

1.1 TRANSPARENCY IN THE ATT

Transparency is more than a term to throw into governance discussions as one in a list of buzzwords to check-off. Rather, transparency – understood here as ‘accessibility of information’ – is a critical, potentially life-saving, matter in the context of the international arms trade. The object and purpose of the Arms Trade Treaty (ATT) itself cannot be fulfilled in the absence of greater levels of openness among countries trading in arms.

THE ATT'S TRANSPARENCY REQUIREMENTS

There has been a longstanding conflict between the secrecy that perennially surrounds the international arms trade and the desire by some to shine a light upon it.¹

Transparency – in the form of public reporting and robust anti-corruption measures – was a key civil society priority from the onset of negotiations to develop an ATT.² Public reporting (Article 13 of the ATT, see below) was at the heart of such a Treaty's purpose in the eyes of many, with advocates arguing that it would be the mechanism through which the ATT will ‘become more than a set of obligations and actually affect States’ behavior.³ Including robust anti-corruption language as part of the ATT's export risk assessment criteria was also a key emphasis for many in civil society and among progressive governments.⁴ However, although around 60 countries favoured including robust anti-corruption mechanisms in the ATT, those demands ultimately failed to galvanize enough support.⁵

The final Treaty text explicitly references ‘transparency’ at two points – in Article 1: Object and Purpose and in Article 5: General Implementation. However, these explicit mentions are by no means the only requirements of States Parties in



IN ITS ESSENCE, THE ATT ITSELF IS A TRANSPARENCY MECHANISM, AND IT HAS THE POTENTIAL TO BECOME A CATALYST TO GREATER OPENNESS

this area (see Figure 1.1). In its essence, the ATT itself is a transparency mechanism, and it has the potential to become a catalyst to greater openness in the sector. In effect, as Saferworld puts it, ‘there are few limits to the extent and nature of information sharing and cooperation among States Parties that could be established in support of ATT implementation.’⁶

However, the ATT's text shows an uneasy compromise on openness. Article 5 best encapsulates this duality. States Parties must be transparent in their national control list⁷ towards the Secretariat and each other, while only being ‘encouraged to make their control lists publicly available’ (5.4). Yet, immediately thereafter (Article 5.5), the text establishes the need (‘shall’) for an ‘effective and transparent national control system regulating the transfer of conventional arms’. Clearly it is not possible to have a transparent control system without a publicly available control list.⁷ This is an example of a tactic used by ATT drafters to include governments on different points of the spectrum between being secretive and open: the repeated use of ‘encouraged’ rather than the explicitly binding ‘shall’, which would have been more conducive to full public access to basic information surrounding the arms trade.

- 1 See, for example, the 1925 Convention for the Supervision of the International Trade in Arms, Munitions and Implements of War, which included ‘transparency measures on exports intended to build confidence among putative states parties.’ Clapham, A. et al (2016). ‘The Arms Trade Treaty: A Commentary’. Oxford: Oxford University Press. p.4.
- 2 For the origins of the ATT from a civil society perspective, see Mack, D. and Wood, B. (2010). ‘Civil society and the drive towards an Arms Trade Treaty’. Geneva: United Nations Institute for Disarmament Research. www.unidir.org/files/medias/pdfs/civil-society-and-the-drive-towards-an-arms-trade-treaty-eng-0-418.pdf. See also Amnesty International (2007). ‘Compilation of Global Principles for Arms Transfers’. 1 April 2007. <https://www.amnesty.org/en/documents/pol34/003/2007/en/>
- 3 Amnesty International (2011). ‘Our Right to Know: Transparent Reporting under an Arms Trade Treaty’. 13 June 2011. <https://www.amnesty.org/en/documents/act30/116/2011/en/>
- 4 Transparency International (2012). ‘Media Advisory: Attempts to regulate arms trade must include strong anti-corruption measures’. 9 July 2012. www.transparency.org/news/pressrelease/20120709_media_advisory_attempts_to_regulate_arms_trade_must_include
- 5 Transparency International (2012). ‘Anti-corruption and the UN Arms Trade Treaty’. 23 July 2012. www.transparency.org/news/pressrelease/20120723_anti_corruption_and_the_un_arms_trade_treaty
- 6 Saferworld (2014). ‘Key issues for ATT implementation: Information exchange under the ATT’. London: Saferworld. November 2014. p. 5. <http://www.saferworld.org.uk/oldsite/resources/view-resource/872-key-issues-for-att-implementation-information-exchange-under-the-att>
- 7 The recommendation that States Parties make their control lists public is particularly ‘critical as it is unreasonable to expect defence industry and other concerned stakeholders to always comply with national laws regulating international arms transfers if they are not in a position to know the items to which those controls apply. States Parties should make their national control lists publicly available (on the Internet) and should seek to promote them among interested parties.’ Ibid. p.2.

Transparency commitments are integrated into many of the ATT's substantive obligations. Article 8 (Import), particularly within 8.1 and 8.3, refers almost exclusively to transparency measures (See Figure 1.1). Based on potentially broad information sharing between the exporter and the importer, this article allows for the exporter to request any form of information (including end-user documentation) from the destination country to assist in its risk assessment. Conversely, the importer also can request any form of information concerning export authorizations. There is thus a wide array of two-way information sharing and communication possibilities in Article 8.

Likewise, most of the 'measures to prevent' diversion that States Parties 'shall take' under Article 11 refer to information sharing and transparency activities. The role of transparency in ensuring effective implementation of Article 11 obligations is considered in more detail in section two of this chapter. Article 12 (Record Keeping) establishes the preconditions for transparency – the basic information that States Parties might collect, organize and keep ('for a minimum of ten years') in order to be later shared. Yet, here again, as in Article 5, the strength of the wording of obligations for States Parties in the final Treaty text would be disappointing to advocates of full transparency. In 12.3, States Parties are simply 'encouraged' (later further softened by 'as appropriate') to include in their record keeping information that should constitute bare minimum data, such as the quantity, value and model/type of arms, as well as the details of all states involved in the transfer chain, including the end user.

Within the ATT, transparency has mostly been discussed in relation to reporting obligations. Article 13 determines as its main transparency mechanisms two mandatory instruments: an Initial Report on measures undertaken in order to implement the ATT, and Annual Reports on exports and imports carried out each year. Both 'shall be made available, and distributed to States Parties by the Secretariat.' This wording is highly relevant as the sentence's punctuation has been referred to as the 'transparency comma', the absence of which would have indicated the drafter's clear intention of having reports made available and distributed solely between States Parties and the Secretariat. The punctuation suggests a more progressive interpretation: 'reports shall be made available' separately put indicates making the reports open to

public view, while the second part of the sentence determines that the ATT Secretariat must ensure distribution of all reports to all States Parties.⁸

Importantly, however, in another example of the tension between secrecy and openness in the ATT, Article 13.3 establishing mandatory Annual Reports concludes by noting that they 'may exclude commercially sensitive or national security information'. The confluence of commercial and national-security sensitivity – and the lack of a requirement that countries choosing to withhold information indicate which of these loopholes is being used, and why – opens the door for potential abuse. The concept of national security can be distorted to keep non-sensitive military information from the public domain. Similarly, the notion of commercial sensitivity is often oversold, as the type of information the sharing of which would raise actual confidentiality concerns is extremely narrow – e.g. technical specifications and detailed pricing data – and is simply not relevant to the ATT's transparency requirements. Companies often put in the public domain data vastly more specific than the minimum requirements in the Treaty, further undermining the validity of the commercial-sensitivity clause.

