

**ATT
MONITOR
REPORT
2015**

COVER PHOTO:

**20 MM ROUNDS BEING INSPECTED
AT BAGRAM AIR FIELD, AFGHANISTAN,
23 MARCH 2011**

CREDIT: STAFF SGT. SHEILA DEVERA
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**U.S. ARMY SOLDIERS HELP INSPECT MALIAN
ARMY SOLDIER'S WEAPONS AT THEIR
GARRISON IN TOMBOUCTOU, MALI, SEPT.
4, 2007 AS PART OF THE TRANS-SAHARA
COUNTER-TERRORISM PARTNERSHIP**

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KEN BERGMANN

EXECUTIVE SUMMARY

The Arms Trade Treaty (ATT) which was adopted by overwhelming vote in April 2013, and subsequently entered into force a little over 18 months later, has the potential to radically change the international arms trade. However, the effectiveness of this new global treaty, the first of its kind to attempt to regulate the trade in conventional arms and ammunition, will depend now on how well it is implemented.

The ATT Monitor is a new project of the Control Arms Secretariat, which aims to track the implementation and impact of the Treaty through independent research and analysis. It will provide unbiased, credible and verifiable information on implementation and universalisation activities. To avoid duplication, it synthesises existing sources of expertise into a 'first-stop' information source for policymakers, civil society, the media and the public.

How the Treaty is interpreted and applied in its earliest years will be vital to its long-term effectiveness. Numerous points within the text contain some ambiguity about the thresholds States should meet. This first ATT Monitor report offers analysis and tools that enable readers to best understand these benchmarks for effective Treaty implementation.

To make the links between the Treaty text and day-to-day application, the 2015 ATT Monitor examines several articles in more detail:

- Article 6 covers circumstances in which a transfer of arms is prohibited
- Article 7 addresses the risk assessment States Parties must undertake before authorising exports
- Article 8 sets out obligations for importing States
- Article 11 obliges States Parties to prevent the diversion of legitimate arms transfers.

All are key to successful Treaty implementation, but may sometimes be open to different practical interpretation.

LEGAL APPLICATION

Article 6 prohibits transfers in violation of UN Security Council decisions or international treaties to which a State is party, or if it is known that the arms would be used to commit crimes such as genocide or war crimes. If a transfer is not prohibited, Article 7 obliges exporting States to undertake a thorough risk assessment before authorising an arms transfer. This includes current and future risk, and involves six steps. States are required to determine whether a transfer would: contribute to peace and security, or be used to commit or facilitate a serious violation of international humanitarian or human rights law; serious acts of gender-based violence or violence against women and children¹, or an offence under international instruments relating to terrorism or transnational organised crime. By drawing on international law, the ATT Monitor offers States a framework through which to assess the potential risk of an arms transfer in each of these six steps.

An exporting State must next consider whether there are any mitigating measures that it or the importing State could undertake to reduce the risks identified. States must then determine whether there remains an 'overriding risk' of any of the negative consequences listed in Article 7 (as described above).

¹ | As the first international treaty to specifically connect gender-based violence with the international arms trade, the ATT will necessarily set critical precedents in this area

While the ATT does not define 'overriding risk', a number of legal interpretations are emerging from interpretive declarations submitted with ATT ratifications. One such interpretation equates the term to mean 'clear' or 'substantial'. Based on this threshold, if an exporting State Party determines that an 'overriding risk' remains, the proposed export must not be authorised.

PRACTICAL APPLICATION

To ensure robust implementation of the ATT, States Parties must strive for consistency in its interpretation and application. But how might this work in practical terms? The application of Articles 6, 7 and 11 to a series of proposed arms transfers to a hypothetical country illustrates how arms transfers can be evaluated by potential exporting States.

The country of 'Canteron' presents concerns on several levels, from internal unrest, repression and corruption to warring neighbours and regional instability. In such a country, ATT Articles 6, 7 and 11 would require careful analysis of multiple factors, including (among others) respect for international law by the recipient entity, limits to fundamental freedoms, human rights violations by law enforcement, and regional conflict and sectarian violence.

Such analysis means careful consideration of both the nature of the recipient and the nature of the equipment to be transferred. It involves consulting a variety of sources, both public and confidential, especially where significant doubts exist, and the exercise of judgement in potentially very fluid and tense contexts. It also obliges States Parties to consider not only current risks, but also the likelihood of items being misused in future.



**BOXES OF 5.56MM CALIBRE
AMMUNITION**

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THE ROLE OF IMPORTERS

The ATT also contains important obligations for arms importers. Both exporting and importing States must work together if the ATT is to fulfil its humanitarian purpose. Article 8 obliges importing States to ensure they can provide information to and assist an exporting State in its export assessment. Such measures may include end-use or end-user documentation. If an importing State fails to comply, an exporting State should refuse the export licence.

The significance of these import measures will be determined by the effectiveness with which States interpret them. The development of 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, will be crucial. Similarly, the accuracy and completeness of States' reporting will help ensure the effectiveness of the ATT's import provisions.

SNAP-SHOT COUNTRY SURVEYS

To profile current ATT implementation, the ATT Monitor offers a snap-shot survey of six States Parties, from two different regions (for comparative purposes) and with different trade perspectives. Norway and Serbia are exporters of conventional arms, while Mexico aspires to grow its trade in high-tech industries related to the defence sector. The Bahamas is primarily an arms importer, and Malta and Panama – located on key trading routes – are used for transit and transshipment. These States reflect the common challenges faced by most small and medium-sized countries which are in the process of reforming national laws and systems to become compliant with the Treaty. Their experiences offer a 'real world' analysis of the types of challenges and opportunities most States Parties are likely to face.

The study assesses whether each State has the legal and institutional framework to address its Treaty obligations. It draws primarily on open-source data available online, first seeking data directly correlating to ATT implementation, then reviewing existing legal and institutional frameworks.

All six States were found to have systems in place that cater, or could cater, to the ATT obligations, although few rested on regulations enacted specifically in response to the Treaty. Several offer approaches that could guide other countries.

The study reveals how hard it can be to discern the mechanisms States use to implement the ATT. Some parts of the Treaty appear easy to adapt to, for instance, establishing a comprehensive scope of products and activities, or detailed procedures for licensing and reporting. Other concepts, such as risk mitigation, are more complicated and require more established common practices to be developed.

Most importantly, the study highlights the value of building on existing resources. For the ATT to work, the tools States use to implement it need real-life applicability.

ESTABLISHING THE BASELINE

To help States understand their ATT obligations and promote effective implementation, the Arms Trade Treaty-Baseline Assessment Project (ATT-BAP) was established. This project aims to guide States on issues to address before ratification and on implementation measures. It enables them to identify areas requiring assistance, and establishes a baseline against which to monitor ATT implementation.

The ATT-BAP database provides an at-a-glance assessment of current ATT implementation. As of 10 July 2015, 60 surveys were voluntarily completed, which included 49 of the 69 States Parties to the ATT. Analysis of the survey results revealed a number of trends relevant to the future of the ATT. The surveys found that a majority of State respondents have national control lists that cover conventional arms exports, imports, transit or transshipment, and brokering. Forty-three respondents stated that they always conduct a risk assessment prior to authorisation of an arms export. That said, 47 States noted that they assessed for violations of international humanitarian and human rights law, and 44 States assessed the risk that weapons transferred would be used to commit acts of gender-based violence. Findings such as these enable not only effective measurement of Treaty compliance, but also help prioritise assistance and cooperation activities.

REPORTING ON PROGRESS

States' own reporting is central to efforts to monitor ATT implementation. The Treaty obliges all States Parties to submit annual reports of their transactions (Article 13). This is a notable strength of the ATT, given that all other relevant reporting mechanisms are voluntary and do not require annual reporting.

Building on its earlier report entitled 'First Findings', the ATT Monitor assesses States' reporting activities when the ATT came into force. It expands the dataset to include all 193 UN Member States and shows which States reported conventional arms imports or exports during 2009-13 using three reporting mechanisms: The UN Register of Conventional Arms, the UN Commodity Statistics Database (Comtrade) and national reports.

Of these 193 States, 159 (82 per cent) publicly reported on their arms imports or exports via at least one of the three mechanisms. This indicates existing acceptance of public reporting. However, States' reporting was often patchy, with several reporting in some but not all years, or information sometimes being withheld. A clear benefit of the Arms Trade Treaty will be to improve the consistency and quality of public reporting on the arms trade.

PROVIDING IMPLEMENTATION ASSISTANCE

To help States implement the Treaty to full effect, the ATT also provides for each State Party in a position to do so to assist others, on request. This covers legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Examples include stockpile management, disarmament, demobilisation and model legislation.

This year, the ATT Monitor focuses specifically on financial assistance for acceding to and implementing the ATT. Such assistance has been prominent to date, particularly from three multilateral mechanisms:

- UN Trust Facility Supporting Cooperation on Arms Regulation² (UNSCAR)
- UN Development Programme (UNDP)
- European Union (EU) ATT Outreach Project.

With an ever-increasing number of projects offering assistance, States and implementing agencies must be as transparent as possible in publishing information about their assistance activities. They must also consider best practice and lessons across the whole assistance spectrum. Improved transparency and coordination will reduce project duplication and facilitate the matching of requests and offers of assistance, helping ensure the full potential and goals of the ATT are met.

CONCLUSION

States, the UN and civil society have all celebrated that the ATT has been negotiated and adopted, and has entered into force. In order for it to live up to its humanitarian mandate, full and effective implementation at this early phase will be key. This, alongside the establishment of new international norms, is what will decide the Treaty's true impact on human lives worldwide.



**KALASHNIKOV AK-47
ASSAULT RIFLES STACKED
IN A WAREHOUSE IN BOSNIA
AND HERZEGOVINA**

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² | UNSCAR also promotes implementation of the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA)



IN NORTHERN KENYA, 14 AND 15 YEAR
OLD BOYS CARRY GUNS EVERY DAY
TO DEFEND THEMSELVES AND THEIR
LIVESTOCK FROM RAIDS

"CATTLE IS OUR LIFE AND WE HAVE TO
LOOK AFTER THEM. I'M NOT SCARED
WHEN I HAVE A GUN. THERE WAS AN
ATTACK TWO WEEKS AGO AND I HAD
TO FIRE IT TO DEFEND OUR LIFE"

CREDIT: © SVEN TORFINN / OXFAM

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7.62 BELTED AMMUNITION
COVERS THE TABLE
DURING AN INSPECTION
AT NELLIS AIR FORCE
BASE IN NEVADA, USA
IN FEBRUARY 2013

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ACRONYMS

ATT – Arms Trade Treaty
ATT-BAP – Arms Trade Treaty-Baseline Assessment Project
ATT-OP – European Union (EU) ATT Outreach Project
BAFA – *Bundesamt für Wirtschaft und Ausfuhrkontrolle* (German Federal Office for Economic Affairs and Export Control)
CAT – Committee against Torture
CCM – Convention on Cluster Munitions
CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
CIFTA – Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials
Comtrade – UN Commodity Statistics Database
CRC – UN Convention on the Rights of the Child
CTOC – United Nations Convention against Transnational Organised Crime
ECOWAS – Economic Community of West African States
EIF – Entry Into Force
GDP – Gross Domestic Product
GRIP – *Groupe de recherche et d'information sur la paix et la sécurité*
iARMS – Illicit Arms Records and Tracing Management System (Interpol)
ICC – International Criminal Court
ICCPR – International Covenant on Civil and Political Rights
ICRC – International Committee of the Red Cross
IHL – International Humanitarian Law
IHRL – International Human Rights Law
OHCHR – Office of the High Commissioner for Human Rights
PoA – UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
SALW – Small Arms and Light Weapons
SIPRI – Stockholm International Peace Research Institute
SPLA – Sudan People's Liberation Army
UN Charter – The Charter of the United Nations
UNDP – UN Development Programme
UNGA – UN General Assembly
UNICEF – UN Children's Fund
UNFPA – UN Population Fund
UNODA – United Nations Office for Disarmament Affairs
UNREC – UN Regional Centre for Peace and Disarmament in Africa
UNROCA – UN Register of Conventional Arms
UNSCAR – UN Trust Facility Supporting Cooperation on Arms Regulation
WA – Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies



SMALL ARMS AMMUNITION AT THE
UNEXPLODED ORDNANCE PIT AT THE
MALIAN ARMY CAMP IN TIMBUKTU,
MALI. THE CAMP WAS ATTACKED BY
TERRORISTS IN MARCH 2012, AND
AMMUNITION STORAGE FACILITIES
WERE DESTROYED IN THE ATTACK

CREDIT: © UN PHOTO / MARCO DORMINO

INTRODUCTION



THE TREATY ITSELF HAS OPENED A DOOR OF HOPE TO MILLIONS OF WOMEN, MEN AND CHILDREN WHO LIVE IN DEPRIVATION AND FEAR BECAUSE OF THE POORLY CONTROLLED INTERNATIONAL ARMS TRADE AND THE PROLIFERATION OF DEADLY WEAPONS... WITH THE ATT, THE WORLD HAS DECIDED TO FINALLY PUT AN END TO THE “FREE-FOR-ALL” NATURE OF INTERNATIONAL WEAPONS TRANSFERS

UN SECRETARY-GENERAL BAN KI MOON¹

The Arms Trade Treaty (ATT) which was adopted by overwhelming vote in April 2013, and subsequently entered into force a little over 18 months later, has the potential for positive humanitarian impact, through regulation of the international arms trade. The geographic spread of its States Parties² bears further testament to the wide global support the Treaty has achieved. However, the effectiveness of this new global treaty, the first of its kind to attempt to regulate the trade in conventional arms and ammunition, will depend now on how well it is implemented.

The central role played by civil society through the global Control Arms Coalition has been acknowledged as crucial to the success of the ATT's adoption and relatively rapid entry into force, as well as in ensuring that the humanitarian imperative was embedded into the core of the Treaty. Civil Society experts also provided a great deal of information, analysis and perspective during the deliberations, prompting the UN Secretary-General to recognise the contributions made by NGOs in his June 2013 statement when the Treaty opened for signature.

The Control Arms Coalition has a continuing important role to play in the future of the ATT. One key initiative is the ATT Monitor, an independent analysis and information tool designed to provide objective information on the implementation of the Treaty.

THE ATT MONITOR: AUTHORITATIVE AND CREDIBLE ANALYSIS

The main objectives of the ATT Monitor are to independently track the impact of the Treaty, and to provide unbiased, credible and verifiable information on implementation and universalisation activities.³ To do this, the ATT Monitor will produce credible qualitative and quantitative research and analysis, and explore emerging trends and practices that have an impact on the effectiveness of the Treaty and its provisions.

Over time, the ATT Monitor will evolve not only to assess data directly provided by States (through their annual transfer reports), but also to develop bespoke datasets and methodologies that enable holistic analysis of practices and trends. These datasets will be regularly updated to reflect the most current information that is publicly available.

The ATT Monitor will consistently aim to add to the knowledge base on arms control efforts. To this end, it will avoid duplication of work done by the many existing and credible bodies in fields relevant to the ATT, including those addressing conventional arms transfers, human rights, international humanitarian law, organised crime and other ATT-relevant sectors.

Rather, the ATT Monitor will engage existing sources of expertise and synthesise them into easily accessible web and print material as a 'first-stop' source of information and analysis on the ATT for policymakers, civil society advocates, the media and the public.

¹ | Ki-Moon, Ban. 2013. Secretary-General's remarks at Special Event Marking the Opening of the Arms Trade Treaty for Signature. United Nations. 3 June 2013 <http://www.un.org/sg/statements/index.asp?nid=6869>

² | The ATT had 69 States Parties as of 10 July 2015, of which 10 are from Africa, eight are from Latin America, 12 are from the Caribbean, 35 are from Europe (including non EU countries), one is from Asia, three are from the Pacific, none from the Middle East, and none from South Asia

³ | Activities with the aim of encouraging non-States Parties to accede to the ATT are referred to as universalisation activities

Three specific activities will be central to the ATT Monitor:

1. Synthesising information that can be used to advance the ATT's implementation and universalisation goals in a user-friendly and accessible format
2. Promoting the sharing of credible information on, and analysis of, the ATT's implementation and universalisation
3. Identifying key challenges in advancing global acceptance of the ATT's norms and its full implementation, and proposing steps to ensure that these challenges are addressed.

From these activities, the ATT Monitor will generate three specific outputs:

- **THE ANNUAL ATT MONITOR REPORT:** Intended to be launched every year at the Conference of States Parties, the report will include analytical chapters on key issues affecting the impact of the Treaty. In future years, there will also be analysis of States Parties' efforts towards Treaty compliance, as well as analysis and critical reflection on the application of the Treaty rules on arms transfers, through spotlight and comparative case studies. A final element of the annual reports will be analysis of data gathered to reflect implementation, adherence and universalisation activities.
- **CASE STUDIES:** These are a dynamic feature of the ATT Monitor project, and will be developed and released throughout the year. They will focus on arms transfers of concern, emerging and best practice in specific thematic areas, and critical analysis of issues relevant to the ATT.
- **A WEB-PLATFORM:** This will contain the most up-to-date information on arms transfers and ATT universalisation and implementation.

The vision for the ATT Monitor is that it will engage with data submitted by States, and provide a critical and analytical lens. However, this data will not physically exist until the first anniversary of the Treaty's entry into force (24 December 2015), while data from States on transfers will not be available before 31 May 2016.

This means that this first edition of the ATT Monitor does not include analysis of official State-submitted data. Instead, it engages with some of the broader issues around the ATT, namely interpretation of legal and procedural obligations, examining existing methodologies for implementation activities, and exploring processes for data gathering and triangulation.

KEY THEMES FROM THE 2015 ATT MONITOR

The first chapter includes an in-depth examination of legal obligations on importers and exporters. Chapter 1.1 focuses on exporters' legal obligations, specifically on Export and Export Assessments (Article 7) and the key legal issues for exporting States to consider before reaching a decision on a transfer. Chapter 1.2 illustrates the process of reaching decisions on transfers to a hypothetical country, while exploring in detail how and where information is available to aid decision-making. Chapter 1.3 examines importer obligations (Article 8) by exploring elements and examples of existing State systems, and reflecting on challenges and opportunities that present themselves to existing and prospective States Parties.

The second chapter examines the infrastructure and systems found in a sample range of countries. Chapter 2.1 illustrates the different ways States Parties can effectively meet the institutional, regulatory and legislative obligations outlined in the Treaty. It profiles the approaches taken by six States from different trading categories: exporters, importers and transit or transshipment countries. Chapter 2.2 considers the ATT Baseline Assessment Project (ATT-BAP). It examines some of the key lessons that have emerged and what the findings of the BAP actually mean for the ATT.

The third chapter looks at reporting activities by UN Member States as per their obligations to other relevant disarmament and arms control initiatives. This includes a dataset that covers all UN Member States (all signatories and States Parties, as well as those States yet to join the ATT). It bases its analysis on secondary data from the UN Register on Conventional Arms, the UN Comtrade database and publicly available national reports on arms transfers.

The fourth and final chapter examines some of the existing multilateral financing mechanisms that have been established to further implementation and universalisation activities. It recognises that assistance comes in many forms, and that focusing on funding sometimes means bypassing other efforts to build capacity. Its goal is to illustrate how assistance activities are helping to strengthen the overall impact of the Treaty. It also outlines representative financial support mechanisms currently helping states and civil society to implement the ATT.

MAKING THE ATT WORK

The international campaign for the ATT achieved widespread support because at its heart, there is a simple and unavoidable premise – that for too long, international arms transfers have flowed into some of the world's conflict zones, and into the hands of human rights abusers. The humanitarian consequences of an arms trade out of control can no longer be ignored.

The ATT adopted by governments on 2 April 2013 embedded this humanitarian imperative into its core. It also effectively enshrined into international law a common minimum standard which commits all States Parties to ensuring a consistent degree of responsibility and oversight in arms transfers. Each State Party is also encouraged to implement additional and higher standards. This is important – it will enable States Parties to address rapidly changing strategic and geopolitical realities, and allows them the operational flexibility to keep pace with improving international standards and emerging best practices.

The true positive impact of the Treaty will now be found in action on the ground towards implementation. Effective and full implementation of the ATT and the establishment of new international norms will be the true arbiters in gauging the real-life humanitarian and human security impacts.

THE ATT MONITOR'S ROLE IN TREATY IMPLEMENTATION

The ATT Monitor has been created to provide civil society monitoring on the effectiveness of Treaty implementation. In order to meet this mandate, the ATT Monitor must establish a vision and clear parameters, which are outlined in this inaugural edition. Part of that task is to determine the thresholds for 'effective' implementation and adherence, based on what the Treaty text obliges States to do.

Numerous points within the Treaty text contain a degree of ambiguity about the benchmark or threshold States must meet. For instance, there is little guidance in international practice and analysis on how to measure 'overriding risk' – which is part of the export assessment States Parties must undertake in order to implement Article 7. In such circumstances, the ATT Monitor will develop a clear methodology to assess these ambiguities. Therefore, to address the issue of 'overriding', Chapter 1.1 of this edition analyses some of the legal interpretations of 'overriding' risk, and explores, for example, how interpretative declarations made by some States Parties can help clarify the ambiguities.

The Object and Purpose of the Treaty (Article 1), which clearly states the goal ('object') of the Treaty, and the reason why the Treaty exists in the first place ('purpose') is an important starting point in assessing the effectiveness of ATT implementation.

Article 1 reads:

"The object of this Treaty is to:

- Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms;
- Prevent and eradicate the illicit trade in conventional arms and prevent their diversion;

for the purpose of:

- Contributing to international and regional peace, security and stability;
- Reducing human suffering;
- Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties."⁴

The Object and Purpose of the ATT illustrate the driving force behind the Treaty. They put each of the Articles into context, and guide the implementation efforts of States Parties. They are among the key elements the ATT Monitor will use to carry out its analysis in this and future editions.

BENCHMARKS FOR EFFECTIVE IMPLEMENTATION

Some critics have argued that the ATT establishes standards that are currently below the existing standards for a number of export control regimes around the world (for example, regional agreements like the Economic Community of West African States (ECOWAS) Convention or the European Union (EU) Common Position, or national control systems like those found in most Wassenaar Arrangement members). States have stressed that the ATT is intended to establish the 'floor' – the minimum common standards that all States Parties have to ascribe to. It is worth recognising that this minimum standard, once applied globally, does in fact significantly improve current practice. In addition, there is considerable scope and space within the ATT for States Parties to establish higher standards within their own legal and administrative frameworks.



**PERSONNEL FROM THE
UN OPERATION IN COTE
D'IVOIRE CONDUCT ARMS
EMBARGO INSPECTIONS OF
GOVERNMENT FORCES IN
WESTERN COTE D'IVOIRE**

CREDIT: © UN PHOTO / KY CHUNG

⁴ | Arms Trade Treaty, Article 1 (adopted 2 April 2013, entered into force 24 December 2014) _UNTS_(ATT) Art 1, <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>



FOR THE ATT TO BE IMPLEMENTED EFFECTIVELY, STATES PARTIES SHOULD ENSURE THAT THEIR LEGAL, ADMINISTRATIVE, INSTITUTIONAL AND PROCEDURAL EFFORTS CONTRIBUTE TO REALISING THE OBJECT AND PURPOSE OF THE TREATY

For the ATT to be implemented effectively, States Parties should ensure that their legal, administrative, institutional and procedural efforts contribute to realising the Object and Purpose of the Treaty. There are numerous guidance notes and analytical tools available to strengthen implementation efforts while remaining true to the purpose of the Treaty. These tools include the legal and procedural considerations of how to understand and implement the obligations enshrined in Article 7 of the Treaty – both of which are deliberated at length in Chapters 1.1 and 1.2 of this edition. These tools are likely to ensure the development of a common vision that has the highest degree of impact and effectiveness. Such an approach will enable States Parties to establish systems and procedures that advance the Treaty's humanitarian objective of reducing human suffering.

