

## CHAPTER 2.2

### THE ATT BASELINE ASSESSMENT PROJECT AND INITIAL ATT MONITORING

#### INTRODUCTION:

Unlike the Mine Ban Treaty or Convention on Cluster Munitions, the success of the Arms Trade Treaty (ATT) cannot be measured in stockpile thresholds or the elimination of weapons systems. Instead, success of the ATT depends on regulations and procedures to ensure that arms are transferred legally and responsibly, only after due attention has been paid to potential negative consequences of particular transfers.

The Arms Trade Treaty Baseline Assessment Project (ATT-BAP) was established in July 2013 to assist States in understanding their obligations under the ATT. It also measures effective Treaty implementation through an ATT-Baseline Assessment Survey, distributed in early 2014. The survey enables States to assess how their current arms transfer control system measures up against the obligations outlined in the ATT. Its contents are drawn directly from provisions contained in the ATT and its was developed with input from States and other Treaty stakeholders. Sixty States Parties had completed surveys by 10 July 2015.

This chapter focuses on the results of the ATT-BAP and highlights how the survey data can be used to identify key trends in Treaty implementation, as well as to identify gaps, needs, resources and good practice for implementing the ATT. It also examines the ways in which the ATT-BAP and the survey have been used to support other regional and international implementation efforts, and how this could potentially relate to future ATT implementation.



**THE SURVEY ENABLES STATES TO ASSESS HOW THEIR CURRENT ARMS TRANSFER CONTROL SYSTEM MEASURES UP AGAINST THE OBLIGATIONS OUTLINED IN THE ATT**

#### USING THE SURVEY DATA

Completed ATT-BAP surveys provide a baseline against which to chart and determine the progress being made as States implement the ATT. Establishing this baseline allows for implementation projects to be more targeted and efficient. In addition, although the ATT-BAP database contains information as it is provided by survey respondents and does not include interpretation or analysis, lessons can be learned from the data. These include appropriate sources of information, the development of good practice, or the identification of challenges to effective implementation.

The ATT-BAP database provides an at-a-glance baseline assessment of current ATT implementation. As of 10 July 2015, 49 of the current 69 States Parties had completed and submitted an ATT-BAP survey. This allows those interested in ATT implementation to make useful comparisons and identify trends in implementation. Nine signatories and two non-signatories have also completed the survey, which demonstrates how States are preparing for accession to the Treaty.

## CURRENT IMPLEMENTATION TRENDS

### NATIONAL CONTROL SYSTEM AND LIST

The most basic requirement of the Treaty is to maintain a national control system. Of the 60 surveys completed, 56 States indicated that they have national control systems for controlling or regulating arms exports, 55 for arms imports, 53 for regulating transit or transshipment under their jurisdiction or across their national borders (by land, sea or air) and 49 for controlling brokering.

At the most basic level, most States do claim to have a national control system. Those that did not answer affirmatively generally left the answer blank, rather than answering no (though some States did report 'no' on their national control systems). This demonstrates that fundamentally, States do have the capacity to have some sort of control system. The details of that system, however, may vary from country to country or region to region.

Completed ATT-BAP surveys also reveal that a majority of State respondents have national control lists that cover conventional arms exports, imports, transit or transshipment, and brokering. Forty-nine States have national control lists in place for helping regulate arms exports, and 46 States have national control lists for arms imports. Additionally, 48 respondents stated that they have national control lists for transit and transshipment. Forty-seven States noted that they maintain a national control list for brokering activities.

National systems rely on existing multilateral regimes to develop their national control lists.<sup>1</sup> For harmonisation it is far easier for States to adopt existing control lists than to develop their own. National control lists do have to be updated over time. Relying on existing lists allows the list to be updated by technical experts who study new technologies and systems. Some ATT-BAP survey respondents provided additional details on their control lists. For example, many European States reported that they use the European Union Common Military List to define the items listed in their national control lists. Many others report that they use the Wassenaar Arrangement control list and UN Register of Conventional Arms categories to form their national control lists.

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<sup>1</sup> | A National Control List will itemise all the military or dual-use items that require export authorisation. (Dual-use items are those which can also serve a non-military purpose.) To meet the ATT requirements, these lists must include all the items identified in Article 2 (Scope), Article 3 (Ammunition/Munitions) and Article 4 (Parts and Components) of the Treaty.



**TRANSHIPMENT SEEMS TO BE AN AREA REQUIRING ADDITIONAL WORK TO ENSURE THAT IT IS ADEQUATELY ADDRESSED WITHIN NATIONAL CONTROL SYSTEMS**

### MEASURES TO CONTROL EXPORTS

The ATT is often understood to be primarily an export control treaty. Indeed a high percentage of survey respondents (53 States) have established arms export regulations in national legislation. However, only 45 States reported that they take measures to ensure that all export authorisations are detailed and issued prior to export as part of this legislation. Ten respondents did not answer the question, probably indicating a lack of knowledge about the national export control system, as only five respondents indicated that no such measures were taken.