If in good faith and as an exception to its usual practice a country claims an exclusion, its report should make clear whether this is relating to national security or to commercial reasons, and provide justifications for the choice, such as clearly noting which companies, jurisdictions or sectors would be undermined by sharing the complete information. In addition to proving seriousness about transparency obligations, such practice would curb the use of this exemption in the future. Otherwise the repercussions of such a clause, if not interpreted strictly in good faith, could undermine any notion of transparency in the ATT.

Issues surrounding transparency in Article 16 (International Assistance) will be particularly relevant to the Voluntary Trust Fund (VTF) (16.3), which, to date, has shown a strong degree of openness in its development and early operation.⁹

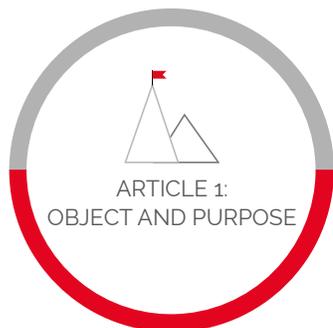
Particularly noteworthy is the call within the VTF's terms of reference that its Selection Committee 'draw, as appropriate, on outside expertise, in particular from UN agencies and civil society', as well as determining that 'all recipients of funds shall submit a final report that should be made publicly available'.¹⁰

8 This issue was debated at the First Conference of States Parties in August 2015, Control Arms Secretariat (2015). 'Summary and Analysis – First Conference of States Parties to the Arms Trade Treaty, Cancun, 24–27 August 2015'. <http://controlarms.org/en/wp-content/uploads/sites/2/2016/07/CSP-Final-Analysis-1.pdf>

9 See all publicly available reports and documentation at ATT Secretariat (N.D.). 'Voluntary Trust Fund'. www.thearmstradetreaty.org/index.php/en/voluntary-trust-fund

10 Articles 7 and 16 in 'Voluntary Trust Fund Terms of Reference'. ATT/CSP2/2016/WP.2/Rev.1. www.thearmstradetreaty.org/images/ATT_VTF/VTF_Terms_of_Reference.pdf.

FIGURE 1.1: TRANSPARENCY IN THE ATT TEXT



ARTICLE 1: OBJECT AND PURPOSE

Promoting cooperation, **transparency** and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.



ARTICLE 7: EXPORT AND EXPORT ASSESSMENT

7.6 Each exporting State Party shall **make available appropriate information** about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties [...].



ARTICLE 5: GENERAL IMPLEMENTATION

- 5.5 Each State Party shall take measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an **effective and transparent** national control system regulating the transfer of conventional arms covered under Article 2 (1) and of items covered under Article 3 and Article 4.
- 5.6 Each State Party shall designate one or more national points of contact to **exchange information** on matters related to the implementation of this Treaty.



ARTICLE 8: IMPORT

- 8.1 Each importing State Party shall take measures to ensure that **appropriate and relevant information** is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment under Article 7. Such measures may include end use or end user documentation.
- 8.3 Each importing State Party **may request information** from the exporting State Party concerning any pending or actual export authorizations where the importing State Party is the country of final destination.



ARTICLE 11: DIVERSION

- 11.3** Importing, transit, trans-shipment and exporting States Parties shall **cooperate and exchange information**, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).
- 11.5** In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2 (1), States Parties are **encouraged to share relevant information** with one another on effective measures to address diversion [...]
- 11.6** States Parties are **encouraged to report** to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1).



ARTICLE 12: RECORD KEEPING

- 12.1** Each State Party shall **maintain national records**, pursuant to its national laws and regulations, of its issuance of export authorizations or its actual exports of the conventional arms covered under Article 2 (1).



ARTICLE 13: REPORTING

- 13.3** Each State Party shall, within the first year after entry into force of this Treaty for that State Party, in accordance with Article 22, **provide an initial report to the Secretariat of measures undertaken in order to implement this Treaty**, including national laws, national control lists and other regulations and administrative measures. Each State Party shall report to the Secretariat on any new measures undertaken in order to implement this Treaty, when appropriate. Reports shall be made available, and distributed to States Parties by the Secretariat.
- 13.5** Each State Party shall submit annually to the Secretariat by 31 May a **report for the preceding calendar year concerning authorized or actual exports and imports of conventional arms** covered under Article 2 (1). Reports shall be made available, and distributed to States Parties by the Secretariat. [...]



ARTICLE 15: INTERNATIONAL COOPERATION

- 15.2** States Parties are encouraged to facilitate international cooperation, including **exchanging information** [...]
- 15.7** States Parties are encouraged to **exchange experience and information on lessons learned** in relation to any aspect of this Treaty.



SIMPLY SUBMITTING A REPORT DOES NOT, OF COURSE, MEAN BEING FULLY TRANSPARENT. DEEPER ANALYSIS OF THE CONTENTS OF EACH REPORT IS ESSENTIAL TO DETERMINE ACTUAL LEVELS OF TRANSPARENCY.

The transparency ramifications of Articles 17 (Conference of States Parties – CSP) and 18 (Secretariat) are of utmost importance to the future of the ATT regime. According to Article 17.4, the CSP must ‘review the implementation of this Treaty [...] consider and adopt recommendations regarding the implementation and operation’, consider amendments, and consider ‘issues arising from the interpretation’ of the ATT.¹¹ It could be argued that transparency should be a priority of every CSP, both in its process and plan of work.

Likewise, the ATT Secretariat can be a major force for greater transparency while fulfilling its mandate ‘to assist States Parties in the effective implementation of this Treaty’ (18.1). As its responsibilities include: ‘(a) Receive, make available and distribute the reports as mandated by this Treaty; (b) Maintain and make available to States Parties the list of national points of contact’, current practice is in line with the Treaty’s transparency requirements as a large number of official documents and reports are available on its website.

However, some information is sheltered within a restricted website for governments only. To be consistent with the ATT’s purpose of increasing transparency in the arms trade, the list of national points of contact should also be made public.

TRANSPARENCY IN PROCESS AND PRACTICE SINCE THE ATT’S ENTRY INTO FORCE

Since the ATT came into force in December 2014, the debate surrounding transparency has continued to rage unabated. So far, the levels and quality of reporting are rather disappointing. In terms of Initial Reports, by 31 May 2017, more than a quarter of the States Parties expected to submit had not met their legal deadline. For Annual Reports covering arms exports and imports during 2016, less than half of the 75 expected reports had been received as of 31 May 2017. As reporting is a mandatory obligation under the ATT, this is a disappointing level of compliance.

