent years to elevate awareness of the need to address trade control from a non-proliferation perspective led to the recent successful seizure of arms illegally destined for North Korea. Awareness of, and the ability to use, existing tools that the Panamanian authorities had at their disposal was essential.

Arms that are not considered implements of war are under licensing requirements by the Ministry of National Security. Law No 57 on Conventional Arms and Related Materials regulates a range of activities, such as the import and brokering of firearms, ammunition, parts and components that cannot be considered implements of war within Panama's territory.⁶⁵

Panama has stated that an interagency collaborative programme is in place under the responsibility of the General Customs Authority. Among other tasks, this supervises the control of goods, substances, products, technologies or software which are subject to international embargo, non-proliferation, controlled trading or prohibition regimes. Whether this interagency programme incorporates ATT requirements specifically has not been possible to verify.⁶⁶ However, Panama has recently taken action over a shipment of illicit arms. In July 2013 it successfully interdicted a Cuban shipment of military aircraft and spare parts destined for North Korea, in violation of the UN arms embargo. The ship was later released to Cuba, but some of the crew members were detained to face arms trafficking charges.⁶⁷



SNAP-SHOT ANALYSIS

It is unclear whether the upcoming ratification of the ATT was behind the Panamanian decision to stop the shipment of arms to North Korea. It is, however, indicative of the authorities' ability to act, even in smaller countries with limited trade in conventional arms, if there is awareness of the need for control for non-proliferation purposes. However, improved control mechanisms for all types of transfers, and increased transparency and information sharing, will be needed to fully implement the ATT. These will also enable the authorities to monitor the trading community that uses the essential global trade route that passes through Panama.

⁶⁵ | *Ley 57 General de armas de fuego, municiones y materiales relacionados*, 27 May 2011, accessed 25 June 2015: http://200.46.254.138/legispan/PDF_NORMAS/2010/2011/2011_583_0419.PDF

⁶⁶ | Addendum to the UNSCR 1540 National Report by Panama, 24 September 2013 United Nations, accessed 25 June 2015: <http://www.un.org/en/sc/1540/national-implementation/national-reports.shtml>

⁶⁷ | "N. Korean ship seized with Cuban weapons returns to Cuba", Reuters, 15 February 2014, accessed 23 June 2015: <http://www.bbc.com/news/world-latin-america-26210187>



SERBIA THE PROCESS OF REFORM



BACKGROUND

Serbia ratified the ATT on 5 December 2014.⁶⁸ The country is an importer as well as an exporter of conventional arms, and is also relevant from the transit and transshipment perspectives. Since the regional conflicts in the 1990s, the Serbian defence equipment industry has grown, with its main defence exporter now trading with approximately 40 countries.⁶⁹ Serbia officially started the EU accession process in January 2014.⁷⁰ This means it will have to adopt and adhere to the relevant EU legislative package. It has already integrated the EU Common Position on Arms Exports into its legislation.



REGULATORY APPROACH

The primary legislation for controls of international transfers of conventional arms is the Law on Export and Imports of Arms and Military Equipment, updated in October 2014. The law offers a comprehensive approach to all types of transfer activities. It defines the concepts of exports and imports, arms brokering and the control of services, and outlines the manner and conditions in which these activities can be performed. It also covers responsibilities and procedures for licensing exports, imports, transport and transit. The law and its dual-use related equivalent aim to put in place an efficient control system to ensure that Serbia's international commitments are met and the country's security, foreign policy and economic interests – as well as international credibility and integrity – are protected.⁷¹ Serbia recently reformed its strategic trade control system to align itself with common practice within the EU, where member states usually have a legislative format that covers military equipment and dual-use goods in two separate legal instruments. Prior to this, Serbia had one unified legislation for the control of both military goods and dual-use products. The country has also adopted a set of bylaws in relation to the new law. These include the National Control List of Arms and Military Equipment⁷² and the Decision on Licensing Criteria for Exports of Weapons, Military Equipment and Dual-Use Goods.⁷³

⁶⁸ | United Nations Treaty Collection, Chapter XXVI, Disarmament ATT, Serbia, United Nations, accessed 23 June 2015; https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-8&chapter=26&lang=en

⁶⁹ | 'Inside Serbia's booming arms industry', Radio Free Europe Radio Liberty, 28 May 2013, accessed 25 June 2015; <http://www.rferl.org/media/photogallery/24998852.html>

⁷⁰ | 'Serbia – membership status', European Neighborhood Policy and Enlargement Negotiations, European Commission, accessed 25 June 2015; http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index_en.htm

⁷¹ | Law on export and import of arms and military equipment, Official Gazette of RS No 107/14 of 16 October 2014 – referred to in the 2013 report on performed activities of exports and imports of arms, military equipment and dual-use goods, arms brokering and technical assistance, page 11, Republic of Serbia Ministry of Trade, Tourism and Telecommunications, accessed 25 June 2015; <http://www.seesac.org/res/files/publication/941.pdf>

⁷² | The Decree on Establishing the National Control List of Arms and Military Equipment, Official Gazette of Republic of Serbia, No 76/14, referred to in the 2013 Annual Report, page 10.

⁷³ | The Decision on Licensing Criteria for Exports of Weapons, Military Equipment and Dual-use Goods, Published in the Official Journal of Serbia and Montenegro, No.11/05 and brought in line with EU Code of Conduct on Arms Exports, referred to in the 2013 Annual report, page 10



SERBIA AT-A-GLANCE

Although primarily focused on future EU accession, Serbia's recent regulatory reform builds a basis for control that has ATT-related principles at its core. It also has a scope that is comprehensive not only in terms of products, but also of activities.