The degree to which commitments and obligations enshrined in the Treaty are interpreted in a robust manner will be crucial for the future success of the Treaty in several ways. For example, under the definitions found in Articles 2, 3, 4 and 5.2 (which deal with the scope of the Treaty), weapons such as grenades appear to be outside a rigid literal interpretation of the definitions of the Treaty.⁵ However, most States Parties have control systems that are very broad in their definitions and therefore already include items like grenades in their control lists. This includes most members of the Wassenaar Arrangement, the EU Common Position and its associated military list, the US government's International Traffic in Arms Regulations, and others.

Another rationale for robust implementation is to maximise the Treaty's positive impact on crisis situations. This is important not just for procedural, institutional and administrative reasons, but for real implications on the ground, in precisely those conflict situations which weighed so heavily during the Treaty negotiations (for example, Libya, South Sudan and Syria).

In some of these cases, the UN Security Council has been unable to reach agreement on arms embargoes. As a result, the decision to transfer arms was left to individual states, greatly increasing the risk of arms moving through the loopholes that existed between the patchwork of regional or other multilateral agreements established to guide in the decision-making process. These include, but are not limited to, the EU Common Position, the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, the ECOWAS Convention, the Nairobi Protocol, and the Southern African Development Community Firearms and Ammunition Protocol.

In such circumstances, as the ATT Monitor case study on South Sudan has illustrated, the need for effective implementation of the ATT is vital. Uncontrolled flows of arms and ammunition into conflict zones like South Sudan have destabilised efforts to broker peace, resulting in humanitarian crises which the global community has struggled to cope with.

⁵ | Doermann, K. 2013. 'Adoption of a Global Arms Trade Treaty: Challenges Ahead', International Committee of the Red Cross, Geneva, 6 April 2013; pg. 4, accessed 10 July 2015; <http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/160413summary.pdf>



KEY FINDINGS FROM ATT MONITOR CASE STUDY #1: ARMS TRANSFERS TO SOUTH SUDAN

The ATT Monitor Case Study on arms transfers to South Sudan has illustrated in devastating detail the consequences of minimal or lax common standards on arms transfers to situations of conflict.

There is credible evidence to show that weapons transfers have continued throughout the current crisis, ignoring repeated risks of both misuse and diversion. Some shipments have included ammunition produced as recently as July 2014.⁶ The vast majority of these transfers have not been reported publicly (through the UN Register, UN Comtrade or national reports).

China sold more than US\$30 million worth of arms and ammunition to South Sudan in 2014, which included some 27 million rounds of small-calibre ammunition and sizeable quantities of rocket-propelled grenades, anti-personnel grenades, anti-tank missiles, assault rifles and pistols.⁷ The Chinese authorities have since rectified the situation; in September 2014 they announced that all arms transfers to South Sudan would cease until further notice.⁸

Between 2012 and 2014, the Sudan People's Liberation Army (SPLA) procured 20 'Cougar' and 30 'Typhoon' type Armoured Personnel Carriers worth US\$9 million from the Canadian-owned manufacturer Streit Group at its United Arab Emirates production facilities.⁹

The case study concludes that had the ATT been in effect since the start of the South Sudanese conflict, the vast majority of arms transfers into the country would have been in violation of the Treaty's standards. If properly implemented, the ATT will have tangible and real impacts on arms flows into crisis situations like South Sudan. It will bolster the peace process and improve the lives of the hundreds of thousands of people who are suffering and displaced within their own country.

⁶ | Gridneff, I. 2014. China Halts Arms Sales to South Sudan after Norinco Shipment. Bloomberg, 30 September 2014, accessed 10 July 2015: <http://www.bloomberg.com/news/articles/2014-09-29/china-halts-weapons-sales-to-south-sudan-after-norinco-shipment>

⁷ | Ibid

⁸ | Anderson, M. 2015. Obama urged to press for ban on arms sales to South Sudan combatants. *The Guardian*, 9 January 2015, accessed 10 July 2015: <http://www.theguardian.com/global-development/2015/jan/09/obama-urged-un-resolution-ban-arms-sales-south-sudan>

⁹ | Binnie, J. 2014. AAD: Streit outlines key customers. *IHS Jane's Defence Weekly*, 18 September 2014, accessed 10 July 2015: <http://www.janes.com/article/43448/aad-streit-outlines-key-customers>

INDICATORS OF SUCCESS FOR THE ATT

It is worth taking stock of a number of elements that will be crucial to the ultimate success of the ATT in changing the status quo. The discussion below is by no means exhaustive, and Articles such as Prohibition (Article 6) and Diversion (Article 11) – which are not covered in depth by this year's edition of the ATT Monitor – are of immense significance to overall effective control of the arms trade.

As well as establishing the minimum requirements for risk assessments related to arms transfers (Article 7), the ATT has also established – for the first time in arms control systems – a risk indicator on gender-based violence and violence against women and children. There is little existing practice or precedence around these subjects in the world of arms control to help guide the decision-making process for licensing officers. However, much experience and expertise can be found in other relevant government institutions that are mandated to protect human rights, and women's rights in particular. More analysis of this can be found in Chapters 1.1 and 1.2.

The Treaty also addresses the legal obligations of importers (Article 8), on transit and transshipment (Article 9), on brokering (Article 10) and on enforcement (Article 14). Whereas only a limited number of countries are exporters of arms and ammunition, nearly every country is an importer of these items, so the importance of obligations for importers and transit and transshipment countries should not be underestimated. More analysis on the obligations of importers can be found in Chapter 1.3.

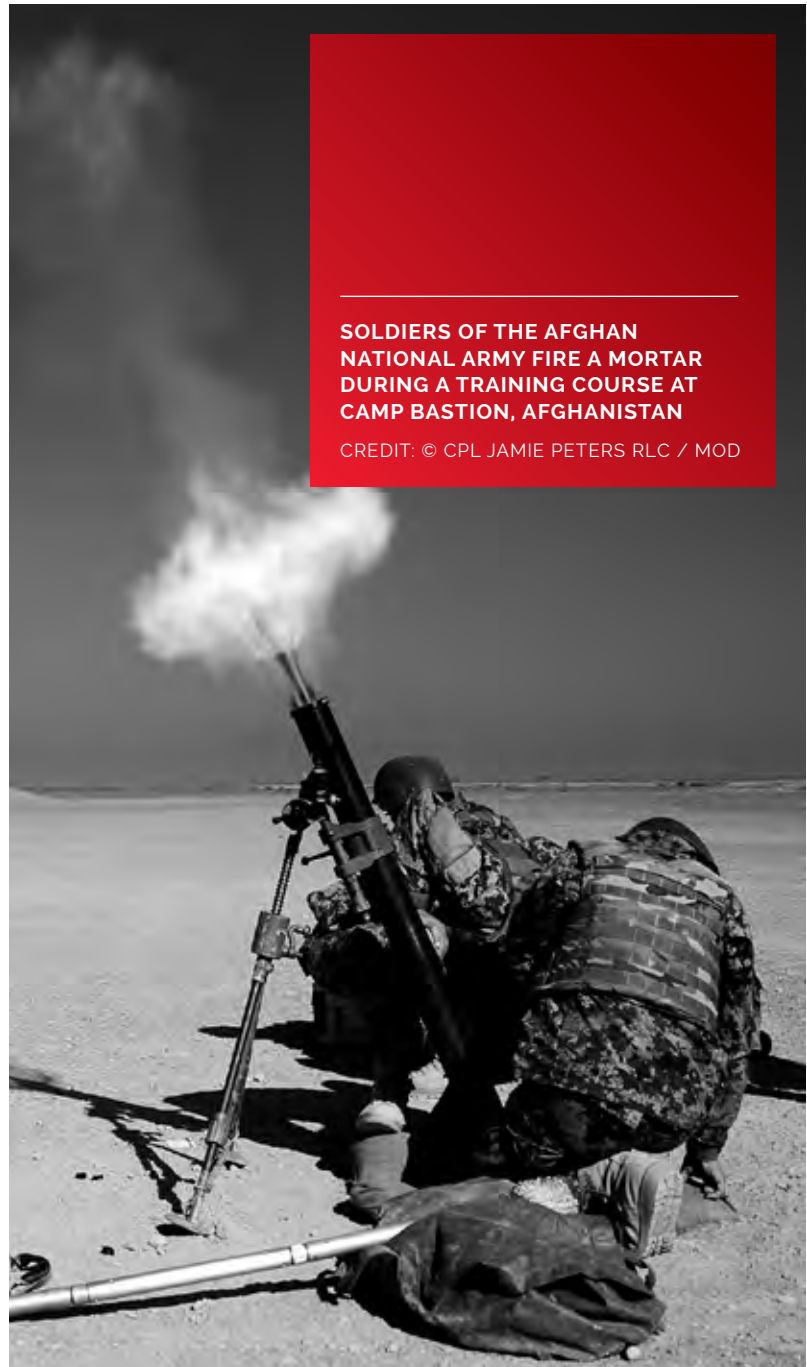
Another key element that will determine the future success of the Treaty is the obligation to report on all implementation activities that States Parties have undertaken to become treaty compliant. As such, States Parties will have to submit reports that take stock of institutional, legislative, procedural and human resource initiatives that align country systems and institutions with Treaty obligations. This should not be a difficult exercise for more than half the States Parties to the ATT – they already have some degree of comprehensive control system in place. But for a number of current and future States Parties, this will be a comprehensive challenge. Some of these challenges are explored in greater detail in Article 2.1, where the experiences of small importers, small transit or transshipment states, and small and emerging exporters are explored.

Taking stock of current systems through voluntary initiatives like the recent ATT Baseline Assessment Project is another key area that will determine future success. The ATT-BAP survey enables respondents to review current institutional and legislative frameworks, and eventually identify where gaps exist that will impact Treaty compliance. Chapter 2.2 elaborates on some of these institutional and legislative challenges, and provides a snap-shot of the status of national systems of survey respondents. Following on from this analysis, Chapter 4 looks specifically at financial assistance that has been made available to States and civil society to undertake implementation and capacity-building activities intended to strengthen Treaty compliance.

Related to this, the Treaty also obliges all States Parties to submit annual reports of their transactions, as laid out in the article on Reporting (Article 13). This is one of the strongest features of the ATT, given that all other relevant reporting mechanisms are voluntary, and States are not required to report every year. As the vast majority of current States Parties already provide annual reports that are publicly accessible, there is a growing expectation that annual State Party reports should also be made publicly available. More analysis of reporting trends can be found in Chapter 3 of this edition.

LOOKING AHEAD

In order for the Treaty to live up to its humanitarian mandate, effective implementation at this early phase will be key. The Goals and Objectives of the ATT offer clear guidance to ensure that implementation efforts move in the direction of the Treaty's vision. Successful implementation of the Treaty will ultimately be measured by the lives saved as a result of meaningful compliance.



**SOLDIERS OF THE AFGHAN
NATIONAL ARMY FIRE A MORTAR
DURING A TRAINING COURSE AT
CAMP BASTION, AFGHANISTAN**

CREDIT: © CPL JAMIE PETERS RLC / MOD



IN KABUL, AFGHANISTAN, 38 WOMEN
HAVE BEEN TRAINED TO JOIN THE
POLICE FORCE. THEIR TRAINING TOOK
SIX MONTHS AND INVOLVED WEAPONS
SKILLS, GENERAL POLICING AND RULE
OF LAW, GENDER AND HUMAN RIGHTS

CREDIT: © ELLIE KEALEY / OXFAM

CHAPTER 1

EXPORT CONTROL AND IMPORTER OBLIGATIONS: SHAPING THE PRECEDENT FOR THE ARMS TRADE TREATY

How the Arms Trade Treaty (ATT) is interpreted and applied in its earliest years will be vital in determining its long-term effectiveness. To help ease the steps from Treaty text to day-to-day application, this opening chapter of the ATT Monitor examines several Treaty articles in more detail:

- Article 6 covers circumstances in which a transfer of arms is prohibited
- Article 7 addresses export and the assessment of risk States Parties must undertake before they authorise exportation
- Article 8 sets out obligations for States importing arms
- Article 11 obliges States Parties to prevent the diversion of legitimate arms transfers.

All are key to successful Treaty implementation, but may sometimes be open to different interpretations when it comes to their practical application. To address this, Chapter 1.1 outlines the legal basis for the steps exporting States must take under Article 7, focusing on sources of international law States can draw on in their risk assessments before deciding whether to authorise an arms export.

Chapter 1.2 considers the application of Articles 6, 7 and 11 to a series of proposed arms transfers to a hypothetical country. It examines them from the perspective of a potential arms-exporting State Party, illustrating how arms transfers can be evaluated when an end-user country raises concerns on several levels.

Although export standards and practices received the bulk of attention during Treaty negotiations, the ATT also contains important obligations related to imports. These are considered in Chapter 1.3, which stresses that both exporting and importing States must work together in cooperation if the ATT is to fulfil its humanitarian intent and purpose.

CHAPTER 1.1

ASSESSING THE RISK: THE LEGAL APPLICATION OF ARTICLE 7 OF THE ARMS TRADE TREATY

The ATT establishes a set of obligations concerning the international transfer of conventional arms and related items, to be implemented by all States Parties. Under Article 7 of the Treaty, exporting States Parties are required to undertake a thorough risk assessment, in cooperation with importing states, before authorising any transfer of conventional arms, ammunition, or parts and components covered under Articles 2, 3 and 4 of the Treaty. Such an assessment includes current and future risk, and involves legal, political and practical elements.

This chapter outlines the legal basis for the steps exporting States must undertake under Article 7. It focuses in particular on the sources of international law States Parties may draw on in their risk assessments and which will inform them whether the export under consideration meets the requisite conditions for authorisation or denial. In addition to the general international legal foundations, States Parties will also need to consider other relevant multilateral, regional or bilateral agreements to which they are a party, as well as any domestic requirements not covered in this paper. States will also need to undertake a political and practical analysis using the guidelines given in Chapter 1.2.

Once an exporting State Party has gathered the factual information related to each step of the risk assessment, it must then consider whether there exist any mitigating measures that it or the importing State could undertake to reduce the risks identified.

After identifying the risks the proposed export poses, and the effect of any potential mitigating measures on those risks, States Parties must then determine holistically whether there remains an 'overriding risk' of any of the negative consequences of the proposed export. Negative consequences resulting from the export, as listed in Article 7.1, include undermining peace and security, committing or facilitating a serious violation of international humanitarian or human rights law, or committing or facilitating an act constituting an offence under international conventions relating to terrorism or transnational organised crime, to which the exporting State is a party.¹ Risks of the commission or facilitation of serious acts of gender-based violence or violence against women and children must also be taken into account in this risk assessment.² While 'overriding risk' is not defined by the ATT, legal bases are emerging for the interpretation and application of Article 7.3. If an exporting State Party determines that an 'overriding risk' remains, the proposed export must not be authorised.



**IF AN EXPORTING STATE
PARTY DETERMINES THAT AN
'OVERRIDING RISK' REMAINS,
THE PROPOSED EXPORT
MUST NOT BE AUTHORISED**

¹ | Arms Trade Treaty, Article 7 (adopted 2 April 2013, entered into force 24 December 2014) _UNTS_(ATT) Art7(1)

² | Arms Trade Treaty, Article 7 (adopted 2 April 2013, entered into force 24 December 2014) _UNTS_(ATT) Art 7(4)

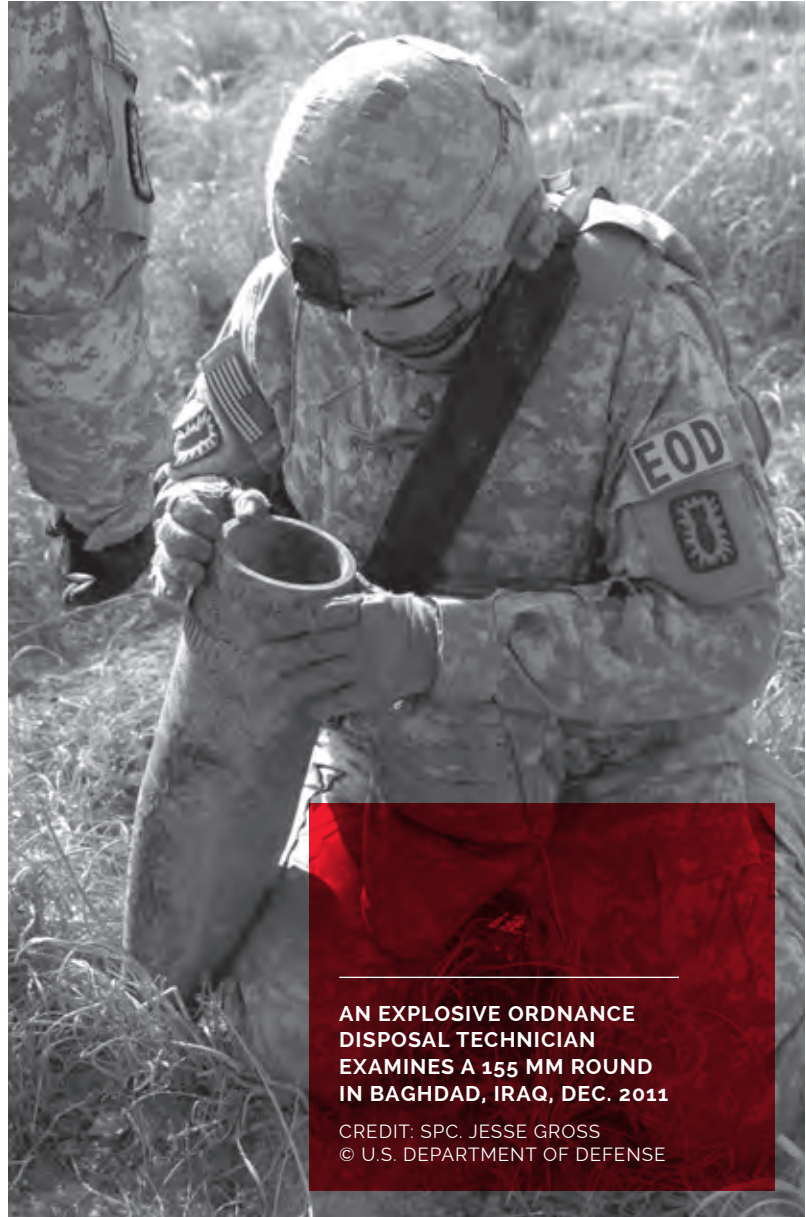
It is important to note that Article 7 contains additional requirements beyond the initial risk assessment, which are not covered in this chapter in detail. These are set out in Articles 7.5, 7.6 and 7.7, and relate to the detail and issuance of authorisations prior to export, the provision of information on request concerning the proposed export to the importing, transit or transshipment States, and the reassessment of any authorised export in consultation with the importing State should new information come to light.

PRELIMINARY STEP – ARTICLE 6

Before undertaking the evaluation that Article 7 requires, all States Parties, including exporting States, must first determine whether the export is prohibited under Article 6. If it is determined that the proposed export is not prohibited under Article 6, the exporting State must then apply the Article 7 risk assessment to the proposed export 'in an objective and non-discriminatory manner'.³

LEGAL ASPECTS OF THE ARTICLE 7 RISK ASSESSMENT: SIX STEPS

Before applying the Article 7 risk assessment to the proposed export, a State Party must first identify for each step of the risk assessment the relevant international agreements and customary international law, where appropriate. The following six-step procedure serves as a guide on which the exporting State can base its factual inquiry. It is the outcome of this factual inquiry that will allow the exporting State to determine the initial degree of risk at issue. See Chapter 1.2 for more detail on how to design and conduct the factual inquiry.



³ | Arms Trade Treaty, (adopted 2 April 2013, entered into force 24 December 2014) _UNTS_(ATT) art 7.(1)



STEP 1 – PEACE AND SECURITY

Article 7.1(a) requires an exporting State Party to 'assess the potential that the conventional arms or items:

(a) would contribute to or undermine peace and security...'

WHAT IS 'PEACE AND SECURITY'?

There are a number of meanings of 'peace and security' that could be applied to the Article 7 risk assessment at international, regional or national levels. One possible source for the meaning of the term is the United Nations (UN) Charter, as interpreted by the UN Security Council. The Security Council, which possesses 'primary responsibility' for the maintenance of international peace and security,⁴ may take binding measures under Chapter VII of the UN Charter in relation to peace and security. Article 39 of the Charter requires the Security Council to determine the existence of any 'threat to the peace, breach of the peace, or act of aggression'. It must also identify any measures it may require or recommend 'to maintain or restore international peace and security'. Although Article 7.1(a) refers to 'peace and security' rather than to 'international peace and security', the preamble of the ATT makes reference to Article 26 of the UN Charter, which 'seeks to promote the establishment and maintenance of international peace and security'. While not limited to such a definition, the reference to Article 26 provides for the use of 'international peace and security' by the UN Security Council as one reference point for guidance as to the meaning of 'peace and security' in Article 7.1(a).

SOURCES OF INTERNATIONAL LAW CONCERNING PEACE AND SECURITY

Examples of 'threats to the peace' as identified by the Security Council include the proliferation of weapons of mass destruction,⁵ the proliferation of small arms,⁶ international terrorism,⁷ piracy⁸ and particular international and non-international armed conflicts.⁹

The Security Council's practice has developed to encompass not only state security but also human security, in the sense of the protection of individuals.¹⁰ Based on Security Council practice to date, actual or potential violations of human rights will constitute a threat to the peace only when those violations are linked to a situation of armed conflict.¹¹ The World

⁴ | Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945), 1 UNTS XVI Art 24 <http://www.unwebsite.com/charter>

⁵ | See, for example, UNSC Res 1540 (2004); UNSC Res 1718 (2006); UNSC Res 1737 (2006)

⁶ | See, for example, UNSC Res 1540 (2004); UNSC Res 1718 (2006); UNSC Res 1737 (2006)

⁷ | UNSC Res 1373 (2001); UNSC Res 1377 (2001)

⁸ | Krisch, K. Article 39. in B Simma (ed), *The Charter of the United Nations A Commentary* (Oxford University Press 2012) p.1283

⁹ | UNSC Res 713 (1991); UNSC Res 864 (1993); UNSC Res 1125 (1997); UNSC Res 1127 (1997). The application of Article 39 to non-international armed conflict was confirmed in statements made obiter dicta by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia in the Tadić case

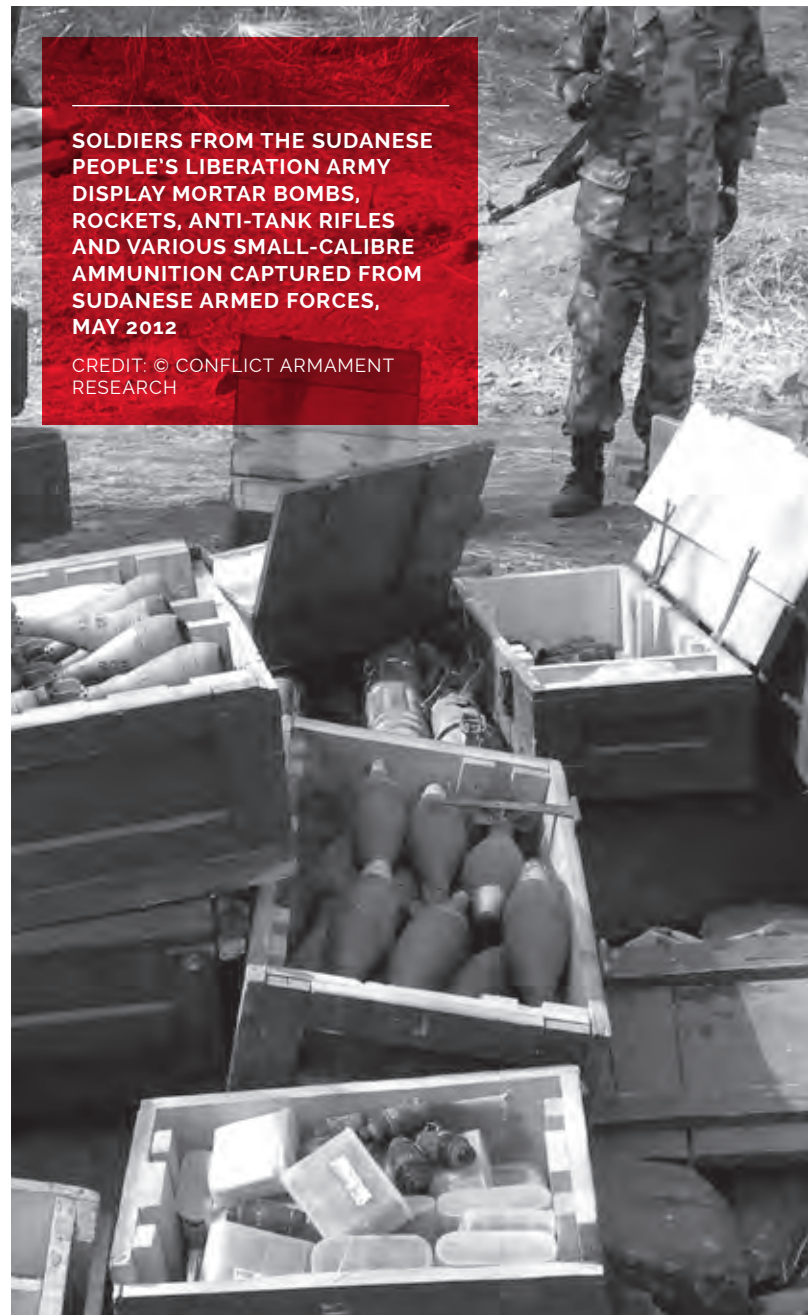
¹⁰ | Krisch, K. Article 39. in B Simma (ed), *The Charter of the United Nations A Commentary* (Oxford University Press 2012) p.1284

¹¹ | Krisch, K. Article 39. in B Simma (ed), *The Charter of the United Nations A Commentary* (Oxford University Press 2012) p. 1287

Summit Outcome Document of 2005 on the Responsibility to Protect urged the Security Council to use its enforcement powers against acts of genocide and crimes against humanity. However, it has been stated that 'UN practice so far does not reflect a sufficiently broad consensus to extend the notion of a threat to the peace to grave violations of human rights as such, in the absence of the risk of armed conflict'.¹²

Designation of a particular armed conflict in a state or region as a threat to the peace could be a key factor in the Article 7 risk assessment. If the Security Council has called on states not to furnish weapons to parties involved in a particular armed conflict, while not formally imposing an arms embargo, an export of weapons to parties involved may 'undermine' peace and security under Article 7.1(a). The same conclusion may apply to the export of weapons to a party involved in an internal armed conflict – whether governmental or non-state forces – where the Security Council has called on all states to do nothing to escalate or exacerbate the violence.