At neither the first or second CSPs did States Parties reach agreement that public reporting should be mandatory, in spite of concerns that providing states with the explicit option of making reports confidential might mean a significant backward step concerning transparency in the arms trade.¹² However, to date only a few states have requested their reports be kept secret, supporting the common interpretation that ATT Initial and Annual Reports should be made public.¹³

Technical support exists to assist capacity-strapped States Parties that are struggling to meet their ATT reporting obligations. For example, the ATT Baseline Assessment Project (ATT-BAP) Reporting Guidance series of materials provides a comprehensive ‘how to’ guide.¹⁴ States Parties could consider negative consequences for those who consistently fail to meet this legally binding commitment, which might include refusing to grant export licences in the case of persistent non-compliers.¹⁵

Simply submitting a report does not, of course, mean being fully transparent. Deeper analysis of the contents of each report is essential to determine actual levels of transparency. Are reports accurate and comprehensive? Each year’s ATT Annual Reports should be compared with independently obtained information on the reporting country’s arms trade. Chapter 2 highlights some of the discrepancies, gaps and inconsistencies across many if not all of the first batch of ATT Annual Reports.

11 Arms Trade Treaty, Article 17.4 (adopted 2 April 2013, entered into force 24 December 2014)_UNTS_(ATT) Art 17.4. <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>

12 Control Arms Secretariat (2016). ‘Reporting and the Arms Trade Treaty: Recommendations for Reporting Templates’. www.thearmstradetreaty.org/images/Control_Arms_Input_on_Reporting_templates.pdf

13 As of 13 June 2017, five countries had submitted confidential Initial Reports: Burkina Faso, Mauritius, Nigeria, Senegal and Togo. Nigeria has stated publicly that it intends to make its Initial Report public but has not yet done so. For Annual Reports, only Slovakia had kept its 2015 report private, while, as of 13 June 2017, Senegal was the only country to keep its 2016 report entirely private. Uruguay’s 2016 report had included a note that its import report may not be made publicly available. Uruguay has committed to making its full report publicly available but had not done so as of 13 June. View and download ATT Reports at ATT Secretariat (N.D.). ‘Reports’: <http://thearmstradetreaty.org/index.php/en/2017-01-18-12-27-42/reports>

14 Available at www.armstrade.info/resources-2/

15 Bales, M. and Mutschler, M. (2016). ‘After the First Annual Reports to the Arms Trade Treaty: How to Overcome Gaps and Reporting Deficits?’ Bonn International Center for Conversion. p. 3. https://www.bicc.de/uploads/tx_bicctools/bicc_policy_brief_4_2016.pdf

Some of these issues may be related to a lack of familiarity and consistency of practice concerning the reporting templates, which were endorsed for use by States Parties during CSP 2016. Without a standardized format for Annual Reports that is consistently utilised by states, there can be no effective comparison of transfer data and meaningful transparency will be compromised.¹⁶

The Working Group on Transparency and Reporting (WGTR), which was established after CSP 2016, is expected to continue coordinating states' efforts to improve both the quantity and quality of reporting. See the Year in Review section for more information on the priorities identified for future work by the WGTR.¹⁷

As far as transparency in the diplomatic process of the ATT itself is concerned, concerns have been raised that public monitoring of CSP proceedings and the deliberations of States Parties might be challenged.¹⁸ Full participation of civil society representatives, as well as those of associations representing

industry, has been enshrined in the ATT's Rules of Procedure.¹⁹ The ATT was achieved through a partnership between governments and global civil society, and CSOs contribute a wealth of expertise that is vital as States Parties begin substantive work to implement their new obligations, and they are key partners and advocates of the ATT in coordinated universalization efforts. It is important that progress made in ensuring civil society participation in all ATT fora is not reversed or taken for granted.

To date, the ATT's normative framework and early practice has produced something – like the deliberations and negotiations that created them – in the middle of the spectrum between total secrecy and absolute openness. ATT States Parties and civil society should continue to work together to build on fulfil the ATT's many transparency requirements in order to allow those monitoring the international arms trade to better see and use information essential to ensure weapons do not fall into the wrong hands.



¹⁶ Ibid. p.6.

¹⁷ The expansion of this group's mandate from the previous Informal Working Group on Reporting to address wider transparency issues is reflective of this issue's central importance to the ATT's impact and implementation in future years.

¹⁸ Perkins, R. (2017). 'Civil society remains vital to success of arms control processes'. United Nations Association UK (2017). 'Strengthening civil society engagement with the United Nations'. Chapter 7. <https://www.una.org.uk/strengthening-civil-society-engagement-united-nations>

¹⁹ First Conference of States Parties to the Arms Trade Treaty (2015). 'Rules of Procedure- Arms Trade Treaty'. ATT/CSP1/CONF/1. 25 August 2015. http://thearmstradetreaty.org/images/ATT_CSP1_CONF.1.pdf

1:2. TRANSPARENCY AND ATT IMPLEMENTATION

Transparency is essential to the long-term success of the ATT. In the absence of a monitoring mechanism within the Treaty text, transparency is the means of verification and oversight, that must be a joint venture carried out by an informed press, civil society, academia, States Parties, the ATT Secretariat and the CSP, and be based on their interaction and communication. In order to be efficient, this monitoring mechanism needs to be implemented daily and openly.

In addition to its role in creating 'an environment of accountability for arms transfer decisions',²⁰ transparency is also critical in operationalizing the ATT's practical requirements. The ultimate impact of the ATT hinges on day-to-day decisions by actors – including government officials – that will either transform the arms trade or keep business as usual.

Perhaps in no other areas is transparent implementation more important than regarding the ATT's measures to combat and prevent diversion, and its international cooperation and anti-corruption commitments.