Serbia has established a three-phase system for activities such as import, export, brokering and technical assistance related to weapons, military equipment and dual-use goods. It starts with a registration process for legal entities and businesses engaged in these activities, with a rulebook to aid the authorities in how to keep this register.⁷⁴ The second phase is the licensing stage, through which individual licences are issued for every transfer. The final phase is dedicated to control and monitoring of the system.⁷⁵

The Ministry of Trade, Tourism and Telecommunications is the primary authority with regards to the control of foreign trade and the export and import control of arms and military equipment, on approval from the Ministry of Defence.⁷⁶ Regarding transit there are two different licensing authorities. The transit of arms and military equipment by land or water is licensed by the Ministry of the Interior, while licences for transport and transit by air are issued by the Directorate of Civil Aviation. Both institutions need approval from the Ministries of Foreign Affairs and Defence.⁷⁷

Serbia issues a public annual report on its strategic trade control system, including statistical data. Traders are obliged to report to the related ministry on relevant transactions, including deliveries made. The ATT is mentioned in the most recent annual report, but EU accession appears to be the overriding priority for the country's reform efforts. However, the purpose and goals set within the new control structure could also serve the ATT principles and purpose – for instance, the eight criteria in the EU Common Position on arms exports and the additional national criteria. However, this is not openly stated.

Serbia also has additional regulatory instruments to control transfers of conventional arms, such as the Customs Law⁷⁸ and the Law on Arms and Ammunition.⁷⁹ However, the trade transfer control for non-proliferation-related purposes is firmly established in the new law of 2014.



SNAP-SHOT ANALYSIS

Serbia is well on its way to operating a comprehensive strategic trade control system that could address all the requirements under the ATT. Like Norway, it has a publicly available list of assessment criteria that are used in the export decision-making process. That level of transparency and the subsequent expectation of compliance that the Serbian authorities look for will be essential to enable the country to communicate strategically with its growing and trade-orientated defence industry. It will also keep it in compliance with Serbia's obligations under the ATT.

⁷⁴ | "Rulebook on the Manner of Keeping the Register of Entities Licensed to Perform Exports and Imports of Arms and Military Equipment, Arms Brokering and Technical Assistance, Official Gazette of the Republic of Serbia", No. 28/15, referred to in the 2013 Annual Report, page 15

⁷⁵ | 2013 Annual Report, page 15

⁷⁶ | "Responsibilities of the Ministry", Republic of Serbia Ministry of Trade, Tourism and Telecommunications, accessed 25 June 2015: <http://mtt.gov.rs/en/ministry/responsibilities-of-the-ministry/>

⁷⁷ | 2013 Report on performed activities of exports and imports of arms, military equipment and dual-use goods, arms brokering and technical assistance, Republic of Serbia Ministry of Trade, Tourism and Telecommunications, accessed 25 June 2015: <http://www.seesac.org/res/files/publication/g41.pdf>

⁷⁸ | 2013 Report, Page 12

⁷⁹ | Republic of Serbia, Law on Arms and Ammunition, Official Gazette of the Republic of Serbia, No. 9/92, 53/93, 67/93, 48/94, 44/98, 39/03, 85/05-other law, 101/05-other law, 27/11-US decree and 104/13; available in English translation, accessed 10 July 2015: <http://www.seesac.org/res/files/failovi/g97.pdf>



ALL STATES WOULD BENEFIT FROM BEING MORE OPEN AND TRANSPARENT ON THE COMPLIANCE EXPECTED FROM THEIR ARMS INDUSTRY WITH REGARDS TO THE ATT



THE VALUE OF DRAWING ON RESOURCES THAT ALREADY EXIST AND BUILDING ON THEM IS PERHAPS THE MOST IMPORTANT LESSON FROM THIS STUDY

CONCLUSION

It is still early in the ATT's lifetime to determine its true impact on the daily work of the selected group of six States Parties – as well as all existing and future States Parties to the Treaty. It will soon become evident how States themselves depict their compliance and daily interaction with the Treaty. However, a snap-shot review like this study reveals how hard it can be to see clearly or find the mechanisms that States use to implement the ATT. Legal traditions, institutional practices and language differ from country to country, while trade very often follows the same procedures. Even by following the path of a legitimate trader, it is still hard to work out what to do and how to do it correctly – and this may require time, which not everyone is prepared to take. Public reporting and outreach strategies will remedy this opacity, but all States would benefit from being more open and transparent on the compliance expected from their arms industry with regards to the ATT.

So far, there are few known cases where ATT provisions have been used as basis for a denied transfer. This will be a question that recurs in future editions of the ATT Monitor. However, in looking at what some States have done to comply with the Treaty, it appears that some parts of it are easier to adapt to than others. For instance, establishing a comprehensive scope of products and activities, or detailed procedures for licensing and reporting, are not difficult. Other concepts are more complicated and require more established common practices to be developed. For example: risk mitigation, covered by ATT Articles 7.2 and 7.3 on Export and Export Assessment; diversion, covered by Article 11, and how to address in practical terms issues such as gender-based violence (Article 7.4).

All the countries in this study would benefit from providing more information to their trading community. Information needs to be readily available on how licensing or restrictions are decided. This is particularly important in States where multi-layered legislation and procedures are in place, and the absence of a clear lead agency increases the risks for overlap and gaps. In an ever-faster moving trade environment, opacity in the rules and who will apply them opens the risk of involuntary non-compliance. Only two countries in the study have made reference to the ATT in the governing documents that are available in open sources. However, all States have some kind of trade control framework in place that could be used if the dots are connected. The value of drawing on resources that already exist and building on them is perhaps the most important lesson from this study. For the ATT to work in reality, the tools States put in place need to have real-life applicability.⁸⁰

⁸⁰ | 2013 Report, page 16