International law provides little existing guidance as to when an arms transfer would 'contribute' to peace and security. Every situation needs to be assessed on its legal, political and practical merits, and it is difficult to identify broad categories that would automatically constitute a 'contribution' to peace and security. A situation that might 'contribute' to peace and security is one in which an export of conventional arms or items is used in support of UN peace-keeping efforts.



¹² | Ibid



STEP 2 – INTERNATIONAL HUMANITARIAN LAW

Article 7.1(b)i requires an exporting State Party to 'assess the potential that the conventional arms or items:

- (b) could be used to:
 - (i) commit or facilitate a serious violation of international humanitarian law...

International humanitarian law (IHL) aims to regulate the conduct of hostilities and limit the effects of armed conflict. It seeks to strike a balance between the 'necessities of war' and the 'requirements of humanity',¹³ primarily by protecting persons who are not, or are no longer, participating in hostilities, and by imposing limits on means and methods of warfare.

IHL generally applies only in situations of 'armed conflict' and imposes obligations on all parties to a conflict, be they a State or an organised non-state armed group. The rules that apply to international armed conflict are sometimes different from those that apply to non-international armed conflict, although many do overlap. The rules of IHL are found primarily in the four Geneva Conventions of 1949 and the Additional Protocols of 1977, as well as a number of further treaties that cover a range of issues including weapons, children and the environment.¹⁴ Many IHL treaty provisions are considered to reflect customary IHL and are therefore binding on all parties to an armed conflict, often in both international and non-international conflict.¹⁵

WHAT IS A 'SERIOUS VIOLATION' OF IHL?

A 'serious violation' of IHL includes war crimes as defined in treaties and in customary international law for both international and non-international armed conflict. There are a number of sources to which States Parties can refer for guidance on customary violations which are deemed 'serious'. Article 8 of the Rome Statute of the International Criminal Court sets out war crimes generally recognised as customary.¹⁶ These include grave breaches of the Geneva Conventions and their Additional Protocols,¹⁷ serious violations of Article 3 to all four Geneva Conventions, and other violations of IHL committed in both international and non-international armed conflict. The International Committee of the Red Cross (ICRC) has identified a number of additional war crimes that are considered customary, even though they are not included as war crimes in the Rome Statute.¹⁸

¹³ | See: Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grams Weight (St. Petersburg Declaration of 1868) (entered into force 29 November/11 December 1868) <https://www.icrc.org/ihl/INTRO/130?OpenDocument>

¹⁴ | For a full list of IHL instruments, see: <https://www.icrc.org/eng/resources/ihl-databases/index.jsp>

¹⁵ | International customary legal obligations binding upon States are created when there is evidence of both (i) acts amounting to the settled practice of States; and (ii) a 'belief that this practice is rendered obligatory by the existence of a rule of law requiring it' (opinion juris). North Sea Continental Shelf cases, Judgment, ICJ Reports 1969, p. 44, para. 77. For more information on customary IHL, see ICRC Study on Customary IHL: <https://www.icrc.org/customary-ihl/eng/docs/home>

¹⁶ | See: Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002, last amended 2010) 2187 UNTS 90 http://www.icc-cpi.int/nr/rdonlyres/eagaeff7-5752-4f84-be94-0a655eb30e16/o/rome_statute_english.pdf

¹⁷ | Examples of grave breaches are violations of GC 1, Art 50; GC2, Art 51; GC3, Art 130; GC4, Art 147; AP1 Arts 8 and 11

¹⁸ | See: International Committee of the Red Cross, Annex 3: Other war crimes according to State practice as reflected in ICRC Study on Customary International Humanitarian Law (2012) <https://www.icrc.org/eng/assets/files/2012/att-other-war-crimes-annex-3-icrc.pdf> and International Committee of the Red Cross, Rule 156. Serious violations of international humanitarian law constitute war crimes (2009) https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule156

Article 7.1(b)i refers to 'a serious violation'. Finding a risk of a single serious violation could more easily lead to the denial of an arms export authorisation than the higher threshold of finding a risk of multiple serious violations. However, a State Party may not consider isolated violations of IHL a sufficient basis for denying an arms export unless there is evidence of the danger of future multiple serious violations. At a minimum, Article 7.1(b)i covers cases in which there is a discernible pattern of violations or a failure to take appropriate steps to put an end to violations and prevent their recurrence.¹⁹ Article 7.1(b)ii, discussed below, also refers to a single 'serious violation of international human rights law', and should be afforded similar consideration.

POTENTIAL REFERENCE DOCUMENTATION

To assess the degree of risk, a State Party may look to the ICRC's Practical Guide on applying IHL to arms transfer decisions, which includes a range of risk indicators.²⁰ For further reference, similar indicators are also included in the User's Guide²¹ accompanying the European Union's 2008 Common Position on Arms Exports.²²

STEP 3 – INTERNATIONAL HUMAN RIGHTS LAW

Article 7.1(b)ii requires an exporting State Party to 'assess the potential that the conventional arms or items:

- (b) could be used to:
 - (ii) commit or facilitate a serious violation of international human rights law...'

International human rights law is found in treaties and in customary international law, and promotes and protects the human rights of individuals and groups. The international trade in conventional arms can affect a wide range of human rights protected under international agreements and customary international law. These include the rights to life; freedom from torture and other forms of cruel, inhuman or degrading treatment; liberty and security of person; freedom from slavery; freedom of thought, conscience and religion; freedom of assembly and of expression, as well as the rights to health, education, food and housing.²³



¹⁹ | See: ICRC's Practical Guide: <<http://www.icrc.org/eng/resources/documents/publication/p0916.htm> at pages 8-9) (NB. the ICRC is in the process of updating this Guide.) See also Amnesty International, *How to Apply Human Rights Standards to Arms Transfer Decisions* (London: Amnesty International Ltd, 2012), 67 http://www.amnesty.org.uk/sites/default/files/how_to_apply_human_rights_standards_to_arms_transfer_decisions.pdf

²⁰ | Supra

²¹ | Council of the European Union 9241/09 of 29 April 2009 User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209241%202009%20INIT>

²² | Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment [2008] L 335/99 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>

²³ | Bellal, A. 2014. *Arms Transfers and International Human Rights Law*. in "Weapons under International Human Rights Law". Casey-Maslen, S. [Ed.]. Cambridge University Press. 2014. pg 469

SOURCES OF IHRL

The core human rights instruments include:²⁴

- International Covenant on Civil and Political Rights and its Optional Protocol (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and its Optional Protocol (2002)
- Convention on the Rights of the Child (1989)
- Convention on the Elimination of All Forms of Racial Discrimination (1966)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Convention on the Rights of Persons with Disabilities (2006)
- International Convention for the Protection of All Persons from Enforced Disappearances (2006).

Although resolutions adopted by the UN General Assembly are not legally binding per se, they can in certain circumstances provide evidence of the existence of customary law. This is the case, for instance, with the Universal Declaration of Human Rights, adopted by way of General Assembly Resolution in 1948. Whether or not such resolutions are reflective of obligations under customary international law will depend on their content, such as the degree of precision of the norms and undertakings defined in them, and whether they are 'evidence of a general practice accepted as law'.²⁵

Other examples of declarations adopted via UN General Assembly Resolution and which are considered reflective of customary international law include:

- Declaration on the Rights of Indigenous Peoples (2007)
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (1998)
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)
- Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (1988).

WHAT IS A 'SERIOUS VIOLATION' OF IHRL?

In jurisprudence and in practice, IHRL invokes the following terms interchangeably: serious, gross, grave, flagrant, particularly serious and egregious. However, there are several relevant examples within the field of IHRL from which guidance on the definition and use of the term 'serious' can be drawn. The character or nature of a human rights violation is necessarily examined in determining whether such a violation is deemed 'serious'. Cherif Bassiouni, Independent Expert on the right to restitution,

²⁴ | See The Office of the High Commissioner for Human Rights, The Core International Human Rights Instruments and their monitoring bodies, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> for the list of core human rights instruments and their monitoring bodies. See also Amnesty International, Applying the Arms Trade Treaty to Ensure the Protection of Human Rights (London: Amnesty International Ltd, 2015), Annex A <https://www.amnesty.org/download/Documents/ACT3000032015ENGLISH.PDF>

²⁵ | Statute of the International Court of Justice (26 1945), 59 Stat. 1055, 1060, USTS 993, Art 38

compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms, stated: "The term 'gross violations of human rights' has been employed in the United Nations context not to denote a particular category of human rights violations per se, but rather to describe situations involving human rights violations by referring to the manner in which the violations may have been committed or to their severity."²⁶

'Massive', 'systematic' or 'widespread' violations – repeated actions that show large numbers or a pattern of violations – are also evidence of serious violations. Some definitions of serious violations do contain the element of scale, and some particular violations require one scale-related factor. For example, for an act to be a crime against humanity it must be part of a widespread or systematic attack. However, scale or pattern are not always seen as a requirement for the definition of a 'serious violation'. The distinct nature of a quantitative factor or pattern is indicated by the separation of this factor in numerous analyses of gross, grave or serious violations.²⁷

In practice, the UN Security Council has used the terms 'grave' and 'serious' interchangeably,²⁸ and in the Human Rights Council's Universal Periodic Review process, references to human rights violations alternate between 'grave' and 'serious'. The following violations have been considered by States as 'serious':

- summary executions
- extrajudicial killings
- destruction of homes
- torture and cruel, inhuman and degrading treatment
- sexual and gender-based violence
- recruitment of child soldiers
- forced labour
- enforced disappearances
- arrest without warrant
- blockade
- retaliation for dissent
- attacks on human rights defenders and journalists
- excessive use of force during peaceful demonstrations.²⁹

²⁶ | Report of the Independent Expert on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms by M. Cherif Bassiouni, submitted pursuant to Commission on Human rights Resolution 1998/43, paragraph 85. See also Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, Final Report submitted by Theo van Boven, Special Rapporteur, UN doc. E/CN.4/Sub.2/1993/8, July 2, 1993, paras 8-13

²⁷ | See: UNGA Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (adopted 6 October 1999; entered into force 22 December 2000) UN doc. A/RES/54/4, Article 8. See also, UNGA Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (10 December 2008; in force on 5 May 2013) UN doc. A/RES/63/117, Article 11(2)

²⁸ | See, for example, UNSC Res 2000 (27 July 2011) Extension of the mandate of the UN Operation in the Côte d'Ivoire (UNOCI), para. 7(g); UNSC Res 2062, (26 July 2012) Extension of the mandate of the UN Operation in Côte d'Ivoire (UNOCI), para. 12

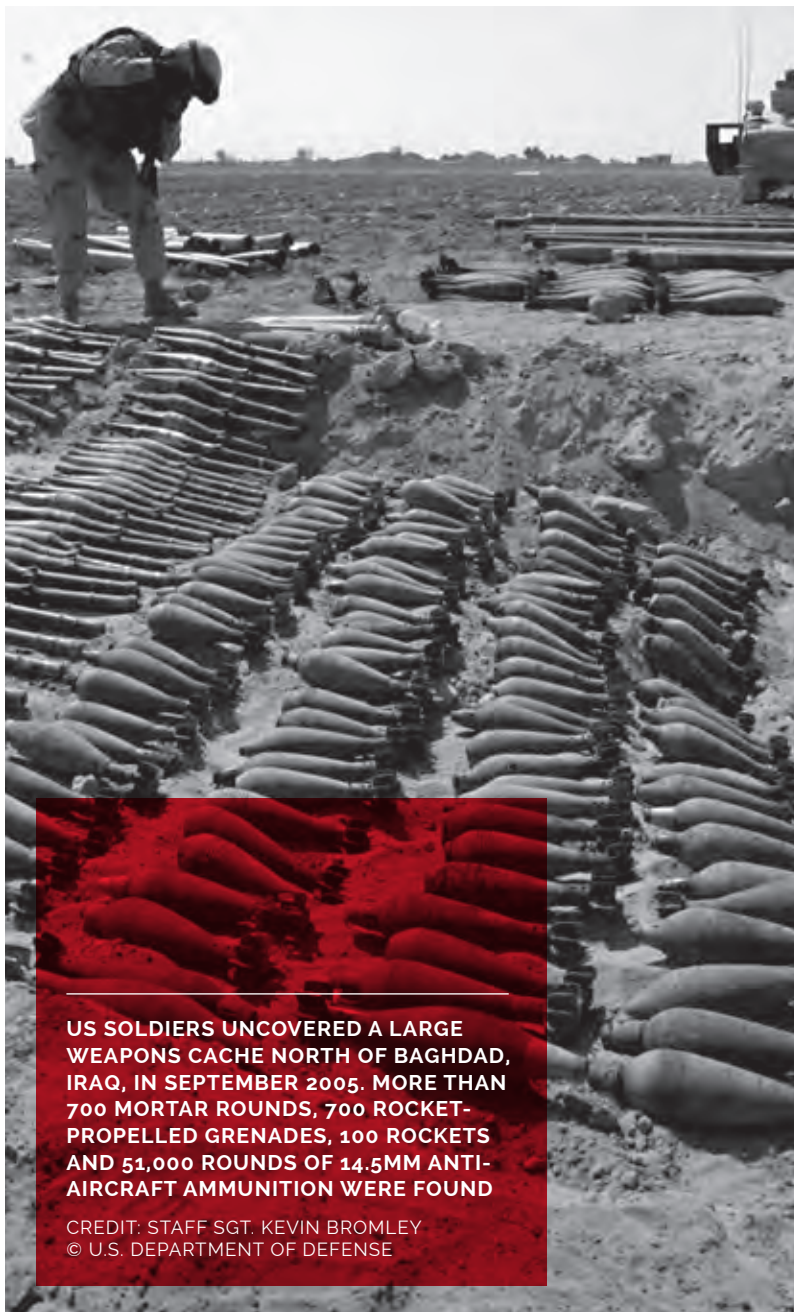
²⁹ | See, for example, UPR, Report of the Working Group (the WG) on the UPR, Central African Republic, (4 June 2009.), UN doc. A/HRC/12/2, para. 23; UPR, Report of the WG on the UPR, Myanmar, (24 March 2011.) UN doc. A/HRC/17/9, para. 107.46; UPR, Report of the WG on the UPR, Nepal, (8 March 2011) UN doc. A/HRC/17/5; UPR, Report of the WG on the UPR, United States of America, (4 January 2011) UN doc. A/HRC/16/11; Report of the WG on the UPR, DR Congo, (4 January 2010.) UN doc. A/HRC/13/8, para. 77; UPR, Report of the WG on the UPR, Somalia, (11 July 2011.) UN doc. A/HRC/18/6, para. 97.60; UPR, Report of the WG on the UPR, Spain, (16 June 2010.) UN doc. A/HRC/15/6, para. 87.2; UPR, Report of the WG on the UPR, Sri Lanka, (5 June 2008.) UN doc. A/HRC/8/46; UPR, Report of the WG on the UPR, Venezuela, (7 December 2011.) UN doc. A/HRC/19/12, para. 96.25

In its requirement that an assessment of the risk of 'serious violations of international human rights law' be undertaken, the ATT in Article 7 points towards the application of a standard of 'due diligence' imposed by many international agreements and instruments in the IHRL context.³⁰ Actions that cannot be attributed to the state may still give rise to state responsibility when it fails to exercise 'due diligence'.³¹ For example, the Small Arms and Light Weapons (SALW) Principles rely on this standard of state involvement, in that 'States are bound to act with due diligence to protect human rights by reducing arms-related violence committed by private actors'.³² The due diligence standard to protect the right to life from violence by small arms and light weapons also includes the responsibility 'to take steps to prevent reasonably foreseeable abuses by private actors'.³³

POTENTIAL REFERENCE DOCUMENTATION

To assess the degree of risk, an exporting State Party should look to relevant documentation of the conditions within an importing State, including:

- Concluding Observations of UN Treaty bodies (for example, the Human Rights Committee, the Committee against Torture and the Committee of the Convention on the Elimination of All Forms of Discrimination against Women)
- Reports of Special Procedures of the Human Rights Council
- The Universal Periodic Review process undertaken by the Human Rights Council relating to the importing State
- The reports of any independent monitoring bodies for the promotion and protection of human rights relating to the importing State.



US SOLDIERS UNCOVERED A LARGE WEAPONS CACHE NORTH OF BAGHDAD, IRAQ, IN SEPTEMBER 2005. MORE THAN 700 MORTAR ROUNDS, 700 ROCKET-PROPELLED GRENADES, 100 ROCKETS AND 51,000 ROUNDS OF 14.5MM ANTI-AIRCRAFT AMMUNITION WERE FOUND

CREDIT: STAFF SGT. KEVIN BROMLEY
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³⁰ | See also Amnesty International, *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights* (London: Amnesty International Ltd, 2015), Annex A <<https://www.amnesty.org/download/Documents/ACT3000032015ENGLISH.PDF>>

³¹ | See: Velásquez-Rodríguez case (Judgment of 29 July 1988.) Inter-Am.Ct.H.R. (Ser. C) No. 4, 172 (1988)

³² | See: U.N. Economic and Social Council. Commission on Human Rights, 56nd Session. Prevention of human rights violations committed with small arms and light weapons - Note by the Secretariat, (10) (a), (E/CN.4/Sub.2/2005/35), 2005, p.8

³³ | Jimenez Vaca v. Colombia, Comm'n No. 859/1999, 2.1–2.15, U.N. Doc. CCPR/C/74/D/859/1999 (Mar. 22, 2002); Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicar. v. USA.), 1986 I.C.J. 14, 130, 148 (Jun. 27, 1986).



STEP 4 – GENDER-BASED VIOLENCE AND VIOLENCE AGAINST WOMEN AND CHILDREN

The ATT is the first international treaty to specifically connect gender-based violence with the international transfer of arms.³⁴ As such, it will necessarily set critical precedents in this area. Article 7.4 requires that an exporting State Party 'in making this assessment, shall take into account the risk of the conventional arms...or items...being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children'.³⁵

The inclusion of Article 7.4 in the ATT emphasises the importance of gender-based violence (GBV) and violence against women and children in the context of arms exports and armed violence. More often than not, the types of 'serious acts' contemplated in Article 7.4 constitute IHRL violations, or in some cases violations of IHL,³⁶ and are otherwise required to be considered under Article 7.1(b)i and ii. For this reason, the specific risk assessment concerning GBV and violence against women and children is most appropriately completed in connection with the risk assessment for serious violations of IHL and IHRL. However, 'serious acts' of GBV or violence against women and children under Article 7.4 need not amount to a violation of international law. 'Serious acts' that do not reach the level of 'serious violations' of international human rights or humanitarian law must still be considered as a part of the Article 7 risk assessment for every proposed export.³⁷

WHAT ARE 'GENDER-BASED VIOLENCE' AND 'VIOLENCE AGAINST WOMEN AND CHILDREN'?

GBV affects women and girls, and men and boys, and is committed against persons, whether male or female, because of their sex and/or socially constructed gender roles. It is also noted that '[g]ender-based crimes are not always manifested as a form of sexual violence... [and]... may include non-sexual attacks on women and girls, and men and boys, because of their gender'.³⁸ Accordingly, the separation, by gender, of people for the subsequent killing of males and subjugation of women would constitute GBV on both counts.