DIVERSION: SHINING A LIGHT

The diversion of arms thrives in, and depends on, secrecy. To tackle this, ATT States Parties must cooperate and share information, including with commercial actors and civil society, at every stage of the transfer chain. Doing so would help identify possible points of diversion and help develop effective measures to prevent its occurrence.²¹

The importance of preventing diversion is highlighted in the ATT's preamble, as well as in its object and purpose, where states commit to 'Prevent and eradicate the illicit trade in conventional arms and prevent their diversion'.²²

Article 11 lays out the specific measures that each ATT State Party must take to tackle diversion. Many of these are based on collecting, analysing and sharing information. For example, exporters are compelled by Article 11.2 to 'seek to prevent the diversion of the transfer of conventional arms [...] by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes'.²³ Without clear and timely information sharing between states involved at every stage of a transfer it is hard to see how exporters can effectively assess, or take action against, diversion risks.²⁴

Information relevant to diversion detection and prevention that States Parties should share includes that relating to 'illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion'.²⁵

The quality, availability and timeliness of this information are crucial. For a variety of legal and procedural reasons, it may not always be possible to make detailed information publicly available. That said, 'it should be possible to share generic information whereby the identity of implicated parties is concealed; and information should still be provided on a retrospective basis once any convictions are secured'.²⁶

Finally, as per Article 11.6, States Parties 'are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms'.²⁷ Here again, the onus is on open information sharing so that all relevant countries are properly alerted to existing diversion risks.²⁸

A similar commitment re-appears under Reporting (13.2), with wording encouraging States Parties to share information regarding effective anti-diversion measures. Regarding Article 13.2, the ATT-

20 Stohl R. (2015). 'Governments Punt on Transparency at Arms Trade Conference.' Stimson. 3 September 2015. <https://www.stimson.org/content/governments-punt-transparency-arms-trade-conference>

21 Amnesty International (2011). 'Our Right to Know: Transparent Reporting under an Arms Trade Treaty'. 13 June 2011. p.2. <https://www.amnesty.org/en/documents/act30/116/2011/en/>

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

23 Arms Trade Treaty, Article 11.2 (adopted 2 April 2013, entered into force 24 December 2014)_UNTS_(ATT) Art 11.2. <http://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>

24 Saferworld (2014). 'Key issues for ATT implementation: Information exchange under the ATT'. Expert Group on ATT Implementation. London: Saferworld. November 2014. p. 4–5.

25 Ibid.

26 Saferworld (2015). 'Key issues for ATT Implementation: Preventing and combating diversion'. Expert Group on ATT Implementation. London: Saferworld. February 2015. p. 7.

27 Arms Trade Treaty, Article 11.6 (adopted 2 April 2013, entered into force 24 December 2014)_UNTS_(ATT) Art 11.6. <http://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>

28 Saferworld (2014). 'Key issues for ATT implementation: Information exchange under the ATT'. Expert Group on ATT Implementation. London: Saferworld. November 2014. p. 4.

BAP found that only three of 52 surveyed countries responded negatively to the question 'Can your State report on measures taken to address the diversion of transferred conventional arms?'²⁹

Article 15.4 (International Cooperation) also has diversion-related commitments, and States Parties appear intent on honouring them. While 13 per cent of respondents to the ATT-BAP survey stated they were not currently engaged in cooperative measures to prevent diversion, they all indicated intent to pursue such actions in future.³⁰

Concerning reporting on diversion, some governments and civil society organizations have attempted to press for greater momentum. Prior to CSP 2015, Argentina shared a proposal on the topic for consideration that was not taken up.³¹ Under the auspices of the WGTR, in April 2017 Mexico introduced a paper proposing a more structured approach to collaboration and information exchange on diversion-related issues. This effort remains under consideration by the WGTR.³²

Taking the ATT's anti-diversion obligations seriously demands these efforts be urgently prioritized and concluded, as many of the serious human rights abuses perpetrated by armed actors around the world are fuelled by the proliferation of arms and ammunition into the illicit market (see Box 2). Diversion is often the critical link between the authorized trade in arms and the illicit market, and thus transparency around diversion patterns is crucial to preventing them.

Exporters recognize the importance of precluding arms 'leakage' but their efforts reported by 2016 may have still fallen short. The ATT Monitor has previously documented that 41 of the 44 States Parties that had submitted their ATT Initial Reports as of 31 May 2016 stated that they participate in information exchange with relevant parties to mitigate diversion risks. However, only 12 States Parties noted either that they already make information on their anti-diversion measures publicly available, or that they will do so once the ATT Secretariat is able to provide a mechanism to do so if circumstances require or upon request.³⁴

BOX 2: EXCERPT FROM ATT MONITOR CASE STUDY #3 – TACKLING TERROR: HOW THE ARMS TRADE TREATY COULD HELP STOP THE DIVERSION OF ARMS AND AMMUNITION IN WEST AFRICA

'Diversion has been a major factor in the availability of weapons and ammunition to terrorist groups and non-state armed actors in West Africa. These have been used to carry out human rights violations and have weakened regional security. While the ATT cannot reasonably prevent all the flows of arms detailed in this case study, it does provide a framework for States Parties to collectively tackle diversion [...] Crucially, the ATT establishes the particular responsibility of exporters to prevent and address diversion. With the ATT now in force, exporting States Parties have a legal obligation to assess the likelihood of diversion of the transfer. If States Parties rigorously apply the risk assessment criteria of Articles 6, 7 and 11 to their export decision-making, many transfers that end up in the illicit market would likely not be authorised, or else robust measures would have been developed to mitigate the risks.'³³

Likewise, recipient States Parties must use information sharing to tackle diversion threats, as 'details of 40 separate cases of illicit arms transfers in Africa over the past decade' showed that 'over one-third of the transfers identified implicate state authorities in their execution.'³⁵ Recent reports have highlighted the extent to which arms, ammunition and parts and components are diverted and trafficked in the Horn of Africa and in Latin America and the Caribbean. While distinct in their drivers and impact, diversion in both regions is linked to a need for improvements to national stockpile security and management.³⁶ It is clearly in the interest of governments in sub-regions severely impacted by diverted arms and ammunition to share relevant information about the sources and routes of diversion.

29 United States, Vanuatu and a state that kept its responses private. ATT-BAP (N.D.). 'Database'. As of May 2017. www.armstrade.info/comparison-results/

30 Ibid.

31 'Reporting Templates Draft 3'. ATT/CSP1/2015/PM.2/WP.4/Rev.1. 6 July 2015. www.thearmstradetreaty.org/images/ATT_CSP1_2015_PM.2_WP.4_Rev.1.pdf

32 'Information exchange mechanism to prevent diversion of conventional arms to the illicit market'. Third Meeting of the Working Group on Transparency and Reporting. 29 May 2017. http://thearmstradetreaty.org/images/CSP3_Documents/WG_documents/WGTR_-_Mexico_proposal_-_Information_exchange_mechanism_to_prevent_diversion_of_conventional_arms_to_the_illicit_market.pdf

33 Control Arms Secretariat (2016). 'Tackling Terror: How the Arms Trade Treaty (ATT) could help stop the diversion of arms and ammunition in West Africa'. ATT Monitor: Case Study 3. p.5.