### MEASURES TO REGULATE IMPORTS, TRANSIT AND TRANSHIPMENT, AND BROKERING

As more States are importers rather than exporters of weapons, it was no surprise that the number of States that have established arms import regulations in national legislation was higher, at 54.

Fifty States noted that arms transit or transshipment is established in their national legislation. However, the breakdown of measures to control transshipment by land, sea and air varied. For example, 52 States have national systems in place for controlling transit or transshipment by land, while 45 have systems in place to control them by sea and 43 have systems for controlling them by air. Interestingly, nine States do not control transit or transshipment in their national legislation. Transshipment therefore seems to be an area requiring additional work to ensure that it is adequately addressed within national control systems.

Brokering is also an area where further work to strengthen national control systems could be targeted. Forty-seven States responded that they have established arms brokering regulations in national legislation, but 12 had not yet incorporated brokering into their national systems.

However, the Survey responses do allow general trends to be identified regarding measures to control and regulate brokering and transit or transshipment. Governments use a variety of definitions within their national laws for brokering and transit or transshipment. For example, Mexico defines transit as 'the passage of regulated items through Mexican territory without them being unloaded in the national territory' and transshipment as 'the unloading or change of transport of the items contained in Annexes I, II, and III of this Directive between the initial loading point and the final destination of those goods'. Not all States provided definitions of both transit and transshipment – some States simply have one definition to cover both activities. The lack of specific definitions could undermine ATT obligations by enabling dishonest actors to circumvent the legal requirements.

Lichtenstein defines brokering as 'the creation of the essential requirements for the conclusion of contracts relating to the manufacture, offer, acquisition or passing on of war material, the transfer of intellectual property, including know-how, or the granting of rights thereto, insofar as they relate to war material; the conclusion of such contracts if this service is provided by third parties'. However, many countries do not include a definition of brokering within their national legislation, effectively allowing arms brokers to operate with minimal constraints in the shadows of the legal arms trade.

## PROHIBITIONS

The article on prohibitions on arms transfers is an essential humanitarian provision of the Treaty. The ATT is quite specific as to when arms sales are not allowed. Forty-seven State respondents reported that they prohibit transfers of conventional weapons as specified in Article 6.1 of the ATT. This includes transfers that would violate obligations under measures adopted by the United Nations Security Council (UNSC) acting under Chapter VII of the United Nations Charter – particularly arms embargoes. Six countries do not have such a prohibition in national law, while seven States did not know whether such a provision existed. Given that UNSC arms embargoes are mandatory, it would seem a quick and easy solution for States to include adherence to UNSC embargoes within their national systems.

Forty-five State respondents indicated that they prohibit conventional arms transfers under Article 6.2. These transfers would violate relevant international obligations under international agreements to which they are a State Party, in particular those relating to the transfer of – or illicit trafficking in – conventional weapons. Six State respondents indicated that they do not prohibit such transfers, while another nine responded that they did not know. Part of the lack of affirmative responses to this question could be related to States not having determined which international agreements are relevant to Treaty Article 6.2. It could also reflect a weakness in national legislation that could, again, be relatively easy to fix for States engaged in arms transfers.



**A CHILD COLLECTS BULLETS FROM THE GROUND IN ROUNYN, A VILLAGE LOCATED IN NORTH DARFUR, SUDAN. MOST OF THE POPULATION IN ROUNYN FLED DUE TO CIVIL CONFLICT IN 2011**

CREDIT: © UN PHOTO / ALBERT GONZALEZ FARRAN

Even fewer States (43) said they currently prohibit transfers of conventional weapons under Article 6.3 of the ATT. This prohibits transfers if States have knowledge at the time of authorisation that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians, or other war crimes as defined by international agreements to which the State is a party. Six States said they did not prohibit such transfers, and 11 States either did not know or provided no response. Without further research, the impediments to including the Article 6.3 prohibitions in national law are unclear. The enactment of such legislation should be an important priority for States if they are to ensure effective ATT implementation.

It was clear that there was some confusion as to which agreements were particularly relevant to fulfilling the obligations under Articles 6.2 and 6.3. However, by responding to the survey, some States identified for themselves the relevant agreements to which they are a party, and provided that list of agreements to ATT-BAP. Included among them are:

- the United Nations Convention on Certain Conventional Weapons
- the Convention on Cluster Munitions (the Oslo Convention)
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (the Ottawa Convention)
- the Missile Technology Control Regime
- the Zangger Committee
- the Nuclear Suppliers Group
- the Wassenaar Arrangement
- the OSCE Principles Governing Conventional Arms Transfers

**INDONESIAN VESSEL KRI  
DIPONEGORO PATROLLING OFF  
THE LEBANESE COAST AS PART  
OF THE MARITIME TASK FORCE OF  
UN INTERIM FORCE IN LEBANON**

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**SURVEY RESPONSES REFLECT A REAL NEED FOR THE DEVELOPMENT OF COMPREHENSIVE EXPORT CONTROL REGIMES. WITHOUT A RISK ASSESSMENT, ARMS TRANSFERS WILL CONTINUE TO FLOW WITH IMPUNITY**

- the European Union Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment
- the Geneva Conventions (1949) plus their three additional protocols (1977, 1977, 2005)
- the Rome Statute (1998).