³⁴ | Dahle, A. Gender-Based Violence and the Arms Trade Treaty, Amnesty International, 9 December 2014) <http://blog.amnestyusa.org/women/gender-based-violence-and-the-arms-trade-treaty//>

³⁵ | Arms Trade Treaty, (adopted 02 April 2013, entered into force 24 December 2014) _UNTS _ (ATT) Art 7.(4)

³⁶ | See, for example, Article 27 of Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (12 August 1949) 6 U.S.T. 3316, 75 U.N.T.S. 135; Article 76(1) of Additional Protocol I, Article 4(2) of Additional Protocol II, and Article 14 of Geneva Convention III

³⁷ | 'Overwhelming majority of States in General Assembly say "yes" to Arms Trade Treaty to stave off irresponsible transfers that perpetuate conflict, human suffering', UN meetings coverage, 2 April 2013, Un doc. GA/11354, p. 27, 30 (referencing statements by Norway and Iceland on the application of Article 7.4)

³⁸ | Office of the Prosecutor of the International Criminal Court, Policy paper on Sexual and Gender-based Crime (June 2014) 3 <http://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>

Acts of GBV are covered by international human rights conventions and their treaty bodies, such as the Committee against Torture (CAT)³⁹ and the Committee of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The CEDAW Committee specifically links GBV to multiple serious human rights violations and applies the definition of GBV not only to acts of violence perpetrated by States Parties, but also to acts perpetrated by non-state actors. A State Party will violate CEDAW and other international human rights instruments if it fails in its obligation to take all appropriate measures to eliminate discrimination and prevent violence, investigate and punish offences of violence and provide reparation.⁴⁰

Violence against women is defined by the CEDAW Committee as that which is 'directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty'.⁴¹

While children enjoy the full protection of IHL and IHRL, IHRL extends particular care to the child due to his or her vulnerability. This is reflected in specific provisions contained in the core human rights instruments, such as Article 24 of the International Covenant on Civil and Political Rights (ICCPR), and most clearly in the UN Convention on the Rights of the Child (CRC), which defines violence against children as 'all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse'.⁴²



³⁹ | Committee Against Torture, General Comment 2, UN Doc CAT/C/GC/2/CRP.1/Rev.4 (2007) http://www1.umn.edu/humanrts/cat/general_comments/cat-gencom2.html

⁴⁰ | Committee on the Elimination of Discrimination Against Women (CEDAW Committee), General Recommendation 19, <http://www.un.org/womenwatch/daw/cedaw/>

⁴¹ | Committee on the Elimination of Discrimination Against Women (CEDAW Committee) (adopted 18 December 1979, entered into force 3 September 1981), General Recommendation 19, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

⁴² | United Nations Convention on the Rights of the Child (adopted on 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, General Comment 13 <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>



SOURCES OF INTERNATIONAL LAW CONCERNING GENDER-BASED VIOLENCE AND VIOLENCE AGAINST CHILDREN

As mentioned, unlike Article 7.1(b), Article 7.4 does not require a 'serious act' of gender-based violence to reach the threshold of a violation of international law, serious or otherwise. However, because most 'serious acts' are likely also to be deemed violations of international law, relevant international legal sources include:

- core International Human Rights Treaties, specifically CAT, CEDAW and CRC⁴³
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime
- Rome Statute of the International Criminal Court.⁴⁴

POTENTIAL REFERENCE DOCUMENTATION

To assess the degree of risk, an exporting State Party may look to relevant documentation of the conditions within an importing State concerning gender-based violence and violence against women and children. This includes:

- country-specific documentation of the CEDAW and the CRC
- Reports of the CEDAW Committee, CRC Committee and Human Rights Committee (monitoring the International Covenant on Civil and Political Rights), pursuant to relevant Optional Protocols allowing for individual complaints, as well as jurisprudence from the International Criminal Court and regional human rights systems.
- Thematic and country-specific UN reports of:
 - the Special Rapporteur on violence against women
 - the Special Rapporteur on the sale of children, child prostitution and child pornography
 - the Special Rapporteur on trafficking in persons, especially women and children
 - the Special Representative of the Secretary-General for Sexual Violence in Conflict.

⁴³ | See: *supra*

⁴⁴ | See: Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002, last amended 2010) 2187 UNTS 90, Article 7(1)(g), and Article 8(2)(b)(xxii) http://www.icc-cpi.int/nr/rdonlyres/eagaeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf



STEP 5 – TERRORISM

Article 7.1(b)iii requires an exporting State Party to 'assess the potential that the conventional arms or items:

- (a) could be used to:
 - (iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party'.

SOURCES OF INTERNATIONAL LAW CONCERNING TERRORISM

Despite the lack of a common definition, terrorism is covered in a number of different international instruments^{45, 46}, including:

- The Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970)
- Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)
- International Convention against the Taking of Hostages (1979)
- Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988)
- Montreal Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988)
- Montreal Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991)
- International Convention for the Suppression of Terrorist Bombings (1997)
- International Convention for the Suppression of the Financing of Terrorism (1999)
- International Convention for the Suppression of Acts of Nuclear Terrorism (2005)

COMMITTING OR FACILITATING A TERRORISM OFFENCE

In most conventions or protocols dealing with terrorism, the export of arms would constitute 'facilitation' rather than a 'commission' of an act of terrorism. For example, the Convention for the Suppression of Unlawful Seizure of Aircraft (1970) makes it an offence for any person on board an aircraft in flight to 'unlawfully, by force or threat thereof, or by any other form of intimidation, seize or exercise control of, that aircraft' or to attempt to do so.⁴⁷ The export of conventional arms used in such an offence would have the effect of facilitating, rather than directly committing, the offence.

An example of conventional arms or items being used to 'commit' an act of terrorism is found in the International Convention for the Suppression of Terrorist Bombings (1997), which prohibits the unlawful and intentional use of explosives and 'other lethal devices in, into, or against various defined public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place'.⁴⁸

⁴⁵ | Becker. T. *Terrorism and the State: Rethinking the Rules of State Responsibility* (Hart Publishing, 2006) p. 84-118

⁴⁶ | Saul. B. *Defining Terrorism in International Law* (Oxford University Press, 2006)

⁴⁷ | Convention for the Suppression of Unlawful Seizure of Aircraft (signed on 16 December 1970, entered into force 14 October 1971) 860 UNTS 106, Art 1

⁴⁸ | International Convention for the Suppression of Terrorist Bombings (signed 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256, Art 2

POTENTIAL REFERENCE DOCUMENTATION

To assess the degree of risk, an exporting State Party may look to documentation concerning the recipient of an export of conventional arms or items, including:

- Reports of the UN Security Council's Counter-Terrorism Committee
- Evidence of breaches of relevant conventions and protocols relating to terrorism
- Evidence of domestic legislation implementing the provisions of relevant conventions and protocols relating to terrorism
- Relevant UN Security Council Resolutions, particularly the Council's counter-terrorism sanctions regime for al Qaida
- Reports of independent monitoring or fact-finding bodies relating to terrorism.

STEP 6 – TRANSNATIONAL ORGANISED CRIME

Article 7.1(b)iv requires an exporting State Party to 'assess the potential that the conventional arms or items:

(b) could be used to:

- (iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organised crime to which the exporting State is a Party'.

SOURCES OF INTERNATIONAL LAW RELATING TO TRANSNATIONAL ORGANISED CRIME

The United Nations Convention against Transnational Organised Crime (CTOC) defines transnational organised crime as 'serious crimes conducted by organised criminal groups where that serious crime is committed transnationally'.⁴⁹ Relevant obligations or criminal offences set out in CTOC include laundering the proceeds of crime, corruption and the obstruction of justice.⁵⁰

The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (2001) (Firearms Protocol) also supplements CTOC and requires States Parties to criminalise the illicit manufacturing and trafficking of firearms. The Firearms Protocol only applies to offences which are transnational in nature and involve an organised criminal group. It does not apply to state-to-state transactions or cases which would prejudice the state's national security interests consistent with the UN Charter. Article 5 of the Firearms Protocol provides for states to criminalise the illicit manufacturing or trafficking of firearms, their parts and components and ammunition.

Other potential sources include:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000)
- Protocol against the Smuggling of Migrants by Land, Sea and Air (2000)
- UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

⁴⁹ | United Nations Convention against Transnational Organised Crime (adopted by UNGA Res 55/25 of 15 November 2000; entered into force 29 September 2003) 2225 UNTS 209, Art. 2(a) and 3(2)

⁵⁰ | United Nations Convention against Transnational Organised Crime (adopted by UNGA Res 55/25 of 15 November 2000; entered into force 29 September 2003) 2225 UNTS 209, Art. 6, 8 and 23

COMMITTING OR FACILITATING A TRANSNATIONAL ORGANISED CRIME OFFENCE

The agreements above, considered broadly, use two approaches to criminalise certain acts. They either directly criminalise an act, or require States Parties to implement domestic legislation to criminalise an act (or both). Regardless of which approach is taken, these acts would be considered as 'constituting an offence' under a relevant agreement. Where an arms export is itself prohibited by the agreement, the export would be considered as a 'commission' of an act constituting an offence under a relevant agreement. More commonly, in the context of transnational organised crime, an export of such arms or items would 'facilitate' an act constituting an offence under a relevant agreement.

For example, under CTOC Article 6.1, a money-laundering offence may be committed or facilitated if the export from an ATT State Party were to be paid for from the proceeds of crime and the exporting State knew this. Likewise, exports to paramilitary groups who pay for arms from the proceeds of a criminal offence would constitute facilitation of a money-laundering offence.

Under the CTOC Trafficking Protocol, arms exports – especially small arms and light weapons – could facilitate trafficking in persons if the items fall into the hands of criminal groups which engage in such trafficking. Such arms exports – as well as their parts, components and ammunition – could also facilitate an offence covered by the CTOC Firearms Protocol if they could lead to the illicit manufacturing of weapons or trafficking in those weapons.



**A SNIPER DEPLOYED TO
HMS SOUTHAMPTON ON
COUNTERDRUG OPERATIONS**

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POTENTIAL REFERENCE DOCUMENTATION

To assess the degree of risk, an exporting State Party may look to documentation concerning the recipient of an export of conventional arms or items, including:

- evidence of breaches by the importing State of relevant conventions and protocols relating to Transnational Organised Crime
- evidence of national legislation implementing the provisions of relevant conventions and protocols relating to Transnational Organised Crime
- relevant Security Council resolutions relating to organised crime.

CONSIDERATION OF MITIGATION MEASURES

Once an exporting State Party has completed its factual inquiry based on these six steps and identified all the risks, as required by Article 7.1, in connection with the proposed export, Article 7.2 provides that '[t]he exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States'.

In other words, Article 7.2 requires the exporting State Party to consider whether there are any mitigating measures that it or the importing State can undertake that would lower the risks identified. When considering appropriate and effective mitigation measures, it is important to draw a distinction between mitigation measures referred to in Article 7, which relates to violations such as those of IHL and IHRL, and mitigation measures referred to in Article 11, which relates to diversion. While both sets of measures are not in all cases mutually exclusive, States Parties should ensure that the purpose and effect of proposed mitigation measures reduce the specific risk under review. A more detailed assessment of the political and practical elements of identifying and implementing mitigation measures in relation to both Articles 7 and 11 can be found in Chapter 1.2.

ASSESSING THE POTENTIAL CONSEQUENCES OF A PROPOSED EXPORT: APPLYING THE 'OVERRIDING RISK' TEST

Article 7.3 provides that 'if, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorise the export'.

That is, if, after conducting the risk assessment outlined in Article 7.1 and considering available mitigation measures outlined in Article 7.2, an exporting State Party determines that an 'overriding' risk of any of the negative consequences in Article 7.1 is present, it shall not authorise the export. How the State Party will assess the information collected from the factual inquiry and apply the 'overriding risk test' depends not only on its legal interpretation, but also on the political and practical realities faced by the exporting and importing States involved. Chapter 1.2 provides further insight into the political and practical aspects of applying Article 7.3 using a detailed hypothetical case study.

INTERPRETING 'OVERRIDING RISK'

The ATT itself does not provide a definition of 'overriding', nor is 'overriding' an established concept in international law. The Oxford English Dictionary defines 'to override' as 'to be more pertinent than', and 'overriding' as 'more important than any other consideration'.⁵¹

Despite the lack of a definition or guidance in the ATT text as to how to directly interpret and apply 'overriding' in the context of Article 7.3, submitting an interpretive declaration upon ratification is one method used by States Parties to clarify their interpretation of the Treaty. Switzerland, Liechtenstein and New Zealand made interpretive declarations at the time of their ATT ratifications that provide guidance on how each of these States intends to apply Article 7.3.

New Zealand, in its interpretive declaration, states that it 'considers the effect of the term "overriding risk" in Article 7.3 is to require that it decline to authorise any export where it is determined that there is a substantial risk of any of the negative consequences in Article 7.1'.⁵² Liechtenstein also declared that 'overriding risk' 'encompasses... an obligation not to authorise the export whenever the State Party concerned determines that any of the negative consequences set out in paragraph 1 are more likely to materialise than not, even after the expected effect of any mitigating measures has been considered'.⁵³ A threshold of risk that is 'substantial' or 'more likely to materialise than not' provides additional guidance on how States Parties might assess the magnitude of the risk before an export is authorised. There are also indications that the forthcoming EU Common Position User's Guide is likely to recommend a similar approach, using 'clear risk' as a threshold.⁵⁴

Setting a specific magnitude or threshold to measure 'overriding risk', such as 'substantial risk' or 'clear risk' could allow for a more tangible and consistent application between States Parties. Others are exploring approaches to the application of Article 7.3 that seek to weigh the risk of negative consequences referenced in Article 7.1 against any lawful positive contributions to peace and security resulting from the proposed export. Under this interpretation, if the negative consequences 'override' or outweigh any such identified lawful contribution to peace and security, the export must not be authorised.⁵⁵

⁵¹ | See also Amnesty International, *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights* (London: Amnesty International Ltd, 2015), 19. <https://www.amnesty.org/download/Documents/ACT3000032015ENGLISH.PDF>

⁵² | Declaration made by New Zealand upon ratification of the Treaty, 2 September 2014: <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXVI/XXVI-8.en.pdf>

⁵³ | Declaration made by Liechtenstein upon ratification of the Treaty, 16 December 2014: <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXVI/XXVI-8.en.pdf>

⁵⁴ | Comments based on email communication with EU officials who have shared the 'Working Draft' of the forthcoming amended version of the Users Guide. [Forthcoming] EU, 2015. User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment. Brussels.

⁵⁵ | For example, Amnesty International describes the operation of Article 7(3) as follows: 'Ultimately, for an export to be authorized... the exporting State is first required to demonstrate in a clear and identifiable way that the export would make a positive contribution to peace and security in lawful manner. The exporting state must also demonstrate that any potential negative consequences identified in the risk assessment... will not be so grave and likely as to override that positive contribution.' Amnesty International, 2015. *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights*. London. Amnesty International Ltd. pgs19-20. <https://www.amnesty.org/download/Documents/ACT3000032015ENGLISH.PDF>



**IMPRECISION IN THE
LANGUAGE CAN BE
REMEDIED THROUGH
INTERPRETIVE
DECLARATIONS AND
BY THE PRACTICE OF
STATES PARTIES IN THE
TREATY'S FIRST YEARS**

CONCLUSION

Imprecision in language in Article 7.3 – and indeed Article 7 as a whole – can be remedied in some cases through interpretive declarations submitted by States at ratification, and certainly by the initial practice of States Parties in the first years that the Treaty is in force.⁵⁶ This provides a significant opportunity for early ratifiers to set the tone of the Treaty at the outset. The Conference of States Parties may also choose to take on an interpretive function in years to come.⁵⁷

In the ATT's first years, the interpretation and application of Article 7 by all States Parties is particularly critical. In order to ensure a strong and robust implementation of the Treaty, States Parties must strive for consistency in interpretation, using the ATT's humanitarian object and purpose as a guide. While the legal analysis provided in this chapter is intended to serve as an initial framework within which States can begin to consider their obligations under Article 7, it is only over time that the true, practical implications of these legal interpretations will become clear.



**INDONESIAN PEACEKEEPERS
GETTING READY TO LEAVE THEIR
BASE FOR A PATROL NEAR TAYBE
IN SOUTH LEBANON**

CREDIT: © UN PHOTO / PASQUAL GORRIZ

⁵⁶ | Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980), 1155 UNTS 332, Art 31(3)(b)

⁵⁷ | Arms Trade Treaty, (adopted 2 April 2013, entered into force 24 December 2014) _UNTS_(ATT) Art 17.4(d)

CHAPTER 1.2

PUTTING THEORY INTO PRACTICE: A HYPOTHETICAL CASE STUDY

INTRODUCTION

To highlight States Parties' obligations, this chapter considers the application of three key Articles: 6 (Prohibitions), 7 (Export and Export Assessment) and 11 (Diversion), with regard to arms transfers to a hypothetical state, 'Canteron'. It examines a series of prospective arms transfers to Canteron, from the perspective of a potential arms-exporting State Party, offering conclusions based on obligations under the Treaty.

The application of Articles 6, 7 and 11 of the ATT to this hypothetical country aims to illustrate how prospective arms transfers can be evaluated when an end-user country is flagged as being of concern on a number of levels.

Two key parameters should guide an assessment of the risks associated with any transfer of conventional arms:

- the nature of the recipient
- the nature of the equipment.

Depending on circumstances, transfers of certain types of equipment for certain purposes could be approved, while others may be refused.

INFORMATION SOURCES

In considering whether or not to authorise an arms transfer, States Parties should draw on a wide variety of information sources. Relevant information will often be sketchy or fragmentary, not least because questions about arms transfers are often regarded as sensitive and may involve confidentiality or national security.

Information should first be sought from the prospective importing state authorities and, where appropriate, the end-user. Both the importing authorities and the end-user may, for example, be able to provide important information not in the public domain that can address concerns arising during the transfer assessment process.

However, multiple other sources will need to be consulted, as it is unlikely that a full picture of the risks attached to a transfer can be properly understood from a single source. Specialist sources often do not cover the full range of relevant criteria, while more generalist analyses are unlikely to go into sufficient detail on every issue. Multiple sources also help address bias, partiality and potential mistakes. Digital social media gives previously unimaginable access to conflict zones and trouble spots, but can be fundamentally misleading (sometimes deliberately so) and requires careful checking.

There is already a substantial body of accepted practice in arms transfer risk assessments. Standard sources include (in no particular order):

- competent United Nations bodies
- diplomatic missions of the transferring State, and potentially of its allies or regional bodies it belongs to
- the International Committee of the Red Cross (ICRC) and other international or regional organisations
- relevant government departments and institutions, including intelligence services
- counterparts from licensing authorities of other States
- research institutes
- humanitarian and human rights NGOs and other civil society organisations (local and international)
- media (specialised and general, traditional and social).

Within most of these categories there is a wide range of viable sources. States Parties must make their own decisions over what is relevant and appropriate, taking into account issues such as objectivity, non-discrimination, universality of coverage, credibility, rigour and diversity. In this chapter, given that many of the above sources will be useful across the whole of the arms transfer risk assessment process, further reference to them will only be made where areas of specialism are noted as potentially useful. The chapter should be read in conjunction with the legal analysis of Article 7 in Chapter 1.1.



**AN ITALIAN SOLDIER ON
LOOKOUT DUTY ABOARD AN
ARMOURED VEHICLE CONVOY
IN AFGHANISTAN**

CREDIT: © CROWN COPYRIGHT / MOD

A GEOPOLITICAL OVERVIEW OF CANTERON

Canteron is a medium-small state which shares land borders with two countries (Belsa and Verrania). It has a lengthy coastline and a barren mountainous interior. Most of its population of almost 7 million lives in coastal urban areas. Annual per capita GDP is US\$40,000, due largely to major oil reserves. However, wealth distribution is extremely uneven, with minority groups, including economic migrants and refugees, faring worst.

Canteron is a one-party state. The president leads both party and government, and was recently re-elected unopposed with 87 per cent of the vote. Freedom of expression, association and religion are significantly limited, and serious human rights violations by law enforcement agencies frequently reported. Women's political and civil rights are restricted, and citizens risk prison and harsh treatment for opposing the government. There are occasional reports of torture and abuse by the police, persistent rumours of widespread police corruption and links to organised crime, and concerns about police impunity.

Domestic unrest has recently increased, alongside calls for greater democracy. Peaceful protest has occasionally led to violence. Television footage shows security forces equipped with armoured vehicles and automatic weapons confronting apparently unarmed crowds. Tear gas and plastic bullets are used routinely to disperse protests.

Isolated explosions have targeted religious figures and facilities, with responsibility claimed by a transnational fundamentalist organisation. The government uses these attacks to justify further clamp-downs on civil liberties, making numerous questionable arrests.

OVERVIEW OF CANTERON

Government	One-party Government
Source of Income	Oil and natural gas
Annual GDP per Capita	US\$40,000
Social Inequality	High
Human Rights Record	Poor
Level of Unrest	High
Military Strength	50,000 full-time troops
Military Spending	6% Annual GDP



The UN Security Council Sanctions Committee¹ has information on the full range of UN Security Council sanctions, while the Stockholm International Peace Research Institute (SIPRI) arms embargo database² and the *Groupe de recherche et d'information sur la paix et la sécurité* (GRIP) embargoes database³ both provide updated information on embargoes in a more accessible format.

Article 6.2 prohibits a State Party from authorising arms transfers that would violate 'relevant international obligations under international instruments to which it is a party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms'.

This suggests only legally-binding international instruments are relevant (where 'international' applies to agreements between two or more States). At the global level this would include, at a minimum:

- 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol), supplementing the UN Convention against Transnational Organised Crime⁴
- 1997 Anti-Personnel Mine Ban Convention⁵
- 2008 Convention on Cluster Munitions.⁶

Relevant legally-binding regional agreements that address international transfers of conventional arms will also be included.

These instruments impose a range of restrictions on the transfer of particular types of conventional weapons, including firearms, anti-personnel land-mines and cluster munitions. While some of these weapons lie outside the explicit scope of the ATT, any State considering the transfer of weapons to Canteron would nevertheless be required to ensure that they would not contravene the prohibitions or restrictions enshrined in any of the international agreements to which it is a party, including those listed above.

It should be noted that while the Firearms Protocol applies only to commercial transactions (where States are not principals to the transfer), the ATT still obliges any such transfers to be authorised by the State Party of the country of export. Therefore, that State Party will need to consider the transfer taking full account of the ATT as well as the relevant provisions of the Firearms Protocol, including those relating to transfer authorisation and notification, marking and record-keeping.

Any decision as to whether transfers of arms to Canteron would be in breach of legally-binding regional agreements will necessarily depend on the specific provisions of those agreements to which the exporting State is Party.

¹ | UN Security Council Sanctions Committees. Accessed 10 July 2015: <http://www.un.org/sc/committees/>

² | SIPRI. Arms Embargo Database. Accessed 10 July 2015: <http://www.sipri.org/databases/embargoes>

³ | GRIP. Embargoes Database. Accessed 10 July 2015: <http://www.grip.org/fr/node/1558>

⁴ | Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts And Components And Ammunition, Supplementing The United Nations Convention Against Transnational Organized Crime. Accessed 10 July 2015: https://treaties.un.org/doc/source/RecentTexts/18-12_c_E.pdf

⁵ | The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. Accessed 10 July 2015: <http://www.apminebanconvention.org/>

⁶ | The Convention on Cluster Munitions. Accessed 10 July 2015: <http://www.clusterconvention.org/>

Article 6.3 prohibits a State Party from transferring arms if it has knowledge, at the time of authorisation, that the arms would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks on civilian objects and civilians, and other war crimes.

There is no specific indication that Canteron is committing the war crimes covered under Article 6.3 on its own territory. However, a robust analysis will assess whether there might be a connection between arms supplies to Canteron and the conduct of hostilities between Belsa and Verrania that may constitute war crimes. If credible external observers such as the ICRC indicate that a violation or a potential violation of ATT Article 6.3 has occurred in Belsa or Verrania, States Parties will need to consider claims that Canteron is:

- operationally involved in the conflict in Belsa
- supplying, or facilitating the supply of, weapons to rebels within Belsa
- supplying, or facilitating the supply of, weapons to Verrania.

If any or all of these concerns are substantiated and it is known that arms transferred would be used in genocide, crimes against humanity or war crimes as specified in Article 6.3, States Parties are bound to refuse those transfers.

If there is sufficient doubt about the direct involvement of Canteron's forces in the conflict between Belsa and Verrania that it does not trigger a refusal under this 'knowledge' test, the transfer is not automatically prohibited per se. This is also the case in the absence of reliable evidence to support allegations of re-transfers from Canteron to Verrania or to rebels in Belsa. However, this does not mean that the transfer should automatically be approved. If an export is not prohibited by Article 6, then it becomes subject to a comprehensive risk assessment under Articles 7 and 11.

For relevant primary sources relating to war crimes, see Chapter 1.1.



**IT IS FUNDAMENTAL
TO AN EFFECTIVE
PROCESS THAT THE RISK
ASSESSMENT MUST ALSO
BE FORWARD-LOOKING**

APPLYING ARTICLE 7 (EXPORT AND EXPORT ASSESSMENT)

If an exporting State Party decides that a transfer of arms under Articles 2.1, 3 and 4 is not prohibited under Article 6, Article 7 requires that it carry out an export risk assessment. This must include concerns relating to human rights, international humanitarian law, terrorist acts, transnational organised crime and gender-based violence or violence against women and children.