34 Control Arms Secretariat (2016). 'ATT Monitor 2016'. New York. 22 August 2016. p.71.

35 Ibid. p. 22.

36 Mack, D. and Slijper, F. (2016). 'Armed and Insecure: An overview of arms transfers and armed violence in the Horn of Africa (2010–2015)'. Utrecht: PAX. 27 September 2016. <https://www.paxforpeace.nl/media/files/pax-report-horn-of-africa-armed-and-insecure.pdf>. Bromley, M. and Malaret, A. (2017). 'ATT-related activities in Latin America and the Caribbean: Identifying gaps and improving coordination'. Stockholm: SIPRI. <https://www.sipri.org/sites/default/files/ATT-related-activities-Latin-America-and-Caribbean.pdf>

In all regions, it is not only exporters and importers that must implement safeguards as diversion can occur at any stage of a weapon's life cycle and at any of point in the transfer chain, including at point of embarkation, in transit, at point of delivery or after delivery.³⁷ Greater transparency would be particularly impactful on preventing transfer diversion and high-order national stockpile diversion (i.e. theft of large quantities of arms and ammunition), as contributing factors can include weak governmental structures, lack of accountability and oversight.³⁸ Secrecy can be lethal when it allows arms diversion.³⁹ However, in some cases even a small measure of increased information sharing and transparency may at times suffice to preclude diversion. Change may therefore be argued to be more a matter of political will than financial cost.⁴⁰

Ultimately, the most transparent systems are the most effective systems in tackling diversion.⁴¹ Transparency is clearly central to most practical efforts to tackle diversion. As Small Arms Survey explains, 'spotting the sometimes subtle signs of diversion requires training, detailed and up-to-date information on other countries' military procurement and weapons inventories, and a wide array of regional and thematic expertise.'⁴²

The ATT provides a crucial platform for states to build and share experience of arms diversion and effective action to address it.⁴³ Helping to internationally harmonize practice will be essential. Lower levels of transparency in one jurisdiction make it a magnet for diversion, a first step in transitioning weapons from the legal market to providing tools of violence to organized crime, terrorists and armed groups not only in that territory but also across borders. Therefore, the more transparent international arms trade the ATT could help catalyse, the greater the benefit to human and national security.

INTERNATIONAL COOPERATION AND ANTI-CORRUPTION MEASURES

Article 15's transparency commitments are somewhat summarized by its final clause (15.7): 'States Parties are encouraged to exchange experience and information on lessons learned in relation to any aspect of this Treaty'. Although there are several national-jurisdiction and sovereignty caveats, in order to cooperate with one another countries are encouraged to consult, exchange or share information on the ATT's implementation (15.2 and 15.3), diversion measures (15.4) and 'investigations, prosecutions and judicial proceedings' (15.5).

According to the initial ATT-BAP survey in 2014, only seven countries (12 per cent of total respondents) were not at that point in time, 'currently involved in exchange of information on conventional arms transfers', none answered in the negative when asked whether they intended 'to pursue cooperation in exchange of information'.⁴⁴ While it is clearly positive that States Parties intend to engage in more information exchange than is their current practice, they must now act on these good intentions, commit to substantially increasing the level and quality of cooperation, and go beyond bilateral or multilateral communications by making information public.⁴⁵

Particularly noteworthy in its transparency implications is Article 15.6, one of the sole survivors of the drive to instil anti-corruption measures into the ATT text: 'States Parties are encouraged to take national measures and to cooperate with each other to prevent the transfer of conventional arms covered under Article 2 (1) becoming subject to corrupt practices'.⁴⁶ The article 'calls upon states to take action at the national level beyond the risk assessment, and to actively work with others at the international level to address corruption risks preventively'.⁴⁷

37 Parker, S. (2016). 'Article 11: Diversion'. In Clapham, A. et al (2016). 'The Arms Trade Treaty: A Commentary', pp. 351–52.

38 Parker, S. (ed.) (2016). 'The Arms Trade Treaty: A Practical Guide to National Implementation.' Geneva: Small Arms Survey. 'Section 9: Diversion', pp. 117–42. Other forms of diversion include 'low-order national stockpile diversion' and diversion from civilian holdings. While the quantities of firearms involved in a given incident are smaller for these phenomena, they should not be minimized. A search for individual cases over the 'previous six months' at the time of writing in Conflict Armament Research's 'iTrace database' documented diverted weapons in Somalia, Iraq, Syria, South Sudan, Central African Republic, Libya, Côte d'Ivoire, Mali, Burkina Faso, Nigeria, Niger and United Arab Emirates from a total of 27 countries of manufacture. Conflict Armament Research (N.D). 'iTrace database'. As of May 2017. <https://itrace.conflictarm.com/>

39 For example, in one case involving Panama, Nicaragua and Colombia, purportedly 'one telephone call could have prevented the entire arms diversion.' Small Arms Survey (2008). 'Small Arms Survey 2008: Risk and Resilience'. Geneva: Small Arms Survey. Chapter 4: 'Deadly Deception: Arms Transfer Diversion'. p. 124. www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2008/en/Small-Arms-Survey-2008-Chapter-04-EN.pdf

40 Ibid., Chapter 2: 'Arsenals Adrift: Arms and Ammunition Diversion'. p.68. www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2008/en/Small-Arms-Survey-2008-Chapter-02-EN.pdf

41 Small Arms Survey (2008). Chapter 4: 'Deadly Deception: Arms Transfer Diversion'. p. 127.

42 Ibid. p.130.

43 Saferworld (2015). 'Key issues for ATT Implementation: Preventing and combating diversion'. London: Saferworld. p. 2.

44 Burkina Faso, Costa Rica, Finland, Ireland, Japan, Peru and a country that chose to keep its responses private. Another three – Kiribati, Palau and Trinidad and Tobago – answered 'Don't Know'. Available at www.armstrade.info/comparison-results/

45 Current practice in international assistance as indicated in ATT Initial Reports is discussed further in Chapter 3.

46 Arms Trade Treaty, Article 15.6 (adopted 2 April 2013, entered into force 24 December 2014). UNTS (ATT) Art 15.6. <http://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>. It may be considered that 'corrupt practices' in the arms trade are not only bribery, but also failure to declare a conflict of interest, promise of post-employment offers ('the revolving door'), and the offer of preferential business access. SIPRI (2011). 'SIPRI Yearbook 2011'. Chapter 1: 'Corruption and the arms trade: sins of commission'. Stockholm: SIPRI. <https://www.sipri.org/yearbook/2011/01>

47 Transparency International (2013). 'Transparency International Welcomes Historic Adoption of UN Arms Trade Treaty (ATT)'. 2 April 2013. 2 April 2013.