#### RISK ASSESSMENT

For those transfers that are not prohibited outright, the Treaty provides guidance on the elements for conducting a risk assessment. In responding to Article 7.1 of the Treaty text, 43 States noted that they always conduct a risk assessment prior to authorisation of an arms export. However, eight States indicated that no risk assessment was conducted and nine either didn't know or had no response. The large percentage of negative responses or failure to respond to this question reflects a real need for the development of comprehensive export control regimes to ensure the ATT is effective. Without a risk assessment, arms transfers will continue to flow with impunity.

When the criteria listed in the ATT are examined individually, it is possible to draw a more complete picture of which areas are most often considered (during national risk assessments). Forty-seven States assess whether arms could be used to commit or facilitate a serious violation of international humanitarian or human rights law. States also noted that they take additional criteria into account prior to authorising a transfer, with 46 States assessing the risk of diversion and 44 assessing the risk that weapons transferred would be used to commit acts of gender-based violence.

For those States that do conduct risk assessments, there were clear examples of mitigation measures provided in their survey responses. These can be helpful models for others that are looking to enhance their risk assessment processes. For example, some States require end-use assurances, destruction of stockpiles of small arms and light weapons on receipt of new weapons, information sharing or security sector reform in advance of the arms transfer.

#### DIVERSION

Preventing diversion is essential for curbing irresponsible and illegal arms transfers. However, only 47 survey respondents indicated that they take preventative measures to mitigate the risk of diversion. The fall in affirmative answers is very much linked to the fact that 11 respondents either did not know what measures they had to prevent diversion or left the box blank. Such a high rate of non-affirmative responses indicates that more needs to be done to ensure that anti-diversion measures are clearly included in national control systems. However, survey responses do indicate that those States that do consider risk mitigation measures offer good practice and lessons can be drawn for those looking to enhance their systems. For example, States' responses noted a number of different measures to minimise diversion risks, such as delivery verification certificates, transit licences and end-user certificates.



**STATES' RESPONSES INDICATE THAT MORE NEEDS TO BE DONE TO ENSURE THAT ANTI-DIVERSION MEASURES ARE CLEARLY INCLUDED IN NATIONAL CONTROL SYSTEMS**

### ATT-BAP IN PRACTICE

The ATT-BAP has developed tools to assist national implementation of the ATT and to help identify areas in which States might seek to engage in bilateral international cooperation and assistance. The Baseline Assessment Survey also has relevance for regional organisations working to ensure effective ATT implementation.

For example, the ATT-BAP survey has been adapted to fit regional needs and requirements in the Caribbean. The Caribbean Community and Common Market (CARICOM) used the survey to develop its own regional assessment of current Treaty implementation efforts and needs. The CARICOM version was completed by eight CARICOM Member States (Antigua and Barbuda, Belize, Grenada, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago). Seven of the CARICOM survey respondents submitted information separately to ATT-BAP. Of particular note, the CARICOM version had members rank their assistance needs, allowing the region to prioritise and harmonise its capacity building and implementation efforts. For example, using the CARICOM rankings, legislative assistance, institutional capacity building, financial assistance, and model legislation were identified as the top four needs for the region. Regional engagement, in general, is crucial to harmonising regulatory approaches, as well as to sharing best practice and best allocating scarce resources.

On the international level, several ATT States Parties have promoted use of the ATT-BAP survey as the basis for their initial report, required under Article 13.1 of the Treaty, on measures to implement the ATT. This is particularly so given that 49 of the ATT's 69 States Parties have already completed the ATT-BAP survey. Regardless of whether it is adopted as the reporting template for implementation, the ATT-BAP survey's snapshot of States' practice will allow civil society and States to monitor advances in national control systems, and track the development of international standards and norms.

### CONCLUSION

The ATT-BAP, though focused on establishing a baseline of State practice from which to measure the Treaty's impact and effect, has always been geared towards the long-term success of the Treaty. Understanding the points at which States have started their implementation of the ATT allows the Treaty's effectiveness to be measured. This process also identifies good practice and specific areas that require additional assistance, resources or capacity. The ATT-BAP aims to assist all parties interested in ensuring the long-term success of the ATT to work together collaboratively and efficiently. Drawing on the initial data from the project, States can identify how best to use limited resources and where to focus attention and effort.