In the case of Canteron, this would require careful analysis of:

- respect for international law by the recipient entity (for example, armed forces, police or other security forces)
- increasing levels of political protest
- limits to fundamental freedoms
- human rights violations by law enforcement agencies and their lack of accountability, including with regard to:
 - responding to political protest
 - treatment of prisoners
 - treatment of minorities
 - a culture of police impunity
 - due process
- accommodation of a significant refugee population
- corruption, particularly among the police
- terrorist attacks on religious figures and facilities
- conflict and sectarian violence in the region
- involvement in the war between neighbouring countries, potentially including the supply of arms to rebel groups or even operational engagement on the ground
- high level of defence spending.

In addition, licensing authorities need to take into account not only the risk of immediate misuse. It is fundamental to an effective process that the risk assessment must also be forward-looking. This is because authorisations may be valid for a period of years, and the items themselves typically have a shelf life of many years. To base an assessment simply on how the items for transfer would be used only at the time of authorisation is to misunderstand the object and purpose of the ATT.

Article 7.2 obliges the exporting State Party to 'consider whether there are measures that could be undertaken to mitigate risks identified'. However, the exporting State Party is not obliged to implement any of the mitigation measures it may have identified. Depending on the circumstances, a number of options present themselves, such as:

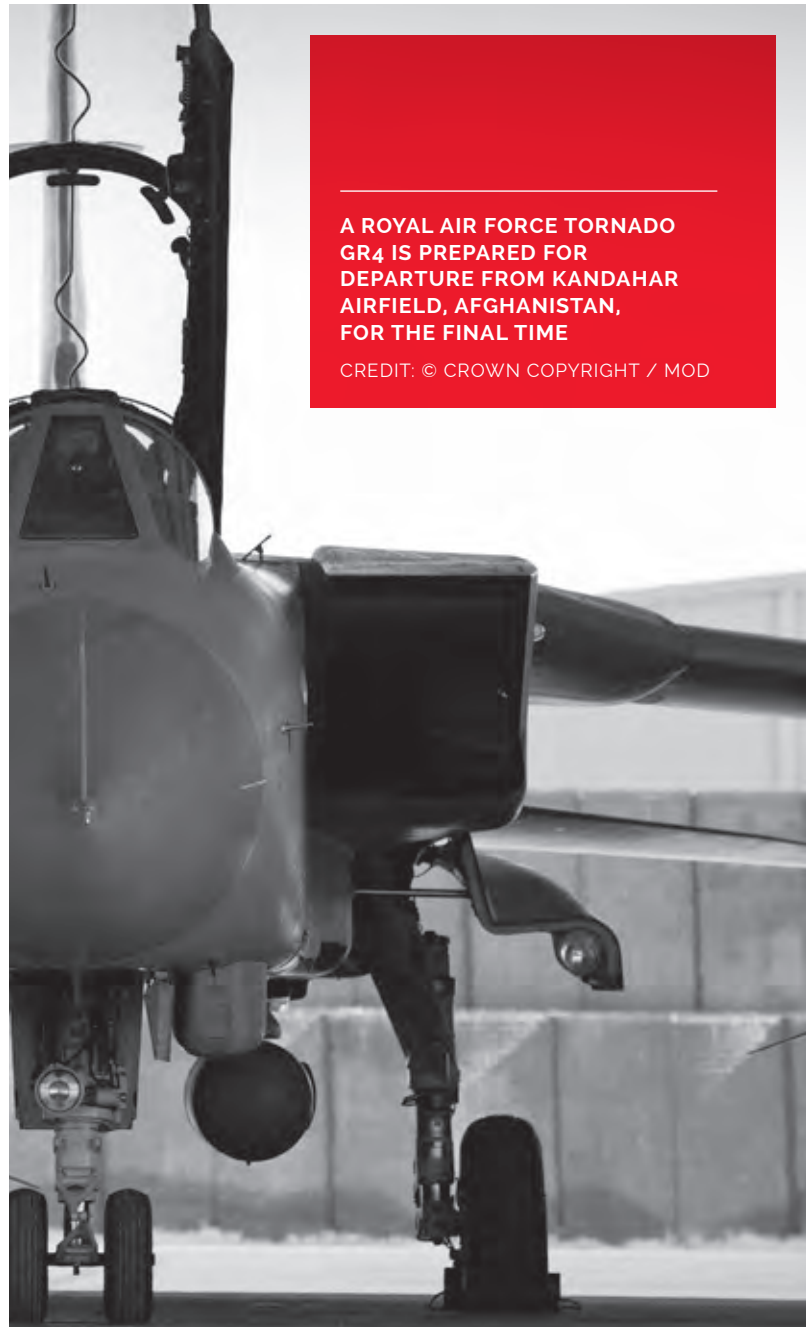
- placing explicit limitations on the end-uses or end-users of the items
- improving certification and verification procedures
- agreeing terms to allow for post-delivery inspection of the items
- improving physical security and stockpile management in the recipient country
- providing human rights or other training to end-users.

Note that it is the effect of mitigation measures, and not just their identification or implementation, that is critical. Where mitigation measures do not reduce the identified risks to a low level, an export of arms should be refused.

Article 7.3 states that if after 'conducting [a risk] assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorise the export'.⁷

(See Chapter 1.1 for a full discussion of Article 7.3 and, in particular, the application of the term 'overriding'.)

Crucially, with regard to the consequences set out in Articles 7.1 and 7.4, authorities must assess not only the risk that items will be used to commit the stated violations or acts, but that they will be used to facilitate these violations or acts. This broadens considerably the scope and application of the criteria, in that it means they also apply where the items are not used directly but their mere possession and availability help to create the climate, conditions or circumstances whereby the recipient feels able to, is encouraged to or does undertake problematic acts.



A ROYAL AIR FORCE TORNADO GR4 IS PREPARED FOR DEPARTURE FROM KANDAHAR AIRFIELD, AFGHANISTAN, FOR THE FINAL TIME

CREDIT: © CROWN COPYRIGHT / MOD

⁷ | The negative consequences in paragraph 1 are that the relevant items would undermine peace and security or could be used to commit or facilitate: a serious violation of international humanitarian or human rights law, an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or an act constituting an offence under international conventions or protocols relating to transnational organised crime to which the exporting State is a Party.

IMPACT ON PEACE AND SECURITY⁸

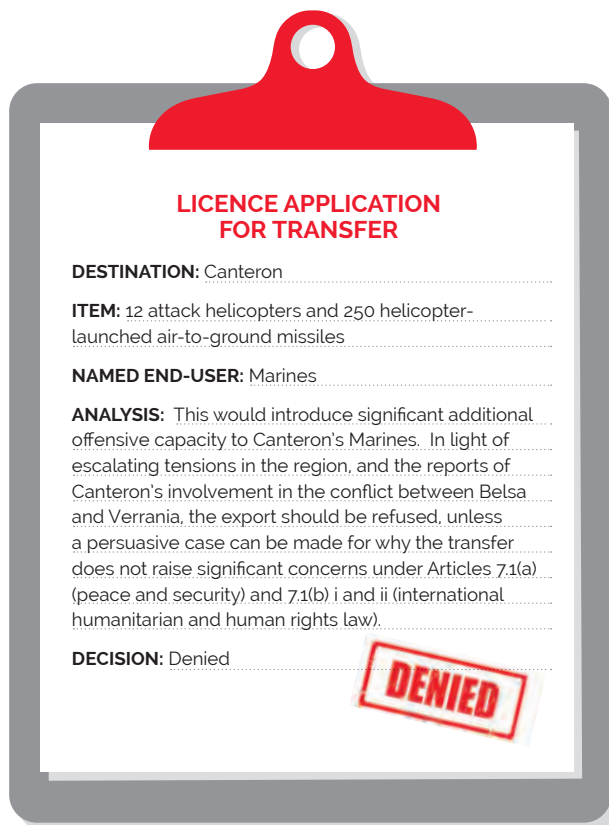
ATT Article 7.1(a) requires States Parties to 'assess the potential that the conventional arms or items would contribute to or undermine peace and security'.

The international legal context of peace and security is defined by the UN Charter and elaborated primarily in decisions of the UN Security Council. These decisions have extended the concept to include human security issues (see Chapter 1.1).

Under the ATT, exporting States are to assess the risks of harm to peace and security, as well as the possibility of a positive contribution, whether global, regional or national. This should be considered from a longer-term, macro perspective, given that building peace and security is a long-term project going beyond any immediate short-term imperative to respond to a crisis. A further consideration is that while peace and security take a long time to build, they can be destroyed extremely quickly.

Peace and security for Canteron and the surrounding region are in constant flux and under significant threat, with many factors needing consideration. This criterion is therefore likely to be critical in the assessment of a high proportion of arms exports across the full scope of the Treaty, from aircraft and naval vessels down to small arms and ammunition. In this context, there is no suggestion that Canteron's role in or relationship to any neighbouring conflict is such that supplying arms will contribute to peace and security.

Conversely, indications of a drift towards countries becoming increasingly involved in their neighbours' strategic affairs points to a developing risk of transfers having a negative impact on regional peace and security. For example, arms supplies could directly or indirectly (via loss, theft or diversion) reach non-governmental actors who may be committing terrorist acts.



**LICENCE APPLICATION
FOR TRANSFER**

DESTINATION: Canteron

ITEM: 12 attack helicopters and 250 helicopter-launched air-to-ground missiles

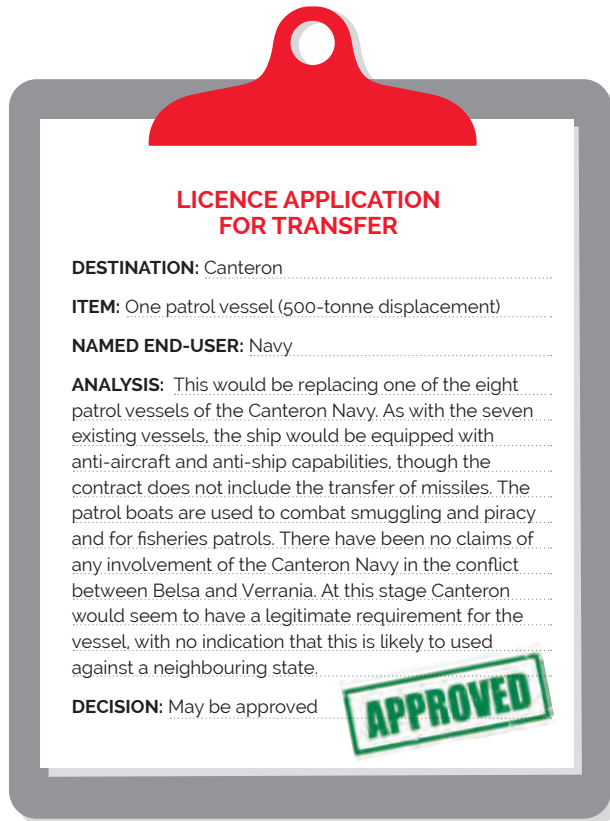
NAMED END-USER: Marines

ANALYSIS: This would introduce significant additional offensive capacity to Canteron's Marines. In light of escalating tensions in the region, and the reports of Canteron's involvement in the conflict between Belsa and Verrania, the export should be refused, unless a persuasive case can be made for why the transfer does not raise significant concerns under Articles 7.1(a) (peace and security) and 7.1(b) i and ii (international humanitarian and human rights law).

DECISION: Denied

DENIED

⁸ | For a legal analysis of the concept of peace and security, including relevant primary sources, see Chapter 1.1



**LICENCE APPLICATION
FOR TRANSFER**

DESTINATION: Canteron

ITEM: One patrol vessel (500-tonne displacement)

NAMED END-USER: Navy

ANALYSIS: This would be replacing one of the eight patrol vessels of the Canteron Navy. As with the seven existing vessels, the ship would be equipped with anti-aircraft and anti-ship capabilities, though the contract does not include the transfer of missiles. The patrol boats are used to combat smuggling and piracy and for fisheries patrols. There have been no claims of any involvement of the Canteron Navy in the conflict between Belsa and Verrania. At this stage Canteron would seem to have a legitimate requirement for the vessel, with no indication that this is likely to be used against a neighbouring state.

DECISION: May be approved

APPROVED

In this context, while acquisitions of a size and type consistent with maintaining Canteron's existing armed capacities might not increase concerns relating to peace and security, the excessive militarisation of Canteron implied by a defence budget of 6 per cent of GDP needs to be considered. An assessment will therefore still be required of Canteron's capacities and configurations, military doctrine, relationships with its neighbours and national security discourse. This must be carried out in the context of the deteriorating regional situation, taking into account whether one particular transfer could be part of a larger regional arms race or an excessive and potentially destabilising accumulation of arms.

Of obvious and immediate concern would be acquisitions that, owing to their scale or technological advancement, indicate a shift in the military capacity of Canteron, the military balance in the region, or towards a more aggressive military posture. Each export will also need to be assessed, not just in its own right, but as part of any broader trends in military acquisitions and the developing security dynamic. In this case, the categories of equipment covered by the ATT (Articles 2, 3, and 4) – in particular battle tanks and armoured combat vehicles, artillery, combat aircraft and missiles, their components and ammunition – would be especially relevant.

Sources of information on military acquisitions include organisations and publications such as SIPRI, the International Institute for Strategic Studies' Military Balance and Strategic Survey, specialised defence-sector media (such as *Jane's*, *Defense News*), along with national, regional and international reports on equipment transfers and holdings (such as the UN Register of Conventional Arms).

Regarding the wider regional security picture, internal government sources will be important, as will relevant deliberations of the UN Security Council and other UN institutions and agencies. Other sources include information provided by specialist academics, research institutes and NGOs, and specialist and general media. Useful indices relating to conflict and instability have been developed in recent years by non-governmental organisations – such as the Institute for Economics and Peace's Global Peace Index⁹, and the Fund for Peace's Fragile States Index¹⁰. These sources function as pointers to potential risks and the need for more detailed analysis.

⁹ | Institute for Economics and Peace. Global Peace Index. Accessed 10 July 2015: <http://www.visionofhumanity.org/#/page/indexes/global-peace-index>

¹⁰ | Fund for Peace. Fragile States Index. Accessed 10 July 2015: <http://library.fundforpeace.org/fsi>

INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW¹¹

Under ATT Article 7.1(b), States Parties to the ATT must refuse arms exports where there is an overriding risk that the arms could be used to commit or facilitate a serious violation of international humanitarian or international human rights law.

INTERNATIONAL HUMAN RIGHTS LAW

As noted in Chapter 1.1, the international trade in arms can impinge on a wide range of human rights as enshrined in Treaty and customary international law, from the right to life to the right to health, education, food and housing. Accordingly, when assessing risks relating to international human rights law (IHRL), any ATT State Party contemplating arms exports to Canteron will need to consider reports of serious human rights violations by law enforcement agencies. This assessment should be further informed by the wider context in which limits to fundamental freedoms, responses to legitimate protest, the treatment of minorities, the application of due process, the treatment of prisoners and the conduct of security forces all give cause for concern. Exporting authorities need to consider whether the arms or items to be exported would exacerbate such concerns.

If their investigations conclude that the reports have been significantly overstated, it will still be important for them to consider potential future risks. These could be expected to intensify in the context of Canteron's declining domestic security environment, as evidenced by increasing anti-government protest, terrorist violence and internal stresses due to attitudes towards the growing refugee population. Exporting authorities will also need to make a forward-looking assessment of whether the deteriorating internal security situation is likely to provoke a violent or repressive government response. In this context an assessment of governance structures and accountability to the population would be useful.

Within the scope of the ATT, the types of equipment most relevant to IHRL violations are small arms and light weapons and their ammunition, and armoured vehicles. However, in situations of extreme internal stress, all conventional weapons are of potential concern and should be subject to careful pre-export assessment. As well as the risk that items would themselves be used to commit violations, an assessment should consider the risk that the items could simply by their presence facilitate, or enable, violations such as assault or rape, for example, by protecting or enhancing the overall operational capacity of the end-users.

In addition to the exporting government's internal information sources, many other sources may assist States in their human rights risk assessments, including relevant UN bodies such as the Office of the High Commissioner for Human Rights (OHCHR)¹², the Human Rights Council and Special Procedures,¹³ UN Sanctions Committees¹⁴ and Security Council¹⁵ reports.

¹¹ | For a legal analysis of the applicability of international human rights law and international humanitarian law, including relevant primary sources, see Chapter 1.1.

¹² | Office of the High Commissioner for Human Rights (OHCHR). Accessed 10 July 2015: <http://www.ohchr.org/EN/Pages/WelcomesPage.aspx>

¹³ | Special Procedures comprise a special rapporteur or independent expert or a working group tasked to address either specific country situations (14, as of 10 July 2015) or thematic issues (currently 39). Human Rights Council and Special Procedures. Accessed 10 July 2015. <http://www.ohchr.org/EN/HRBodies/SP/Pages/WelcomesPage.aspx>

¹⁴ | UN Security Council Sanctions Committees. Accessed 10 July 2015: <http://www.un.org/sc/committees/>

¹⁵ | United Nations Security Council. Accessed 10 July 2015. <http://www.un.org/en/sc/>

International NGOs such as Amnesty International and Human Rights Watch provide useful data on in-country practices, while human-rights monitoring organisations and agencies on the ground may have first-hand knowledge of problems. The US State Department provides a detailed yearly human rights report on all countries (excepting the US).

Other useful sources include:

- Geneva Academy, What amounts to 'a serious violation of international human rights law'?, August 2014¹⁶
- The User's Guide to EU Council Common Position 2008/944/CFSP, new edition forthcoming¹⁷
- Amnesty International, Applying the ATT to ensure the protection of human rights, February 2015.¹⁸

INTERNATIONAL HUMANITARIAN LAW

As noted in Chapter 1.1, international humanitarian law (IHL) applies only in situations of armed conflict and seeks to limit the effects of such conflict, particularly in relation to non-combatants. In practice, however, there is often overlap between IHL and IHRL.

Despite rumours concerning Canteron's involvement in the neighbouring conflict (where serious IHL violations are alleged), the reality is unclear. An export assessment should therefore explore and analyse all relevant available information to determine the level and nature of Canteron's involvement in the conflict between Belsa and Verrania, before considering the extent of IHL violations and the likelihood of an increase or decrease in the foreseeable future.

Even if current concerns are not substantiated, the export assessment should explore the potential for serious violations of IHL going forward. States Parties contemplating exports to Canteron need to assess:

- the possibility that Canteron will become more deeply involved in the conflict between Belsa and Verrania or embroiled in another conflict
- the risk of any such conflict contributing to serious violations of IHL
- the likelihood that once involved, Canteron would be directly implicated in serious violations of IHL
- whether the items to be exported would be used to commit or would facilitate such violations.

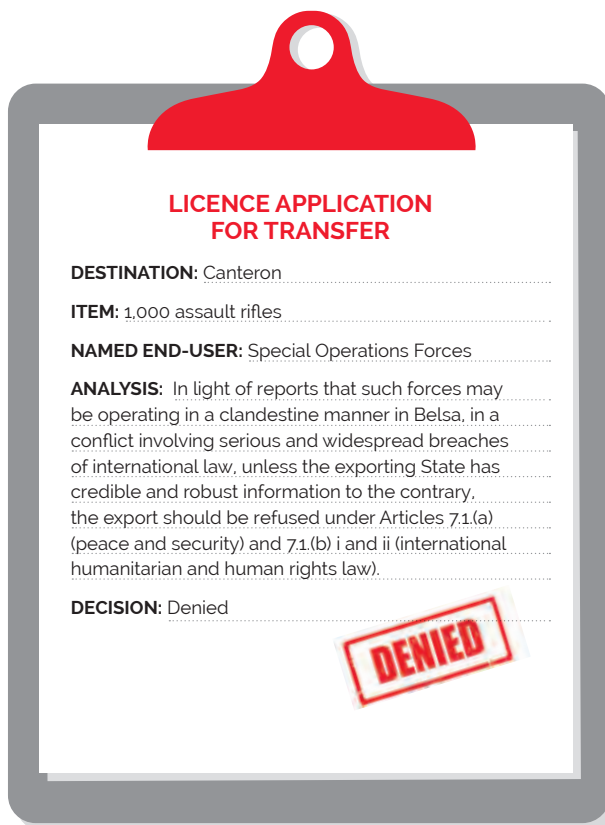
Sources relevant to the IHL analysis include the deliberations and outputs of the ICRC, not least its 2007 publication Arms transfer decisions – *Applying international humanitarian law criteria: Practical guide*.¹⁹ This offers several relevant risk indicators, such as the proposed recipient's previous history in respecting IHL, its formal commitments to respect IHL, and the integration of IHL into military doctrines, manuals and instructions.

¹⁶ | Geneva Academy. 2014. What amounts to 'a serious violation of international human rights law'? August 2014. [http://www.geneva-academy.ch/docs/publications/Briefings and In breifs/Briefing 6 What is a serious violation of human rights law_Academy Briefing No 6.pdf](http://www.geneva-academy.ch/docs/publications/Briefings%20and%20In%20briefs/Briefing%206%20What%20is%20a%20serious%20violation%20of%20human%20rights%20law_Academy%20Briefing%20No%206.pdf)

¹⁷ | The 2009 edition of the User's Guide, which is soon to be replaced, is available at: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209241%202009%20INIT>

¹⁸ | Amnesty International. 2015. Applying the ATT to ensure the protection of human rights. February 2015. <https://www.amnesty.org/en/documents/act30/0003/2015/en/>

¹⁹ | ICRC. 2007. Arms transfer decisions—Applying international humanitarian law criteria: Practical guide. 2007. https://www.icrc.org/eng/assets/files/other/icrc_002_0916.pdf



**LICENCE APPLICATION
FOR TRANSFER**

DESTINATION: Canteron

ITEM: 1,000 assault rifles

NAMED END-USER: Special Operations Forces

ANALYSIS: In light of reports that such forces may be operating in a clandestine manner in Belsa, in a conflict involving serious and widespread breaches of international law, unless the exporting State has credible and robust information to the contrary, the export should be refused under Articles 7.1.(a) (peace and security) and 7.1.(b) i and ii (international humanitarian and human rights law).

DECISION: Denied

DENIED

TERRORIST OFFENCES²⁰

Under ATT Article 7.1(b) iii, States Parties must refuse arms exports where there is an overriding risk that the arms could be used to commit or facilitate terrorist offences as set out in relevant international instruments.

The lack of a universally accepted definition of the terms 'terrorism' or 'terrorist' means that the ATT applies to those areas where there is international agreement, namely relevant conventions or protocols. Most such instruments relate to offences concerning the safety of civil aviation and maritime activities and terrorist acts that employ particular tools or modus operandi (see Chapter 1.1 for a comprehensive list of relevant instruments).

Canteron is experiencing some low-level, but nonetheless serious, incidents of terrorist activity involving improvised explosive devices. This, in itself, is not critical to the Article 7 risk assessment about potential exports of arms to Canteron. More important in this context is Canteron's role (if any) in the conflict between Belsa and Verrania and whether arms have been supplied by Canteron to armed opposition groups in Belsa known to have perpetrated terrorist acts.

²⁰ | For a legal analysis of Article 7.1 (b) iii, including relevant primary sources, see Chapter 1.1

In making this assessment, an exporting State Party should ascertain:

- whether there is a substantial risk that Canteron is involved in the direct or indirect transfer of arms to armed opposition groups in Belsa known to have committed terrorist offences
- whether security forces from Canteron are involved in Belsa and are responsible for, or complicit in, terrorist offences. Even if no evidence is found, it will nevertheless be important to assess the possibility that, in the context of a volatile sub-region, Canteron might engage in these activities in the foreseeable future. This assessment might involve the relevant authorities in the exporting State Party consulting with their intelligence services, with consular officials in Canteron or with authorities in partner States.

If there is evidence to confirm either of the above scenarios, the exporting State Party is required to consider whether there is a substantial risk that the proposed export of arms could be used to commit or facilitate terrorist offences – either by Canteron providing the weapons directly or indirectly to armed groups in Belsa, or to sections of its own security forces operating there under cover. If a substantial risk is identified and no effective mitigation measures can be implemented, the export under consideration should be refused.