As in the case of diversion, more information sharing and openness is the only way to efficiently implement the ATT's cooperation and anti-corruption obligations.⁴⁸ A lack of transparency over information and practices that fosters corruption also has severe human-security consequences, wasting financial resources that might be expended on socio-economic and health priorities.⁴⁹

Corruption also kills by diverting funds from planned security and military programmes and operations, including equipment, training and salaries. For example, billions of US dollars of graft by senior Nigerian military and political officials – including US\$2 billion for 'fake arms contracts' and 'ghost soldiers' – 'helps explain Boko Haram's success', while in Iraq the purchase of US\$68m (£52m) in fake bomb detectors in 2008 and 2009 resulted in a demoralized and weakened force and may have been 'partly responsible for Daesh taking Mosul in 2014'.⁵⁰ In order to curtail this sort of corruption, governments should publish as much information as possible on the 'quantity, value, model/type' they are encouraged to record and report under Articles 12 and 13 of the ATT, as there is a 'need to understand what was procured, and how much was paid'.⁵¹

Despite coming up short in relation to civil society demands during negotiations, the ATT does include some anti-corruption measures. Article 11.5 of the ATT establishes 'a clear link between the diversion assessment and information about corruption or corrupt practices'.⁵² Also, under Article 7.1 States Parties are required not to authorize transfers if there is a risk that they could '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'. As is clearly pointed out in the United Nations Convention against Transnational Organized Crime, to which 187 States are Party, these offences include both corruption and money laundering.⁵³ Exporters should therefore scrutinize publicly available anti-corruption resources as part of their comprehensive risk assessments.⁵⁴ A serious risk assessment would arguably preclude arms transfers to many countries on the ATT's anti-corruption obligations alone.

Efforts to cleanse arms sales of corrupt practices are as necessary as ever. Among these, particularly impactful in bringing the issue to the forefront has been the book and documentary, *The Shadow World*, by former South African parliamentarian Andrew Feinstein.⁵⁵ Tools such as the interactive online platform Project Indefensible, civil society networks and blogs, academia and think tank monitoring, and expert policy papers continue to provide the blueprint towards achieving the vision once hoped for an ideal ATT and beyond.⁵⁶

As the ATT's monitoring and verification mechanism, its transparency measures must be implemented in earnest – and in a collaborative fashion among all stakeholders. Transparency is essential to many aspects of the Treaty's implementation, particularly to combat and prevent diversion, and to ensure international cooperation and to give teeth to its anti-corruption measures. Without meaningful information sharing and openness it will not be possible to fulfil the ATT's potential to curtail the 'leakage' of weapons into the illicit market, fight the opacity that nurtures corruption, and further human security.

48 This is discussed in greater detail in Chapter 1 of Control Arms Secretariat (2016). 'ATT Monitor 2016'. New York. 22 August 2016.

49 See for example, the case of South Africa's government in the 1990s paying US\$300 million in commissions during a multi-billion dollar arms deal at a time when it claimed to be unable to afford to provide life-saving HIV and AIDS medication. Feinstein, A. (2012). 'The Shadow World: Inside the Global Arms Trade'. London: Penguin. p. xv.

50 Marsh, N. (2016). 'Corruption, Conflict and Transparency'. Peace Research Institute Oslo (PRIO). Presentation for event 'Transparency and Corruption in the Defence and Security Sector: Implications for conflict, the Sustainable Development Goals and the Arms Trade Treaty'. Oslo, 1 June 2016.

51 Ibid.

52 Transparency International (2013). 'Transparency International welcomes historic adoption of UN Arms Trade Treaty (ATT)'.

53 United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003)_UNTS A/55/383. <https://www.unodc.org/unodc/treaties/CTOC/>

54 Transparency International (N.D.). 'Government Defence Anti-Corruption Index'. <http://government.defenceindex.org/list/>. As of May 2017, 30 countries, or 26 per cent of those assessed, were given the most serious risk rating for 2015 (an 'F' grade). These scores are not set in stone over time, as the methodology states the index 'measures levels of corruption risk in national defence establishments, and scores each country from A (the best) to F (the worst)'.

55 See Feinstein, A. (2012). 'The Shadow World'.

56 For more information, see the following. Project Indefensible(N.D.). <https://projectindefensible.org/>. Bock, T. and Hurd, H. (2016). 'If you really care about sustainable development, you better think about defense'. Forum on the Arms Trade. 6 July 2016. www.forumarmstrade.org/looking-ahead-blog/category/transparency. World Peace Foundation (N.D.). 'Compendium of arms trade corruption'. <http://streams-dev.it.tufts.edu/wpf/index.html>. Stimson Center (N.D.). 'Managing the Arms Trade Program'. <https://www.stimson.org/programs/managing-arms-trade>. Transparency International (2016). 'Licence to bribe? Reducing corruption risks around the role of agents in defence procurement'. June 2016. <http://ti-defence.org/publications/licence-to-bribe-reducing-corruption-agents-defence-procurement/>

1.3. ALLAYING FEARS AND BUILDING CONFIDENCE: THE IMPLICATIONS OF GREATER TRANSPARENCY IN THE ARMS TRADE

There should be no need to go beyond the most important argument for greater transparency: less people would be killed, maimed and terrorized by armed violence and conflict if the arms trade becomes less secretive. Yet there are many other reasons, as explained below, to advocate for and accept greater levels of openness.

CONFIDENCE-BUILDING

Transparency in the arms trade reduces the grounds for suspicion and mistrust between countries. Building confidence through responsible action by States Parties is one of the stated purposes of the ATT, and transparency through public reporting is a necessary condition in order for confidence building to take place.

Such confidence building is the antidote to the 'security dilemma' or 'spiral insecurity', a famous theory of international relations that says that otherwise friendly neighbours may engage in an arms race, and possibly an actual conflict, simply by miscalculating intentions and responding with increased military expenditure.⁵⁷ Concealing information that supposedly would benefit an enemy in a hypothetical conflict actually increases the probability of creating enemies and starting conflict. There is clearly a strong strategic rationale for greater transparency.

The proof that countries understand that transparency is inherently in the national self-interest is the prevalence and use – albeit decreasing in some cases – of voluntary reporting on a wide array of security-related matters regionally and globally, such as to the UN Register of Conventional Arms (UNROCA).

PRAGMATISM AND INCENTIVES

There are also very pragmatic reasons to become part of the ATT regime and, once inside, to insist on public reporting and openness. For one, it makes little sense to attempt to conceal information that is already known or easily available through other means. The stance of some governments on transparency appears to be based on the premise that if they

do not share information, it will not be possible to access it. However, in practical terms, governments' ability to hide much of the basic data required to meet the ATT's transparency obligations has been probably forever undermined. Looking beyond the other national, regional and multilateral instruments in which information is shared by trading partners, information made public through open-source intelligence can provide a level of detail on a country's military capacity that vastly surpasses the information regarding equipment levels that ATT reporting could provide.⁵⁸ In fact, for a relatively small financial outlay, anyone can have access to not only generic type and units of conventional arms but also to information about technical details, preparedness, state of wear, distribution over territory, military doctrine, organization and size of the armed forces, and much more. The high cost of secrecy for governments – political capital wasted, loss in international confidence, uncomfortable pressure from civil society, unfavourable diplomatic and public perceptions – is by no means offset by any perceived 'gains', creating a lose-lose situation.