Relevant sources of information include UN Security Council resolutions relating to terrorism and the work of the Council's Counter Terrorism Committee.²¹ Publications of respected organisations and institutes focused on international security and related issues are also applicable.



**A LARGE AMOUNT OF ROCKET
PROPELLED GRENADE
LAUNCHERS FOUND DURING
AN IRAQI ARMY-LED PATROL OF
A VILLAGE AND SURROUNDING
AREAS NEAR HAWIJA, IRAQ**

CREDIT: © U.S. ARMY /
SPC. MICHAEL PFAFF

²¹ | UN Security Council. Counter Terrorism Committee. Accessed 10 July 2015.

TRANSNATIONAL ORGANISED CRIME²²

States Parties must refuse arms exports where there is an overriding risk that the arms could be used to commit or facilitate an act relating to transnational organised crime which constitutes an offence under international instruments to which the exporting State is a Party.

'Transnational organised crime' refers to a wide range of criminal activity by groups operating internationally, including trafficking in illegal drugs, people, endangered species and firearms, as well as cyber-crime and money laundering.²³ Corruption – particularly systemic corruption – can also be viewed as part of this matrix.

With suggestions circulating on social media and in international media that senior police figures in Canteron are corrupt and have links to organised crime, an export risk assessment should explore the veracity of these allegations and whether any arms exported to the government may be used by the police or others to pursue international criminal activity. This should include assessment of the possibility that weapons such as small arms, purportedly destined for military end-use, may be misappropriated and used by the police for organised criminal activity, or that they may fall into the hands of criminal groups. In the case of Canteron, where evidence is limited, further investigation will be necessary. This might involve authorities in the exporting State Party consulting with their intelligence services, with consular officials in Canteron, with authorities in partner States and with the UN Office of Drugs and Crime.

If it is decided that the incidence of criminal (including corrupt) activity by the police is significant, and that there is a substantial risk of the proposed export of arms being used in the facilitation or commission of transnational organised crime, the proposed export should be refused.

The principal international instrument in this field is the UN Convention against Transnational Organised Crime²⁴, together with Protocols on Trafficking in Persons, Especially Women and Children, on Smuggling of Migrants, and on Illicit Manufacturing and Trafficking of Firearms. Also of relevance may be publications of respected organisations and institutes that address transnational organised crime issues, for example: Global Initiative on Transnational Organised Crime, *Clingandael*, Global Witness, Transparency International and *Stiftung Wissenschaft und Politik*.

²² | For a legal analysis of Article 7.1 (b) iv, including relevant primary sources, see Chapter 1.1.

²³ | There is no explicit definition of the term 'transnational organised crime' in the United Nations Convention on Transnational Organized Crime (UNTOC). However the convention does contain a definition of 'organized criminal group' in Article 2(a) as: a group of three or more persons that was not randomly formed, existing for a period of time, acting in concert with the aim of committing at least one crime punishable by at least four years' incarceration, in order to obtain, directly or indirectly, a financial or other material benefit'. See <http://www.unodc.org/unodc/en/organized-crime/index.html>

²⁴ | UN Convention against Transnational Organized Crime. Accessed 10 July 2015. <http://www.unodc.org/unodc/treaties/CTOC/>

GENDER-BASED VIOLENCE OR SERIOUS ACTS OF VIOLENCE AGAINST WOMEN AND CHILDREN²⁵

In conducting an export risk assessment, Article 7.4 obliges States Parties to take into account the risk of the arms or items being used to commit or facilitate serious acts of gender-based violence (GBV), or serious acts of violence against women and children. It is worth reemphasising that GBV is committed against women, girls, men and boys, and includes rape, sexual violence and non-sexual attacks. Chapter 1.1 includes a comprehensive discussion of these issues.

As noted, Belsa and Verrania have accused each other of employing rape as a weapon of war against the civilian population, while armed rebels within Belsa are also alleged to have recruited child soldiers. These claims should be investigated not only in the context of Article 7.4 but also in the context of Article 6 (prohibitions) and Article 7.1 (IHL and IHRL). If claims relating to the conduct of Belsa and Verrania are substantiated, and relevant support from Canteron is identified, exports of major conventional weapons and small arms and light weapons to Canteron should be refused.

Information sources identified under Articles 6 and 7.1 are relevant here, given the overlapping nature of the issues. Particular prominence should be given to organisations and institutions with a special interest in GBV and violence against women and children. These include UN agencies such as the UN Children's Fund (UNICEF), the UN Population Fund (UNFPA) and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict; the ICRC, and international NGOs such as the International Rescue Committee, the International Medical Corps, *Medecins Sans Frontières* and Oxfam. Some have an extensive field presence in conflict and human rights crisis zones and can serve as primary sources of credible information.

APPLYING ARTICLE 11 (DIVERSION)

Arms diversion is the process by which authorised holdings or transfers of arms are either delivered to unauthorised end-users contrary to the terms of the transfer, or put to unauthorised uses by a legitimate end-user. ATT Article 11 requires States Parties to prevent the diversion of arms (listed under Article 2.1) and sets out a range of measures that they must either adopt or consider adopting.

Exporting States Parties are obliged firstly to assess the risk of diversion of an export, then to consider the establishment of mitigation measures. Other prevention measures may include 'examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorising the export'.

Allegations that Canteron is supplying weapons to the Government of Verrania and to armed rebels in Belsa require investigation on the grounds that they imply a diversion risk. If the claims are substantiated, efforts should be made to identify exactly the types and quantities of arms transferred. The diversion of relatively few small arms to Verrania or to rebels in Belsa may not necessarily suggest a risk of Canteron also diverting major conventional arms, so there is a need for export assessments to obtain a proper understanding of how diversion risks manifest themselves.

²⁵ | For a legal analysis of the concepts of gender-based violence and violence against women and children, including relevant primary sources, see Chapter 1.1.

In practice, the regional situation is such that if a substantial diversion risk is identified, States Parties should take a very cautious approach to exporting any items that might be of use to identified unauthorised end-users. A related issue is whether the prospective unauthorised end-user has the capacity to use the arms in question. If it does not, and Canteron does, that would suggest a reduced diversion risk.

Other actors in the transfer control chain can also be involved in diversion, including brokers, shipping agents, or countries linked to transit or transshipment. As past behaviour is an important indication of future risk, it is vital that an exporting State Party is aware of all those involved in the arms transfer chain, and refuses exports where significant questions are raised. Transport routes may also provide a clue to diversion risks. States Parties should be wary, for example, of approving exports to Canteron which would transit through Belsa and Verrania. Other factors to consider include whether Canteron's stockpile management is effective and not vulnerable to corruption, and whether the export would be sensible in terms of Canteron's legitimate defence needs.

If a diversion risk is identified, the exporting State Party is obliged before any licensing decision is taken to consider the establishment of mitigation measures to reduce that risk. Options proposed in Article 11 include:

- possible confidence-building measures or joint programmes with the importing State
- no-re-export clauses
- physical security measures for arms in transit
- post-shipment controls including on-site verification measures.

Crucially, any mitigation measures agreed with the importing or transit State must be appropriate and effective in reducing the risks of diversion to a low level before



**COMBAT ARMS TRAINING
AND MAINTENANCE COURSES
FOR AIR FORCE PERSONNEL
INCLUDES FAMILIARISATION
WITH AMMUNITION
(PICTURED), WEAPONS,
PARTS AND EQUIPMENT**

CREDIT: © U.S. AIR FORCE /
AIRMAN 1ST CLASS KRISTOFFER
KAUBISCH

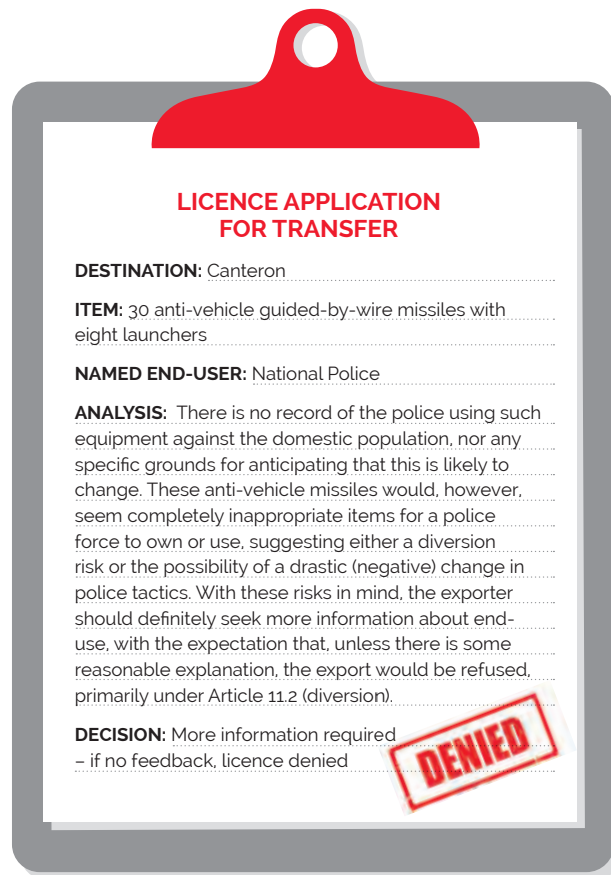
the decision can be taken to authorise the export. Where mitigation measures are irrelevant or ineffective in reducing risk, exports should be refused.

If the assessment concludes that diversion is a serious risk, the key to resolving this issue will lie in securing credible high-level political commitment from within Canteron. Technical 'fixes' will be of limited effect if key actors in Canteron remain committed to diverting arms into the conflict zone.

The User's Guide to EU Council Common Position 2008/944/CFSP (new edition forthcoming) provides detailed guidance to the issues and sources to consider during any diversion risk assessment.²⁶ The UN – including the reports of various UN Security Council Sanctions Panels of Experts – is an important source of information on arms diversion to proscribed end-users. Information can also be obtained from humanitarian agencies such as Amnesty International and Human Rights Watch, which document cases of misuse of arms.

Several organisations specialise in locating, identifying and tracing specific conventional arms and ammunition, such as Conflict Armament Research (responsible for iTrace) and Armament Research Services. Interpol has established an Illicit Arms Records and Tracing Management System (iARMS) – a 'state-of-the art tool that facilitates information exchange and investigative cooperation between law enforcement agencies in relation to the international movement of illicit firearms'. The US maintains a publicly available List of Statutorily Debarred Parties²⁷, which includes the names of all those who have violated US arms export legislation.

Exporting States Parties may also obtain important information from their intelligence services and diplomatic missions or those of allies.²⁸



**LICENCE APPLICATION
FOR TRANSFER**

DESTINATION: Canteron

ITEM: 30 anti-vehicle guided-by-wire missiles with eight launchers

NAMED END-USER: National Police

ANALYSIS: There is no record of the police using such equipment against the domestic population, nor any specific grounds for anticipating that this is likely to change. These anti-vehicle missiles would, however, seem completely inappropriate items for a police force to own or use, suggesting either a diversion risk or the possibility of a drastic (negative) change in police tactics. With these risks in mind, the exporter should definitely seek more information about end-use, with the expectation that, unless there is some reasonable explanation, the export would be refused, primarily under Article 11.2 (diversion).

DECISION: More information required
– if no feedback, licence denied

DENIED

²⁶ | 2009 User's Guide to Council Common Position 2008/944/CFSP Defining Common Rules Governing the Control of Exports of Military Technology and Equipment

²⁷ | US Department of State, Directorate of Defence Trade Controls, List of Statutorily Debarred Parties. Accessed 10 July 2015. <http://pmdtc.state.gov/compliance/debar.html>

²⁸ | NB: calculation of future diversion risk should not stand or fall on the basis of whether there is physical evidence of previous diversion

CONCLUSION

The agreement under the ATT that all prospective international exports of conventional arms should be required to pass certain universally applied objective 'tests' before being approved, regardless of their ultimate declared destination, is a landmark achievement. However, the challenge to States Parties did not end with the Treaty's entry into force.

As this chapter demonstrates, the obligation for States Parties to make a rigorous risk assessment of all proposed arms exports requires several stages. It starts with a consideration of whether a proposed transfer would be automatically prohibited on the grounds that it would violate specific international legal obligations. If not, a more involved assessment of the likelihood of a range of negative consequences arising from the proposed export is required.

The object and purpose of the ATT require due diligence in conducting this assessment. This means careful consideration of the risks regarding both the nature of the recipient and the nature of the equipment to be transferred. It involves consulting a variety of sources, both public and confidential, and the exercise of judgement in potentially very fluid and stressed contexts. It also obliges States Parties to consider not only the risk that the items for export would be subject to misuse if exported immediately, but also how contexts might develop over time and the likelihood of items being misused in future.

With this in mind, it is evident that if ATT States Parties are to implement the export risk assessment robustly they will have to:

- take a measured and careful approach to export licensing
- be proactive in seeking information from a variety of sources, especially where significant doubt exists, as may frequently be the case
- exercise particular caution where decisions may have to be made on the basis of incomplete information
- consider longer-term risks, not just those at the moment of licence application.



AMMUNITION FALLS TO
THE GROUND DURING
A JOINT TRAINING
EXERCISE BETWEEN US
AND LATVIAN FORCES
IN LATVIA IN JUNE 2014

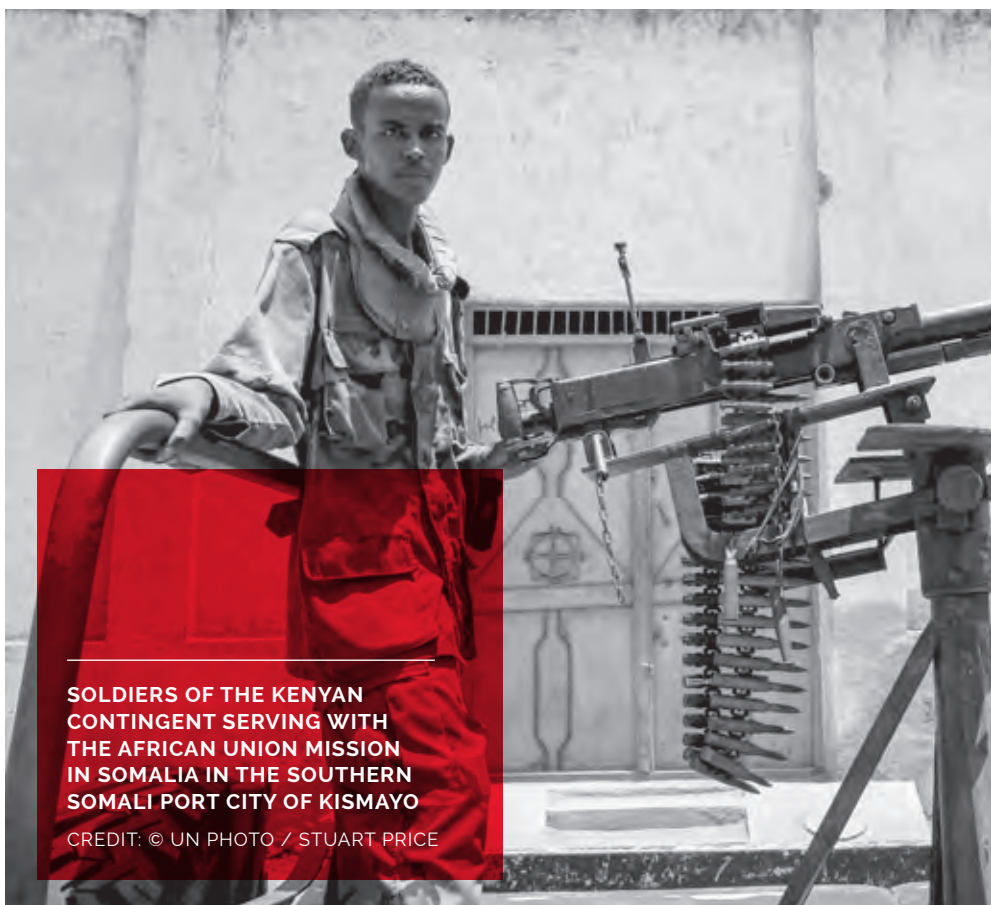
CREDIT: © US ARMY /
SPC. JOSHUA LEONARD

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



**SOLDIERS OF THE KENYAN
CONTINGENT SERVING WITH
THE AFRICAN UNION MISSION
IN SOMALIA IN THE SOUTHERN
SOMALI PORT CITY OF KISMAYO**

CREDIT: © UN PHOTO / STUART PRICE

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.

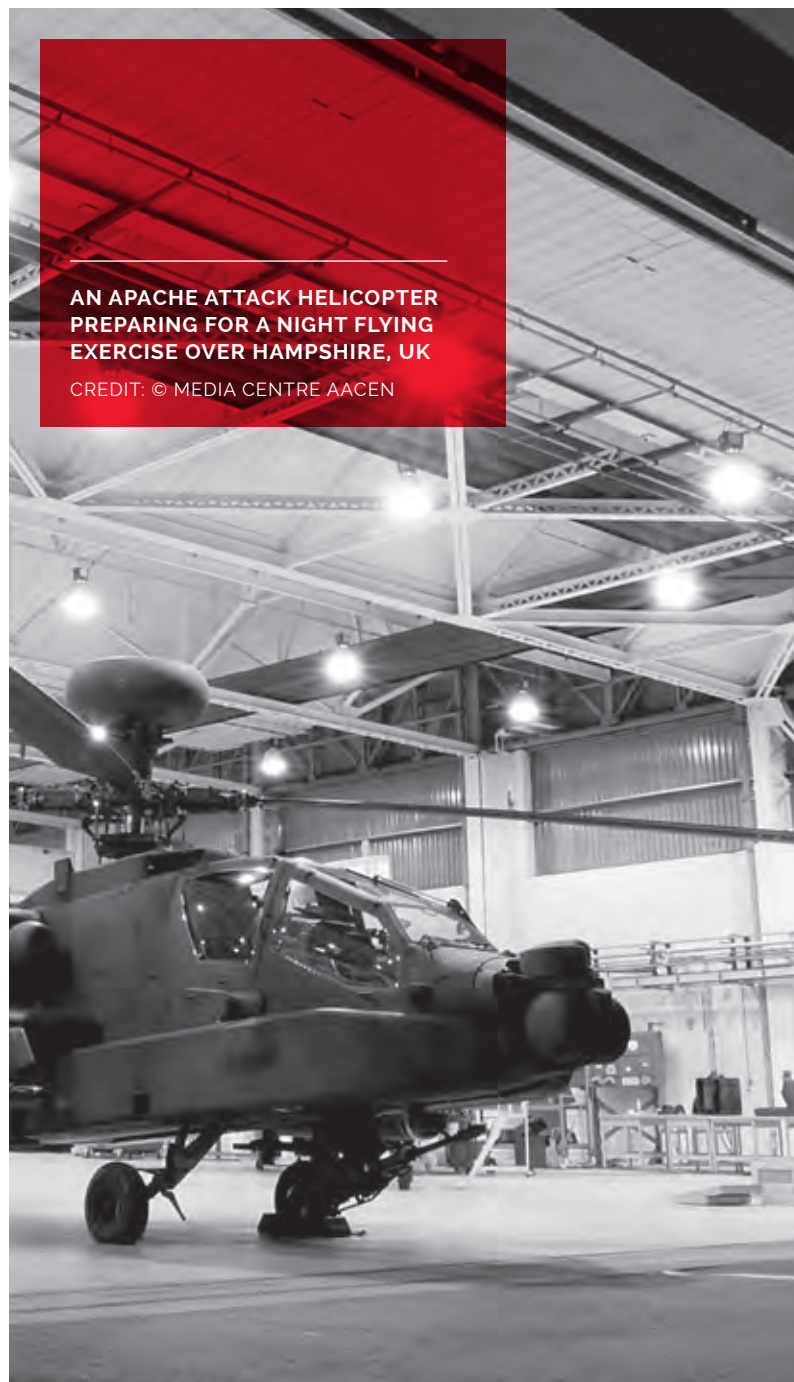
⁵ | ATT-BAP. October 2014. The ATT Baseline Assessment Project – Initial Finds and Current State Practice. Washington D.C.: Stimson Center, <http://www.armstrade.info/database>

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



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**

CREDIT: © UN PHOTO / KY CHUNG

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.



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.

**SOLDIERS FIRING A 105MM
LIGHT GUN DURING A TRAINING
EXERCISE IN NORWAY**

CREDIT: © STEVE DOCK / MOD



CHAPTER 2

IMPLEMENTATION MEASURES

This chapter examines institutional, legislative, legal and administrative steps that current and future States Parties need to take in order to become Treaty compliant. These provisions are critical to the long-term success of the ATT. Before a State Party can be fully Treaty compliant, it has to bring several of its national laws and systems into alignment with Treaty requirements. This chapter first takes stock of the challenges faced by a number of 'typical' ATT States Parties who are not currently large-scale exporters – and therefore do not currently have robust transfer control systems in place already. It then aggregates these institutional realities to begin to make specific policy recommendations for existing and future States Parties of the ATT.

In Chapter 2.1, the systems and institutions in six States Parties to the Treaty are explored. These countries are divided across three trading profiles – exporters, importers, and transit or transshipment states. For comparative purposes, they are taken from two regions, Europe (Malta, Norway and Serbia) and Latin America and the Caribbean (Mexico, Panama and the Bahamas).

The findings from and implications of the ATT Baseline Assessment Project are explored in Chapter 2.2. This voluntary stock-taking exercise has enabled the 70 respondents to date to develop a comprehensive picture of their national systems. Looking at the overall collection of responses, a number of clear areas of focus emerge which relate to Treaty compliance. This type of analysis will be critical to ensure that limited assistance and cooperation resources are directed effectively, and achieve the best impact.

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 of 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.lovdata.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://lovdata.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://lovdata.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&mtdsg_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_del_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&mtldsg_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/941.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/97.pdf>



**ALL STATES WOULD
BENEFIT FROM BEING
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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



NORWEGIAN MILITARY WINTER
TRAINING EXERCISE HELD IN 2015

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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.¹ 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.

¹ | 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
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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.

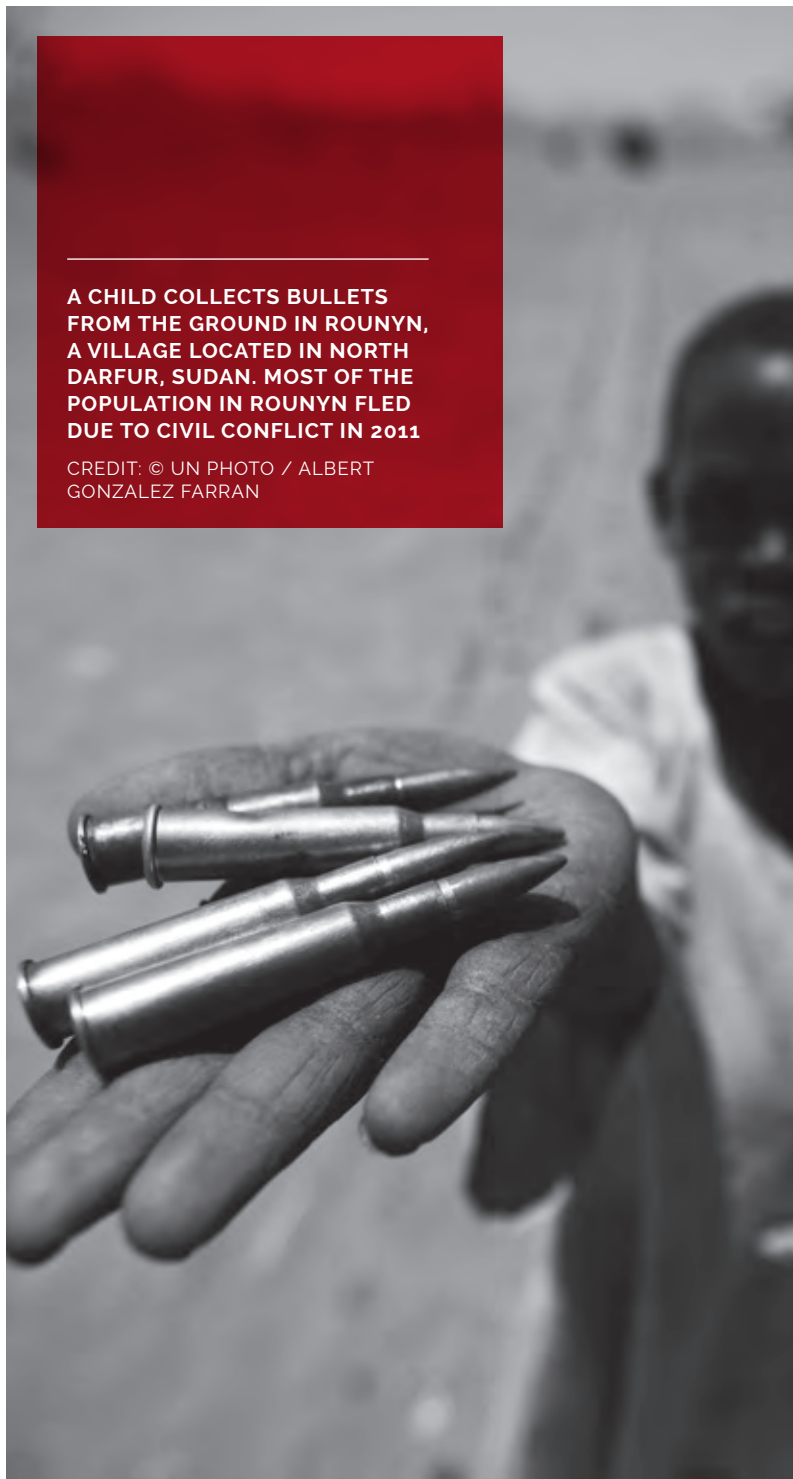
PROHIBITIONS

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**

CREDIT: © UN PHOTO / INDOBATT MPIO





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.



SOLDIERS OF THE KENYAN
CONTINGENT SERVING WITH
THE AFRICAN UNION MISSION
IN SOMALIA IN THE SOUTHERN
SOMALI PORT CITY OF KISMAYO

CREDIT: © UN PHOTO/STUART PRICE

CHAPTER 3

REPORTING ON PROGRESS

Reporting and transparency are critical components for ensuring the long-term success of the ATT. The Treaty text on Reporting (Article 13) obliges all States Parties to submit a one-off report on implementation activities by the first anniversary of the Treaty's Entry Into Force (December 2015), and thereafter, annual reports on exports and imports of all conventional arms covered by the Treaty.¹

This chapter builds on the ATT Monitor report 'Initial Findings'² by expanding the dataset and analysis to include all 193 UN Member States. Its focus is on reporting activities by UN Member States when the Arms Trade Treaty came into force on 24 December 2014. It shows which States have reported conventional arms imports or exports using three reporting mechanisms during the period 2009 to 2013 (comprehensive data on reporting in 2014 was not available at the time of writing in June 2015).³

THREE REPORTING MECHANISMS OF RELEVANCE TO CONVENTIONAL ARMS TRANSFERS⁴

A number of reporting initiatives have been put in place since 1990. All of them have been voluntary mechanisms, and States have not been obliged to report annually. There are also regional initiatives such as the EU Annual Reports, and information exchanges between States which are members of the Wassenaar Arrangement, the Organisation for Security and Cooperation in Europe, and the European Union (in addition to its annual reports).⁵ Of these mechanisms, three are of most relevance to establishing a reporting profile among existing and future States Parties to the ATT:

THE UN REGISTER ON CONVENTIONAL ARMS

The UN Register was set up in 1991 and is run under the auspices of the United Nations Office for Disarmament Affairs (UNODA). All UN Member States are asked to provide information voluntarily to the Register on their arms imports and exports. They are specifically requested to name the exporting or importing State; the number of units transferred; intermediary States and the State where the arms originated. States are requested to report on seven categories of arms: battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, and missiles or missile launchers. These seven categories do not include small arms and most types of light weapons. International attention to the proliferation of small arms and light weapons led to calls for their inclusion in the UN Register, though some States were reluctant to revise the seven

¹ | It is important to note that reporting requirements do not include mandatory reporting on transfers of ammunition (Article 3) or parts and components (Article 4)

² | Karim, A and Marsh, N. 2015. Initial Findings. ATT Monitor. February 2015. <http://controlarms.org/en/att-monitor-report>

³ | The methodology for this analysis is outlined in Annex 2 of this edition of the ATT Monitor

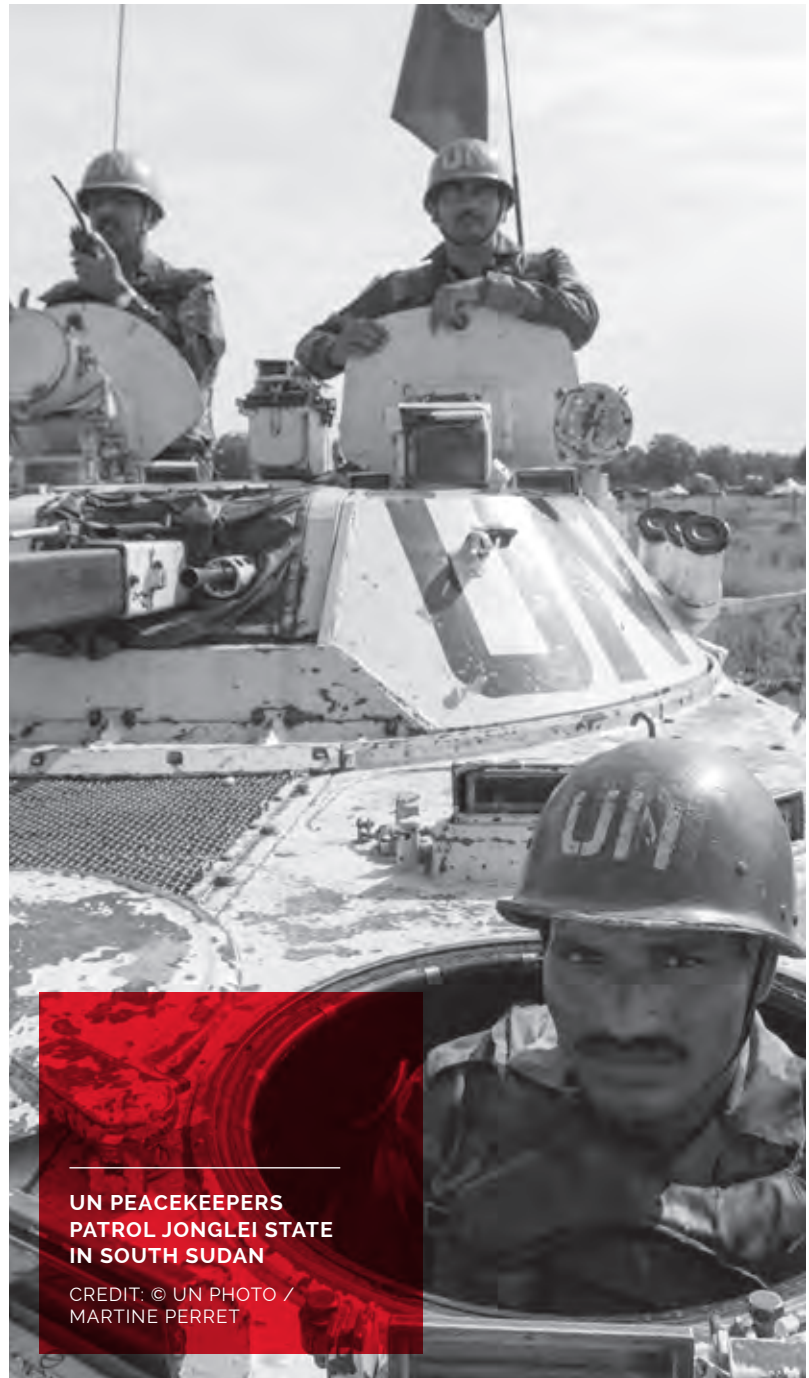
⁴ | For an analysis of the relevance of these reporting mechanisms in the context of increasing transparency in the arms trade, see: Marsh, N., Dansseart, P., and DaSilva, C. 2011. Our Right to Know – Transparent Reporting Under An Arms Trade Treaty. Amnesty International. June 2011.

⁵ | Marsh, N., D. P., and DaSilva, C. 2011. Our right to know – Transparent reporting under an Arms Trade Treaty. Amnesty International. June 2011. pp. 5-6

categories. Instead, in 2003 it was decided that Member States could report 'additional information' on imports and exports of small arms and light weapons.⁶ In practice they do so by reporting those transfers as a form of 'background information'. This was a compromise that formalised the reporting of imports and exports of small arms and light weapons without revising the original seven categories of arms covered by the UN Register.

UN COMMODITY STATISTICS DATABASE (COMTRADE)

All States collect customs data on movements of goods over their borders. The data is primarily used for revenue collection and the compilation of economic statistics, and all States use a standard system of classifying goods. States voluntarily report this data to the UN Commodity Statistics Database (known as Comtrade), which is run by the United Nations Statistical Division. Data reported to Comtrade includes categories which cover the arms trade, particularly small arms and light weapons. When reporting to Comtrade, States can provide information on the number of units exported, the financial value of a shipment, the weight of goods, the exporter and the importer. As it is a record of goods moving from one State to another, the data does not record the ownership of goods being traded.



**UN PEACEKEEPERS
PATROL JONGLEI STATE
IN SOUTH SUDAN**

CREDIT: © UN PHOTO /
MARTINE PERRET

⁶ | See General Assembly document A/58/274 and Resolution 58/54

NATIONAL REPORTS ON ARMS TRANSFERS

National reports are published by individual States and provide a detailed record of their arms imports and exports. Such reports are usually the source of the most detailed information on the arms trade. States publish different information in their national reports, but they often contain information on arms export licences granted or refused, as well as a detailed record of the quantity, type and financial value of arms exports and sometimes imports.

CURRENT REPORTING PRACTICES

Of the **193** States assessed in this report, **159** of them, or **82 per cent**, publicly reported some information on their arms imports or exports via at least one of the three reporting mechanisms during the five-year period 2009-2013. None of the **34** States⁷ that did not report at all are major arms producers.⁸ **Ten**⁹ of these 34 states are either Signatories or States Parties to the ATT, whereas **24** of them are non-States Parties or non-Signatories to the ATT.¹⁰

In total, **26** States reported using all three reporting mechanisms. Twenty-four of these States were European and two from North America.

Sixty used some combination of two of the reporting mechanisms: 15 from Asia and the Pacific, 14 from Europe and the Caucasus, 11 from Latin America, five from the Caribbean, five from Sub-Saharan Africa, and five from the Middle East and North Africa.

Seventy-three used just one of the three mechanisms: 30 from Sub-Saharan Africa, 13 from Asia and the Pacific, 11 from the Middle East and North Africa, nine from Latin America, six from the Caribbean, and six from Europe and the Caucasus.



**DOCUMENTING ILLEGAL
HAND-CRAFTED WEAPONS
SEIZED BY POLICE, OCTOBER
2014, LAHAN, NEPAL**

CREDIT: © CONFLICT ARMAMENT
RESEARCH

⁷ | Seven of the 34 States which have not have submitted any reports through any of the three mechanisms submitted 'nil reports' to the UN Register during this period. 'Nil reports' only pertain to the seven major categories of conventional arms, and do not allow for submission of background information where SALW transfers can be recorded. It is for this reason that these seven Nil Reports are being counted as not having submitted any information on transfers.

⁸ | UN Register on Conventional Arms, <http://www.un.org/disarmament/convarms/Register/>

⁹ | As of 15 July 2015, of the 10 States not to have submitted any reports across any of the three mechanisms, Chad, Liberia and Sierra Leone are States Parties to the ATT, and Angola, Georgia, Guinea-Bissau, Haiti, Swaziland, Togo and Tuvalu are Signatories to the ATT.

¹⁰ | The 24 Non-States Parties or Non-Signatories who have not reported on any of the three mechanisms are: Afghanistan, Algeria, Brunei, Cuba, Democratic Republic of Congo, North Korea, Equatorial Guinea, Eritrea, Iran, Iraq, Jordan, Kyrgyzstan, Laos, Maldives, Marshall Islands, Micronesia, Monaco, Myanmar, Somalia, South Sudan, Tajikistan, Timor-Leste, Turkmenistan and Uzbekistan.



THE HIGH LEVEL OF EXISTING PUBLIC REPORTING BY STATES PARTIES AND SIGNATORY STATES INDICATES THAT THERE IS ALREADY AN ACCEPTANCE OF PUBLIC REPORTING



THIS IS A SIGNIFICANT OPPORTUNITY TO ESTABLISH A COMPREHENSIVE REPORTING TEMPLATE THAT IS STANDARDISED ACROSS ALL STATES PARTIES, ENABLING EFFECTIVE AND MEANINGFUL ANALYSIS OF THE ARMS TRADE

Overall, **34** States published national reports during the five-year period,¹¹ **143** reported to Comtrade¹² and **86** reported to the UN Register.¹³

Thirteen countries also submitted 'nil reports' to the UN Register over this period. Seven of these provided no further reports through the other two mechanisms, and six of them also reported through Comtrade. Nil reports declare that the country neither exported nor imported any of the conventional arms covered by the UN Register – though in one case, this report was not accurate because another country had indicated exports to this country during the same year.

Background information on imports and exports of small arms and light weapons was provided by **62** States.¹⁴

Overall, the high level of existing public reporting by States Parties and signatory States indicates that there is already an acceptance of public reporting. All the countries which became States Parties on 24 December 2014 had previously publicly reported some information on their arms imports or exports. It is worth noting that of the 63 countries yet to sign or accede to the ATT, more than half (36 countries) have reported at least once through one of the reporting mechanisms.

Analysis of the data illustrates that reporting was often sporadic, with some States reporting to the UN Register in some but not all years. Even when States did report, information was sometimes withheld, such as if a State did not report on certain categories of equipment. A number of States also submitted 'nil reports' to the UN Register – which merely indicated that the State neither imported nor exported any of the conventional arms covered by the Register for that year.¹⁵

There were also instances of data discrepancy as a result of late submissions, whereby States submitted reports to the UN Register, but these were not accounted for in the relevant annual consolidated reports to the Secretary-General.¹⁶

In light of this, the clear benefit of the Arms Trade Treaty would be to improve the consistency and comprehensiveness of public reporting on the arms trade. This is a significant opportunity to establish a comprehensive reporting template that is standardised across all States Parties, enabling effective and meaningful analysis of the arms trade. The fact that 82 per cent of all States are already undertaking some form of public reporting illustrates that many believe reporting to be an important obligation. This is a powerful platform to build on for the ATT.

¹¹ | Stockholm International Peace Research Institute (SIPRI), National Reports Database, accessed 26 June 2015: http://www.sipri.org/research/armaments/transfers/transparency/national_reports/sipri-national-reports-database

¹² | UN Comtrade Database, accessed 26 June 2015: <http://Comtrade.un.org/>

¹³ | UN Register on Conventional Arms, accessed 26 June 2015: <http://www.un.org/disarmament/convarms/Register/>

¹⁴ | UN Register on Conventional Arms, accessed 26 June 2015: <http://www.un.org/disarmament/convarms/Register/>

¹⁵ | Nil reports are sometimes not an accurate reflection of transfer activity. For example, two countries submitted nil reports for a particular year, but both were identified as import destinations for the same year in export reports of two other countries.

¹⁶ | For example, India reported to the UN Register in 2012, but this was not accounted for in the relevant year's consolidated report to the UN Secretary-General, or the relevant addendum reports for 2013



155MM ROUNDS

CREDIT: © 1ST STRYKER
BRIGADE COMBAT TEAM

CHAPTER 4

FINANCIAL ASSISTANCE

The regulation of arms transfers requires significant resources. For effective implementation of the ATT, and for its universalisation, those resources must be made available to those who require them.

Article 16.2¹ of the Treaty states that 'Each State Party may request, offer or receive assistance through, inter alia, the United Nations, international, regional, sub-regional or national organisations, non-governmental organisations, or on a bilateral basis.'² However, defining assistance (including financial assistance) as described under Article 16.1 is a challenge. There is no definition or explanation of what 'legal or legislative assistance', 'institutional capacity building' or 'technical, material or financial assistance' constitute in practical terms.³ The text does state that financial assistance 'could relate to institutional funding, direct budgetary support, funding for ATT-related events and the provision of outside expertise, although it could also be broadly defined as an overarching term for any type of assistance that involves budgetary allocations by the donor state.'⁴

This chapter examines assistance for acceding to and implementing the ATT, with a particular focus on multilateral financial support that States have received since the adoption of the Treaty by the UN General Assembly on 2 April 2013. It is also important to recognise other forms of assistance and cooperation, such as those stated above under Article 16.1, which are of equal importance in ensuring the fulfilment of the ATT's objectives and purpose.

The chapter highlights some of the most prominent forms of assistance delivered by multilateral agencies and organisations. It does not seek to evaluate or assess the quality of these assistance mechanisms. Its contents are based on information that is publicly available or which has been communicated to the author through correspondence at the time of writing.⁵ In this first edition of the ATT Monitor, this section has been limited to a quantitative survey of multilateral financial assistance. It will be expanded in future editions to include an examination of a broader range of assistance and cooperation.

¹ | Arms Trade Treaty (2013) Article 16. International Assistance: 'In implementing this Treaty, each State Party may seek assistance including legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Such assistance may include stockpile management, disarmament, demobilisation and reintegration programmes, model legislation, and effective practices for implementation. Each State Party in a position to do so shall provide such assistance, upon request.'

² | Article 16.2 – Arms Trade Treaty (2013)

³ | According to an analysis of Article 16 of the Treaty by The Geneva Academy of International Humanitarian Law and Human Rights 'This article examines how states may seek or offer international assistance. Under paragraph 1, a state party "in a position to do so" is required to provide assistance, if requested. This formulation was used in both the 1997 Anti-Personnel Mine Ban Convention and the 2008 Convention on Cluster Munitions, as well as in political instruments such as the 2001 UN Programme of Action on Small Arms and the International Tracing Instrument. No minimum level of assistance is stipulated and the phrase "in a position to do so" has not been construed to require that any (and every) request must receive a favourable response'. P.38 S. Casey-Maslen, G. Giacca, and T. Vestner, Academy Briefing No. 3: The Arms Trade Treaty. Geneva Academy (June 2013). Available at <http://www.geneva-academy.ch/docs/publications/Arms%20Trade%20Treaty%203%20WEB.pdf>

⁴ | S. Bauer, 'Article 16: international assistance', eds. C. da Silva, T. Haeck and B. Wood, Weapons and International Law: The Arms Trade Treaty, Larcier Law Annotated (Larcier: Brussels, forthcoming 2015). Cited in S. Bauer and M. Bromley, (2015) Implementing the Arms Trade Treaty: Building on Available Guidelines and Assistance Activities. Stockholm International Peace Research Institute, <http://books.sipri.org/files/misc/SIPRIBP1505.pdf>

⁵ | The author of this chapter wishes to thank those who have provided information through correspondence

Two mechanisms for multilateral assistance within the United Nations (UN) system have played prominent roles in assisting ATT implementation:

- the UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR)
- the UN Development Programme (UNDP), through its sponsorship programme for representatives of low-income states.

Alongside these, the chapter examines the EU's ATT Outreach Project, which offers the expertise of government officials from across the EU to help non-EU countries tackle implementation challenges and to promote ATT universalisation.

It is important to note the overlap that exists between assistance efforts for the ATT and other arms transfer control mechanisms. In some cases, these have been the subject of ongoing assistance efforts for a number of years, for example, the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA)⁶. Such overlap derives from law, administrative procedures, agencies and staff, which are responsible for the ATT as well as similar transfer control mechanisms.⁷ Assistance that improves arms transfer controls outside the ATT context is to be welcomed and will no doubt benefit ATT implementation, but it should be noted that this requires careful coordination to ensure efficacy.



⁶ | United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspect <http://www.poa-iss.org/PoA/pohtml.aspx>

⁷ | S. Bauer, and M. Bromley, (2015) Implementing the Arms Trade Treaty: Building on Available Guidelines and Assistance Activities, SIPRI Background Paper, Stockholm International Peace Research Institute: Stockholm: SIPRI - <http://books.sipri.org/files/misc/SIPRIBP1505.pdf>

APACHE HELICOPTER ON HMS ILLUSTRIOUS

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UN TRUST FACILITY SUPPORTING COOPERATION ON ARMS REGULATION (UNSCAR)

As a result of the common ground between the PoA and the ATT – and what the UN terms the 'complementarities of [their] implementation activities'⁸ – the UN Office of Disarmament Affairs (UNODA) launched the UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR) on 7 June 2013, alongside Australia, Denmark, Germany, the Netherlands, and Spain. Another driving factor was the request by a significant number of States for focused and effective funding for ATT implementation. UNSCAR is a multi-donor flexible funding mechanism whose intention is to support States in accession to and implementation of the ATT, as well as the PoA. The facility is a significant contributor to ATT assistance efforts.⁹

The mechanism operates by selecting organisations for funding based on project proposals submitted to the Trust Facility.¹⁰ Organisations that have so far received funding¹¹ include think tanks, UN offices, non-governmental organisations (NGOs) and regional organisations. The projects are then implemented across various states and regions.

To date (July 2015), the UNSCAR mechanism has been operational for two rounds of funding: 2013-14¹² and 2014-15¹³, with a further 2015-16 cycle soon to open for applications at the time of writing.¹⁴ The Trust is financed through voluntary contributions.¹⁵ Projects that have received funding include:

- capacity-building of government officials and national legislators for ATT ratification and promotion
- improvement of border security against weapons trafficking
- advocacy against gender-based violence.

UNSCAR also funds special or rapid-response activities relating to ATT and PoA implementation in times of emergency. For example, in 2013-14 following Typhoon Haiyan in the Philippines, UNSCAR funding was used to assist the clearance of a destroyed arms depot and the securing of ammunition.¹⁶

⁸ | United Nations Office for Disarmament Affairs, UNSCAR Call for Proposals 2013, accessed 26 June 2015: http://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/08/UNSCAR_Call_for_Proposals1.pdf

⁹ | There is a funding cap of US\$200,000 per project, United Nations Office for Disarmament Affairs, UNSCAR Call for Proposals 2014, accessed 26 June 2015: <http://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/UNSCAR-2014-Call-for-Proposals1.pdf>

¹⁰ | Those wishing to receive assistance through the mechanism must meet several criteria: 'Be consistent with the objectives of UNSCAR, as well as priority areas as identified in annual UNSCAR Call for Proposals; Consider enhancing partnership with regional organisations; Be presented by at least one eligible implementing partner'. Further information: UNSCAR Factsheet <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2015/04/UNSCAR-Fact-Sheet-Apr2015.pdf>

¹¹ | 'Eligible applicants are the 23 UN entities that work on small arms, the arms trade, and ammunition; regional organisations, NGOs and research institutes' http://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/08/UNSCAR_Call_for_Proposals1.pdf

¹² | United Nations Office for Disarmament Affairs, UNSCAR Funded Projects under the 2013 Call for Proposals, accessed 26 June 2015: <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2013/06/UNSCAR-Funded-projects-2013-2014.pdf>

¹³ | United Nations Office for Disarmament Affairs, UNSCAR 2014 – 2015 Cycle: List of funded projects, accessed 26 June 2015: <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2013/06/UNSCAR-2014-Funded-Projects.pdf>

¹⁴ | United Nations Office for Disarmament Affairs, UNSCAR 2015 – 2016 Call for Proposals, accessed 26 June 2015: <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2013/06/UNSCAR-2015-2016-Call-for-Proposals-Flyer.pdf>

¹⁵ | The donors for the 2014 Call for Proposals are: Australia, Denmark, Germany, Ireland, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom. These projects will continue to be implemented through 2015 (one-year projects) or 2015-2016 (two-year projects). The donors for the forthcoming 2015-2016 Call for Proposals are: Australia, Denmark, Finland, Germany, Ireland, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom. Source: <http://www.un.org/disarmament/factsheets/>

¹⁶ | UNSCAR Factsheet 2015, accessed 26 June 2015: <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2015/04/UNSCAR-Fact-Sheet-Apr2015.pdf>

UNSCAR: PROMOTING THE ATT AMONG PARLIAMENTARIANS

In May 2014, the Parliamentary Forum on Small Arms and Light Weapons, in cooperation with the UN Regional Centre for Peace and Disarmament in Africa¹⁷ (UNREC) and the National Assembly of Togo¹⁸, held a seminar entitled 'Enhance ATT and UNPoA Implementation by South-South Parliamentary Exchange and Cooperation'.