With much to gain and little (if anything) to lose by embracing transparency, the balance can be further tipped towards gain within a multilateral regime such as the ATT. The CSP could consider many different formulations of potential additional incentives towards greater transparency, including having greater access to assistance and implementation funds. Ultimately, as transparency is a means to demonstrate that a country is a trusted partner, reporting to the ATT could be taken into account by states considering export licences.⁵⁹

ALLAYING FEARS

Fears – however irrational – nonetheless persist. The need for, and expectation of, transparency may be construed in some countries as a barrier to entry to the ATT. Some have argued that increased transparency would hinder universalization, noting that some countries may simply not join the Treaty when confronted with a requirement to give up secrecy.⁶⁰ Such an argument rests on the idea that the basic purposes and normative values of the ATT may be an impediment to its own universality. A similar argument has been put forward by some to suggest that criticism of ATT violators 'could deter others joining'.⁶¹

57 See, for example, Jervis, R. (1978). 'Cooperation under the Security Dilemma'. *World Politics*, 30:2. pp. 167–214.

58 International Institute for Strategic Studies (2017). 'The Military Balance 2017'. IHS Jane's 360. www.janes.com

59 Mutschler, M. and Grebe, J. (2015). 'Transparent Reporting for a Successful Arms Trade Treaty'. Bonn International Center for Conversion. p. 7. https://www.bicc.de/uploads/tx_bicctools/Policy_Brief_2015_1.pdf

60 Anonymous official from a Southeast Asian country, cited in Persi Paoli, G. and Kytomaki, E. (2016). 'Towards a Universal Arms Trade Treaty: Understanding barriers and challenges in South-East Asia'. RAND Europe. p. 26.

61 Macdonald, A. (2016). 'Greater transparency around the arms trade would save countless lives'. *The Guardian*. 24 August 2016. <https://www.theguardian.com/commentisfree/2016/aug/24/greater-transparency-arms-trade-save-lives>

However, transparency should be seen as an opportunity to demonstrate responsible and accountable practice. The ATT's transparency obligations should not be a disincentive to joining the Treaty, nor for countries within the regime to shy away from public reporting and robust information sharing. States signing onto the Treaty's transparency requirements have much to gain from demonstrating, through robust and open reporting, that their actions and policies duly implement the Treaty.

Government fears around transparency have often been overstated.⁶² Being inside the ATT regime will allow countries to gather more information and experience than those outside, particularly in the more sensitive bilateral and informal information-sharing settings that may include information on diversion patterns, export denials and opportunities for cooperation and assistance. As Amnesty International has pointed out, 'increased transparency also helps to reduce unfair criticism of governments when they act lawfully to supply or acquire the legitimate means of defence and law enforcement.'⁶³

No government is, can or should be 100 per cent transparent. However, 'the all-encompassing secrecy that often characterizes arms deals hides corruption, conflicts of interest, poor decision-making and inappropriate national security choices.'⁶⁴ In relative terms, the ATT's transparency obligations are quite minimalist, so reticence in joining the instrument on the basis of information-protection concerns is unfounded.⁶⁵

Many countries are already bound by, or have participated in, instruments that match or surpass the ATT in their transparency demands. Though voluntary, and suffering from a severe decline in reporting rates in recent years, UNROCA has a similar level of information demands for weapons type as the ATT.⁶⁶ Between 2000 and 2006, the Register received reports from an average of 116 countries, including voluntary data on military holdings



THERE SHOULD BE NO NEED TO GO BEYOND THE MOST IMPORTANT ARGUMENT FOR GREATER TRANSPARENCY: LESS PEOPLE WOULD BE KILLED, MAIMED AND TERRORIZED BY ARMED VIOLENCE AND CONFLICT IF THE ARMS TRADE BECOMES LESS SECRETIVE.

and/or procurement though national production from an average of almost 45 countries annually.⁶⁷ The legally binding Inter-American Convention on Transparency in Conventional Weapons Acquisitions of the Organization of American States (OAS) (adopted in 1999) has mandatory reporting that must include export, import and national acquisition (domestic production), and must be shared within 90 days of any acquisition of conventional arms.⁶⁸

Encompassing 41 countries – including most European countries as well as Argentina, Australia, Canada, Mexico, Turkey and South Africa – the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies has a much broader equipment scope than the ATT and members must report every six months on transfers and denials to countries outside the agreement.⁶⁹ Legally binding instruments covering only small arms and light weapons (SALW) likewise include important transparency obligations, such as determining dialogue with manufacturers and suppliers and keeping records indefinitely in the case of the ECOWAS Convention.⁷⁰

62 See for example Amnesty International (2011). 'Our Right to Know: Transparent Reporting Under an Arms Trade Treaty' p. 3.

63 Ibid, p.2

64 Feinstein, A. (2011). 'The Shadow World' p. XXV.

65 Instituto Sou da Paz (2012). 'Brasil e o Arms Trade Treaty: Impacto e importância de um Tratado humanitário' [Brazil and the Arms Trade Treaty: Impact and importance of a humanitarian treaty]. Author's translation. www.soudapaz.org/upload/pdf/brasil_e_att_240512_final_2.pdf.

66 Particularly since adding the voluntary category of small arms and light weapons in 2003.

67 The year with most participation, 2001, saw 124 reports submitted. <https://www.unroca.org/participation>

68 Inter-American Convention on Transparency in Conventional Weapons Acquisitions (adopted 1999).

www.oas.org/en/sla/dil/inter_american_treaties_A-64_transparency_conventional_weapons_acquisitions.asp

Seventeen countries from Latin America and the Caribbean have ratified or acceded to the Transparency Convention. For a brief discussion of the Convention in English, see Saferworld (2007). 'Towards Global Standards: Regional Experience in Small Arms Transfer Controls'. Edited Papers from an international seminar, Waterloo, Canada. 8 February 2007. London: Saferworld. pp. 17–18.

69 For transparency and information-sharing guidelines for arms, which 'will include any matters which individual Participating States wish to bring to the attention of others', see Wassenaar Arrangement Secretariat (2017). 'Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies'. www.wassenaar.org/wp-content/uploads/2015/06/WA-DOC-17-PUB-001-Public-Docs-Vol-I-Founding-Documents.pdf

70 ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials. (Adopted 14 June 2006, entered into force 29 September 2009). www.poa-iss.org/RegionalOrganizations/ECOWAS/ECOWAS%20Convention%202006.pdf

If reporting templates and streamlining are properly developed and implemented, the ATT's reporting need not be a significant extra effort for a State Party – and international cooperation and assistance mechanisms and funds, in addition to support from civil society, are readily available. Reporting activity can strengthen governments by increasing interdepartmental cooperation, coordination and knowledge, thereby creating better prepared professionals and agencies that are also better able to implement the Treaty at large and other germane public policies.