Around 30 Members of Parliament from 15 African states participated, along with colleagues from Central America and the Caribbean. They met with experts from Control Arms, the Economic Community of Central African States, Nigeria National Commission on SALW, Small Arms Survey, UNREC and its equivalent in Latin America and the Caribbean, the West African Action Network on Small Arms and the World Council of Churches.

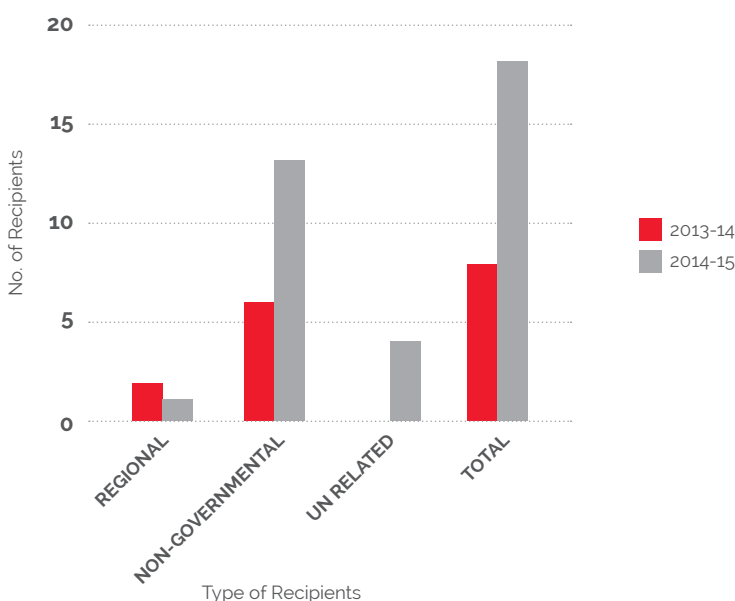
In their final declaration, delegates expressed concern at the slow ratification of the Treaty across Africa, and emphasised the importance of parliamentarians in promoting ATT ratification and implementation, calling on colleagues across the world to support universalisation of the ATT.

For further information, see Parliamentary Forum on Small Arms and Light Weapons seminar report:¹⁹

From most reports made public after an organisation has conducted an UNSCAR-funded project, it is relatively clear which States or regions have benefited from the funding. However, there are some cases in which this is not evident (sometimes due to privacy requests). This makes examining the coverage and scale of UNSCAR-funded projects difficult. There are also examples of UNSCAR-funded projects that do not benefit a specific State or region, but rather are of use and benefit to all, such as those undertaken by Chatham House and the Stimson Center.

GRAPH 1²⁰ illustrates the allocation by type of recipient of the two funding cycles to date:

GRAPH 1:
UNSCAR FUNDING BY TYPE OF RECIPIENT AND NO. OF RECIPIENTS



Source: United Nations Office for Disarmament Affairs
– Correct as of 20 June 2015

¹⁷ | UN Regional Centre for Peace and Disarmament in Africa, Accessed 10 July 2015, <http://unrec.org/index/>

¹⁸ | National Assembly of Togo, Accessed 10 July 2015, <http://www.assemblee-nationale.tg/spip.php?article393>

¹⁹ | Parliamentary Forum on Small Arms and Light Weapons. Enhance ATT and UNPoA Implementation by South-South Parliamentary Exchange and Cooperation, Accessed 10 July 2015, <http://parliamentaryforum.org/news/enhance-att-and-unpoa-implementation-south-south-parliamentary-exchange-and-cooperation>

²⁰ | As the graph shows, in the 2013-14 project cycle, eight project proposals were selected with a total of US\$900,000 granted for those selected, at an average of US\$112,500 per recipient. These projects were scheduled for completion by June 2014. For the most recent project cycle (2014-2015), the mechanism was enlarged, with 18 proposals selected, and a total budget of US\$3.1 million for those selected (an increase of 344 per cent) with an average of US\$172,000 per recipient. Please note that these calculations were done by the author. Source: UNSCAR Factsheet, available at: <http://www.un.org/disarmament/factsheets/>

UNITED NATIONS DEVELOPMENT PROGRAMME

Since 2011, the UNDP has been administering sponsorship programmes²¹ to assist officials from low-income States to attend and participate in international ATT meetings. Initially these were part of the preparatory process leading to Treaty negotiations. More recently, they have included the informal consultations and preparatory meetings held in 2014-2015. Current eligibility for sponsorship is linked to the Organisation for Economic Co-operation and Development's Development Assistance Committee list of recipient states, with funds available on a first-come, first-served basis.²² A total of 139 delegates received sponsorship for these informal consultations and preparatory meetings, which were held in Mexico City (8-9 September 2014), Berlin (27-28 November 2014), Port of Spain (23-24 February 2015), and Vienna (20-21 April 2015).²³

The programme is supported by contributions from the Governments of Australia, Austria, Germany, Ireland, Mexico, the Netherlands, Norway, Sweden, Switzerland, Trinidad and Tobago, and the UK.



**EX-COMBATANTS
SURRENDER WEAPONS
AND AMMUNITION TO A
UN REGISTRATION DESK
IN SOUTHERN BURUNDI**

CREDIT: © UN PHOTO /
MARTINE PERRET

²¹ | The sponsorship programme as administered by UNDP consists of 1) a return economy-class trip following the most economic and direct route, including necessary terminal costs, 2) reasonable accommodation and limited relevant allowances to cover meals not included in the programme and/or accommodation costs and 3) travel insurance.

²² | The Organisation for Economic Co-operation and Development's Development Assistance Committee list of Overseas Development Aid, available at: <http://www.oecd.org/dac/stats/daclist.htm>

²³ | At the time of writing (18 June 2015) the sponsorship programme for the Final Preparatory Meeting in Geneva (6-8 July 2015) was ongoing and had not been finalised. The data was therefore not available, and is not included in the total number of sponsored delegates stated.

EU ATT OUTREACH PROJECT (ATT-OP)

The European Union also plays a prominent role in ATT assistance, primarily through two routes: the EU ATT Outreach Project (ATT-OP) and through the implementation of European Council Decisions.²⁴ The ATT-OP was established through Council Decision 2013/768/CFSP of 16 December 2013²⁵, and is scheduled to run for three years. With a budget of €6.3 million, it aims to assist non-EU countries (at their request) with implementation challenges, as well as promoting universalisation, by drawing on the diverse expertise of government officials from across the EU.²⁶ The German Federal Office for Economic Affairs and Export Control (BAFA²⁷) has been mandated to implement the project, within the framework of the European Security Strategy²⁸. Along with EU funding, the project is co-financed by the German government.²⁹

The project's stated aim is to assist a number of non-EU countries, at their request, in strengthening their arms transfer systems so as to bring them into line with the Treaty. There are also efforts to universalise the Treaty and conduct outreach with states not yet party. So far, ATT-OP projects include tailored national assistance programmes, ad-hoc assistance and regional seminars in Latin America and the Caribbean, Asia Pacific and West Africa. The details of these activities are published regularly in newsletters on the ATT-OP website.³⁰

²⁴ | The European Union also delivers assistance through the implementation of relevant Council Decisions such as 2012/711/CFSP, which, although primarily focused on the implementation of other instruments, also involve ATT universalisation and implementation. Relevant information can be found in the EU Annual Report assessing the implementation of Common Position 2008/944/CFSP of 8 December 2008, defining common rules governing control of exports of military technology and equipment: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF> More information on the subject in general can found at: http://www.eeas.europa.eu/non-proliferation-and-disarmament/arms-export-control/index_en.htm

²⁵ | Council Decision 2013/768/CFSP of 16 December 2013 on EU activities in support of the implementation of the Arms Trade Treaty, in the framework of the European Security Strategy, Official Journal of the European Union, L341, 18 Dec.2013

²⁶ | European Commission, EU Arms Trade Treaty Outreach Project, accessed 27 June 2015: <https://export-control.jrc.ec.europa.eu/Home/Arms-Trade-Treaty>

²⁷ | BAFA: *Bundesamt für Wirtschaft und Ausfuhrkontrolle*

²⁸ | European Council, A Secure Europe in a Better World – European Security Strategy, 2003, accessed 26 June 2015: <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>

²⁹ | In addition to these projects, BAFA also implements ATT assistance projects independently of the EU. More information is available at: http://www.bafa.eu/bafa/en/export_control/eu-outreach/index.html

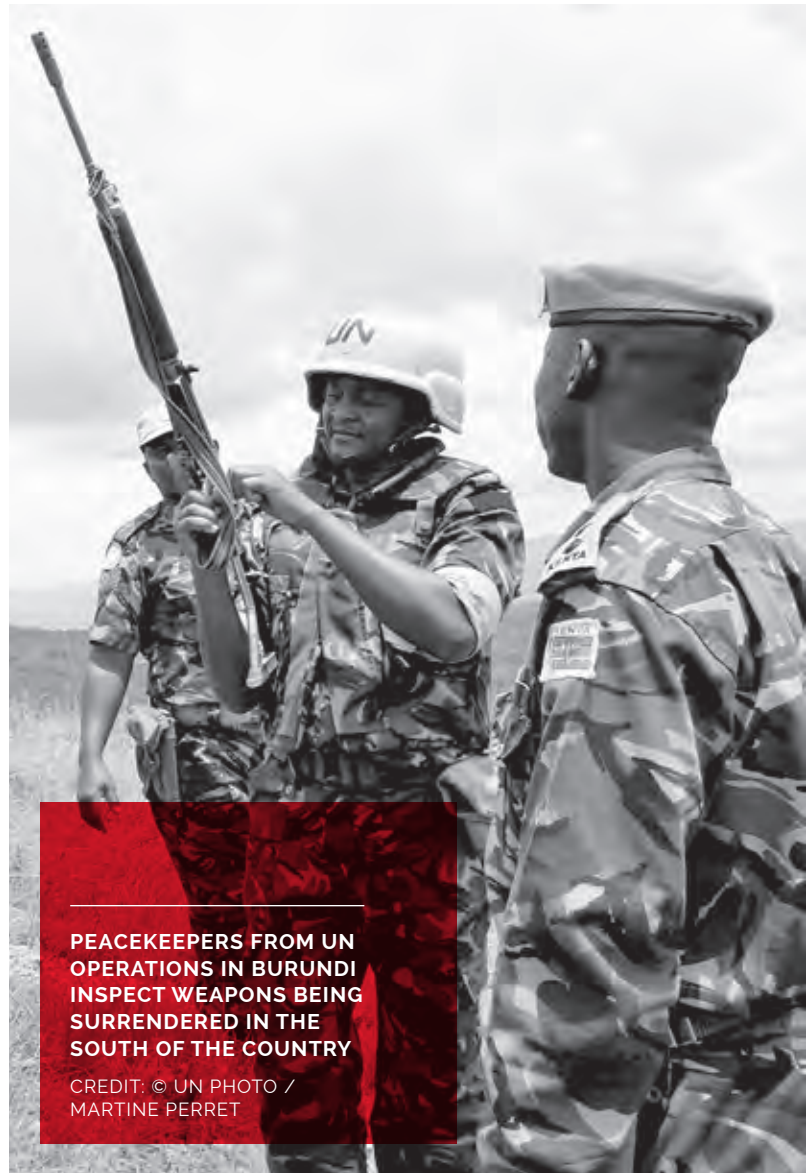
³⁰ | European Commission, EU Outreach in Export Control Newsletter <https://export-control.jrc.ec.europa.eu/News/Newsletter>

CONCLUSION

While this chapter gives a brief overview of examples of multilateral financial assistance, the ATT Monitor recognises that there are other forms of assistance and cooperation, such as those conducted bilaterally, which are of equal importance in ensuring the fulfilment of the ATT's objectives and purpose. These will be examined further in future editions of the ATT Monitor. Other multilateral agencies and organisations not mentioned here have also played significant roles in providing States with support in arms transfer controls.³¹

With an ever-increasing number of projects offering assistance, States, implementing agencies, international organisations, regional organisations and NGOs, among others, need to be as transparent as possible in publishing information of their assistance activities. Such transparency will improve information exchange and coordination, help reduce project duplication and facilitate the matching of requests and offers of assistance.

Given the existence of assistance which is not directly linked to the ATT, but which directly or indirectly benefits the Treaty, it is of critical importance that States consider best practice and lessons across the whole assistance spectrum. Such attention, alongside coordination with assistance for other transfer control mechanisms and the acknowledgment of synergies between them, will go far in ensuring that the full potential and goals of the ATT are met.³²



³¹ | M. Bromley, and P. Holtom, (2014) Arms Trade Treaty assistance: identifying a role for the European Union, EU Non-proliferation Consortium Discussion Paper, February 2014, accessed: 19 June 2015: <http://www.nonproliferation.eu/web/documents/nonproliferationpapers/markbromleypaulholtom52f3b0bd1d36d.pdf>

³² | The ATT Monitor acknowledges the work of others in examining these issues and recommends the following further reading:
 Bauer S., and Bromley, M. (2015) Implementing the Arms Trade Treaty: Building on Available Guidelines and Assistance Activities. Stockholm International Peace Research Institute (SIPRI) Background Paper. Stockholm: SIPRI
 Bromley, M. and Holtom, P. (2014) Arms Trade Treaty assistance: identifying a role for the European Union, EU Non-proliferation Consortium Discussion Paper, February 2014
 Casey-Maslen, S., Giacca, G. and Vestner, T. (2013) Academy Briefing No. 3: The Arms Trade Treaty. Geneva Academy, June 2013
 Maze, K. (2011) 'International assistance and cooperation in an ATT: possibilities for a future treaty', UNIDIR Resources, January 2011

APPENDIX 1

TRENDS ANALYSIS: REPORTING

STATE	REPORTING (2009-2013)		
	REPORTED TO UNROCA	REPORTED TO COMTRADE	PUBLISHED NATIONAL REPORT
Afghanistan			
ALBANIA	✓	✓	✓
Algeria			
ANDORRA	✓		
ANGOLA			
ANTIGUA AND BARBUDA	✓	✓	
ARGENTINA	✓	✓	
Armenia	✓	✓	
AUSTRALIA	✓	✓	
AUSTRIA	✓	✓	✓
Azerbaijan	✓		
BAHAMAS	✓	✓	
BAHRAIN		✓	
BANGLADESH	✓	✓	
BARBADOS	✓		
Belarus	✓		✓
BELGIUM	✓	✓	✓
BELIZE	✓	✓	
BENIN		✓	
Bhutan	✓	✓	
Bolivia	✓	✓	
BOSNIA AND HERZEGOVINA	✓		✓
Botswana		✓	
BRAZIL	✓	✓	
Brunei			
BULGARIA	✓		✓

Information correct as of 10 July 2015.

States:

STATE = State Party
STATE = Signatory
 State = Non Signatory

Reporting between 2009 and 2013:

✓ = Reported at least once between 2009 & 2013
 N = Submitted only 'Nil Report' between 2009 & 2013

STATE	REPORTING (2009-2013)		
	REPORTED TO UNROCA	REPORTED TO COMTRADE	PUBLISHED NATIONAL REPORT
BURKINA FASO		✓	
BURUNDI		✓	
CAMBODIA	✓	✓	
CAMEROON		✓	
Canada	✓	✓	✓
CAPE VERDE		✓	
Central African Republic		✓	
CHAD			
CHILE	✓	✓	
China	✓	✓	
COLOMBIA	✓	✓	
COMOROS	✓	✓	
CONGO		✓	
COSTA RICA		✓	
COTE D'IVOIRE		✓	
CROATIA	✓	✓	✓
Cuba			
CYPRUS	✓	✓	
CZECH REPUBLIC	✓	✓	✓
DR Congo			
DPR Korea			
DENMARK	✓	✓	✓
DJIBOUTI		✓	
DOMINICA		✓	
DOMINICAN REPUBLIC	✓	✓	
Ecuador	N	✓	
Egypt		✓	
EL SALVADOR	✓	✓	
Equatorial Guinea			
Eritrea			

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 State = Non Signatory

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✓ = Reported at least once between 2009 & 2013
 N = Submitted only 'Nil Report' between 2009 & 2013

STATE	REPORTING (2009-2013)		
	REPORTED TO UNROCA	REPORTED TO COMTRADE	PUBLISHED NATIONAL REPORT
ESTONIA	✓	✓	✓
Ethiopia		✓	
Fiji		✓	
FINLAND	✓	✓	✓
FRANCE	✓	✓	✓
GABON		✓	
GAMBIA		✓	
GEORGIA			
GERMANY	✓	✓	✓
GHANA		✓	
GREECE	✓	✓	
GRENADA	✓	✓	
GUATEMALA		✓	
GUINEA	✓	✓	
GUINEA-BISSAU			
GUYANA	✓	✓	
HAITI			
HONDURAS		✓	
HUNGARY	✓	✓	✓
ICELAND	✓	✓	
India	✓	✓	
Indonesia		✓	
Iran			
Iraq			
IRELAND	✓	✓	✓
ISRAEL	✓	✓	
ITALY	✓	✓	✓
JAMAICA		✓	
JAPAN	✓	✓	
Jordan			

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STATE	REPORTING (2009-2013)		
	REPORTED TO UNROCA	REPORTED TO COMTRADE	PUBLISHED NATIONAL REPORT
Kazakhstan	✓		
Kenya		✓	
KIRIBATI		✓	
Kuwait		✓	
Kyrgyzstan	N		
Laos	N		
LATVIA	✓	✓	
LEBANON	✓	✓	
LESOTHO		✓	
LIBERIA			
LIBYA		✓	
LIECHTENSTEIN	✓		
LITHUANIA	✓	✓	
LUXEMBOURG	✓	✓	
FYR MACEDONIA	✓		✓
MADAGASCAR	✓	✓	
MALAWI		✓	
MALAYSIA	✓	✓	
Maldives	N		
MALI		✓	
MALTA	✓	✓	
Marshall Islands	N		
MAURITANIA		✓	
Mauritius	N	✓	
MEXICO	✓	✓	
Micronesia			
MOLDOVA	✓		
Monaco	N		
MONGOLIA	✓	✓	
MONTENEGRO	✓	✓	✓

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Reporting between 2009 and 2013:

✓ = Reported at least once between 2009 & 2013
 N = Submitted only 'Nil Report' between 2009 & 2013

STATE	REPORTING (2009-2013)		
	REPORTED TO UNROCA	REPORTED TO COMTRADE	PUBLISHED NATIONAL REPORT
Morocco		✓	
MOZAMBIQUE	✓	✓	
Myanmar			
NAMIBIA		✓	
NAURU	✓		
Nepal	N	✓	
NETHERLANDS	✓	✓	✓
NEW ZEALAND	✓	✓	
Nicaragua		✓	
NIGER		✓	
NIGERIA		✓	
NORWAY	✓	✓	✓
Oman		✓	
Pakistan	✓	✓	
PALAU	✓	✓	
PANAMA		✓	
Papua New Guinea		✓	
PARAGUAY		✓	
PERU	✓	✓	
PHILIPPINES		✓	
POLAND	✓	✓	✓
PORTUGAL	✓	✓	✓
Qatar	✓	✓	
REPUBLIC OF KOREA	✓	✓	
ROMANIA	✓		✓
Russian Federation	✓	✓	
RWANDA		✓	
SAINT KITTS AND NEVIS		✓	
SAINT LUCIA		✓	
SAINT VINCENT AND THE GRENADINES		✓	

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STATE	REPORTING (2009-2013)		
	REPORTED TO UNROCA	REPORTED TO COMTRADE	PUBLISHED NATIONAL REPORT
SAMOA	N	✓	
SAN MARINO	✓		
SAO TOME AND PRINCIPE		✓	
Saudi Arabia		✓	
SENEGAL		✓	
SERBIA	✓	✓	✓
SEYCHELLES		✓	
SIERRA LEONE			
SINGAPORE	✓	✓	
SLOVAKIA	✓	✓	✓
SLOVENIA	✓		✓
Solomon Islands	N	✓	
Somalia			
SOUTH AFRICA	✓		✓
South Sudan			
SPAIN	✓	✓	✓
Sri Lanka		✓	
Sudan		✓	
SURINAME	✓	✓	
SWAZILAND			
SWEDEN	✓	✓	✓
SWITZERLAND	✓	✓	✓
Syrian Arab Republic		✓	
Tajikistan	N		
TANZANIA		✓	
THAILAND	✓	✓	
Timor-Leste			
TOGO			
Tonga		✓	
TRINIDAD AND TOBAGO	✓	✓	

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STATE	REPORTING (2009-2013)		
	REPORTED TO UNROCA	REPORTED TO COMTRADE	PUBLISHED NATIONAL REPORT
Tunisia	N	✓	
TURKEY	✓	✓	
Turkmenistan	N		
TUVALU			
Uganda		✓	
UKRAINE	✓		✓
UNITED ARAB EMIRATES	✓	✓	
UNITED KINGDOM	✓	✓	✓
UNITED STATES OF AMERICA	✓	✓	✓
URUGUAY	✓	✓	
Uzbekistan			
VANUATU		✓	
Venezuela		✓	
Viet Nam	✓	✓	
Yemen		✓	
ZAMBIA		✓	
ZIMBABWE		✓	

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APPENDIX 2

1. SOURCES AND METHODOLOGY FOR DATA ON REPORTING

For reporting to the **UN Register**, the ATT Monitor consulted the Index of the 'Information submitted by Governments' section of the regular Report of the Secretary-General on the United Nations Register of Conventional Arms (including addendums). The following documents were specifically consulted: A/69/124/Add.1; A/69/124; A/68/138/Add.1; A/68/138; A/67/212/ADD.2; A/67/212/ADD.1; A/67/212; A/66/127; A/66/127/ Add.1; A/65/133; A/65/133/Add.1; A/65/133/Add.2; A/65/133/Add.3; A/65/133/Add.4 A/65/133/Add.5. All the reports are available on the website of the UN Office of Disarmament Affairs.¹ The reports were accessed during December 2014 and January 2015. Nil Reports were treated as the State not having submitted any information on transfers because they only pertain to the Register's seven major categories of conventional arms, and do not allow for submission of background information where transfers of small arms and light weapons can be recorded.

Reporting to **Comtrade** was assessed using Harmonized System 2012 Nomenclature Categories 930120; 930119; 930190; 930200; 930320; 930330. Data had previously been downloaded from the UN Statistics Division's website (from <http://comtrade.un.org/>) and entered into the Norwegian Initiative on Small Arms Transfers database. The most recent download date was 25 November 2014.

National reports on States' arms imports and exports were accessed via the National Reports Database run by the Stockholm International Peace Research Institute (SIPRI), and available on the SIPRI website.²

¹ | UN Register on Conventional Arms, accessed 25 June 2015: <http://www.un.org/disarmament/convarms/Register/>

² | Stockholm International Peace Research Institute (SIPRI), National Reports Database, accessed 25 June 2015: http://www.sipri.org/research/armaments/transfers/transparency/national_reports/sipri-national-reports-database