Transparency tends to increase over time. Understandably, a State with a history of sensitivity to information sharing will not become much more transparent overnight, needing legislative and cultural evolutions in order to do so. In many regional or UN instruments, initial resistance to information sharing was overcome by practice. For example, when devised the OAS Transparency Convention did not intend to make reports public, but once countries realized openness was not as scary as feared, publicity became the norm and reports were made available on the organization's website. A similar process has taken place in the development of the annual report produced by the EU.⁷¹

Other than the 'minimum standards' explicitly determined by the ATT's text that are a legal requirement for all States Parties, countries with limited practical transparency experience could, in a step-by-step approach, progressively broaden the information that they are prepared to make public, while States Parties ready for higher levels than the floor defined by the Treaty can report on transfers of ammunition, parts and components, technology and manufacturing equipment – in addition to transfer denials and other items deemed more sensitive.⁷²

BEST PRACTICES AND EXAMPLES TO EMULATE

Good practices in the field of arms export and transfer controls long pre-date the ATT, although only in a small number of countries. Prior to the Treaty's adoption, 35 countries and territories published an annual report on their arms-trade activity, with three doing so monthly, two quarterly and another three twice a year.⁷³ The United States, the first country to publish a national report on its arms exports, has done so since 1961. In Sweden, the public presentation and debate in parliament around the annual report of arms exports has taken place since



GOOD PRACTICES ARE STILL FAR FROM THE NORM, AND BEST PRACTICES ARE NOT PERFECT ONES. REGARDING THE SMALL-ARMS TRADE, EVEN THE COUNTRIES CONSIDERED THE MOST TRANSPARENT IN THE 2016 TRANSPARENCY BAROMETER – GERMANY AND UNITED KINGDOM – RECEIVED 'ONLY' 19.75 OUT OF A POSSIBLE 25 POINTS.

1985. Relative openness has come not only from wealthy countries but also from the likes of Serbia, which published annual reports prior to ATT negotiations⁷⁴ and has scored well in its transparency for small arms transfers, with the Small Arms Survey ranking it fourth in the world for 2016 among major exporters.⁷⁵

More recent developments, either emboldened by the ATT discussions or spurred by domestic circumstances, are also noteworthy⁷⁶ From 2014, 'a report regarding export licenses granted in the first half of each year will be published in the second half of that year' by Germany, which 'informs Parliament about licensing decisions taken by (its) specialized Cabinet Committee, shortly after these decisions have been taken'. Portugal's national report includes information on transit and brokering. Spain ensures control by parliament by sending it the relevant information about arms transfers every semester. Sweden translates its national report into English to facilitate international scrutiny.⁷⁷

The ATT's first round of Annual Reports also witnessed the emergence of good practice examples. For example, Austria, Portugal and Slovenia reported on the value and number of exported heavy conventional arms, while these three as well as Bosnia and Herzegovina, Japan and Montenegro voluntarily reported on the number and value of exported SALW (see Chapter 2 for more details). Transparency champions should seek to raise reporting standards in future rounds of annual reporting and continue to lead by example.⁷⁸

71 Inter-American Convention on Transparency in Conventional Weapon Acquisition. (Adopted 1999). www.oas.org/csh/english/conventionalweapons.asp#Reports. European Union (N.D.). 'Arms export control'. https://eeas.europa.eu/headquarters/headquarters-homepage/8472/arms-export-control_en

72 Mutschler, M. and Grebe, J. (2015) 'Transparent Reporting for a Successful Arms Trade Treaty' p. 5.

73 Weber, H. and Bromley, M. (2011). 'National Reports on Arms Exports'. Stockholm: SIPRI. March 2011. <http://books.sipri.org/files/FS/SIPRIFS1103b.pdf>

74 Lazarevic, J. (2010). 'Transparency Counts: Assessing State Reporting on Small Arms Transfers, 2001–08'. Geneva: Small Arms Survey, June 2010. www.smallarmssurvey.org/fileadmin/docs/B-Occasional-papers/SAS-OP25-Barometer.pdf

75 Pavesi, I. (2016). 'Trade Update 2016: Transfers and Transparency'. Geneva: Small Arms Survey, June 2016. p.42. www.smallarmssurvey.org/fileadmin/docs/S-Trade-Update/SAS-Trade-Update.pdf

76 See ATT-BAP (N.D.). www.armstrade.info/comparison-results

77 Ibid. National reports submitted by each country.

78 Bales, M. and Mutschler, M. (2016) 'After the First Annual Reports to the Arms Trade Treaty: How to Overcome Gaps and Reporting Deficits?' p. 7.

Good practices are still far from the norm, and best practices are not perfect ones. Regarding the small-arms trade, even the countries considered the most transparent in the 2016 Transparency Barometer – Germany and United Kingdom – received 'only' 19.75 out of a possible 25 points.⁷⁹ The average score was below the halfway mark (11.16) but more than one-third of the countries improved their scores, with South Africa (+7.75 points) and Bosnia and Herzegovina (+4.25) improving most.⁸⁰ In other words, even the most transparent governments can improve their practices.

CONCLUSION

Transparency is embedded throughout the ATT. Indeed there is hardly an obligation that does not relate to information sharing. Without meaningful information sharing, it will not be possible for the ATT to live up to its own lofty object and purpose.

In addition to the growing pains within the ATT regime concerning openness, the current global transparency picture is troubling. However, efforts to increase transparency in the international arms trade could assist to protect gains from recent decades in open-government practice. To do so, placing a spotlight on the arms trade cannot be considered in isolation from the larger security,

political and economic picture, nor can it be detached from the sectors of the economy that support it.

Finally, greater transparency and accountability should also be pursued at the national level, regardless of whether the country is an ATT State Party or not, or of how responsible its arms transfer practices are.⁸¹ National efforts to establish transparency mechanisms can include the production of an annual public report to be debated in parliament, the establishment of a dedicated parliamentary committee to oversee the policy and practice of arms-transfer control, and the development of an interdepartmental structure to coordinate government policy and practice.⁸²

As demonstrated above, there are many reasons to seek greater openness, including confidence-building among countries, bolstering national security by pre-empting conflict, shedding the high costs of secrecy in terms of wasted political capital and reputation losses in the international community, gaining access to incentives, and proving responsible implementation of the ATT. In seeking greater openness, governments should emulate the examples of best practice, while transparency champions should intensify their efforts to continuously raise standards, recognizing that even the most transparent governments can, and should, seek to improve their practices.



**AN AVIATION ORDNANCE MAN
PERFORM A WEAPONS INSPECTION
ON AN AIM-9 SIDEWINDER AIR-TO-AIR
MISSILE MOUNTED ON AN F/A-18F
SUPER HORNET**

CREDIT: © U.S. NAVY PHOTO BY AIRMAN
ANGEL G. HILBRANDS.

79 Netherlands came in a close second, with 19.25. Pavesi, I. (2016). 'Trade Update 2016: Transfers and Transparency'.

80 Ibid.

81 For examples of prominent national-level civil society campaigns that push for greater transparency, among other objectives, see Stop Wapenhandel (Netherlands) www.stopwapenhandel.org/node/1939 and Campaign Against Arms Trade (UK) www.caat.org.uk.

82 See Control Arms Secretariat (2016). 'ATT Monitor 2016'. New York. 22 August 2016. Chapter 1.1. p. 24.