

2.2 – INITIAL REPORTS

INTRODUCTION

Article 13.1 of the Arms Trade Treaty requires States Parties to '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.' Furthermore, the Treaty requires States Parties to report 'on any new measures undertaken in order to implement this Treaty, when appropriate.' ATT initial reports should therefore serve as an important component of Treaty implementation and tool to measure and assess how States Parties understand and incorporate the Treaty's provisions into their national control systems.

This chapter offers reflections on five years of ATT initial reporting. It examines trends in reporting compliance and provides a snapshot of progress made towards Treaty implementation based on publicly available information as provided by States Parties in their initial reports. The chapter concludes with enduring challenges to ATT reporting and considerations of how these impact Treaty implementation.

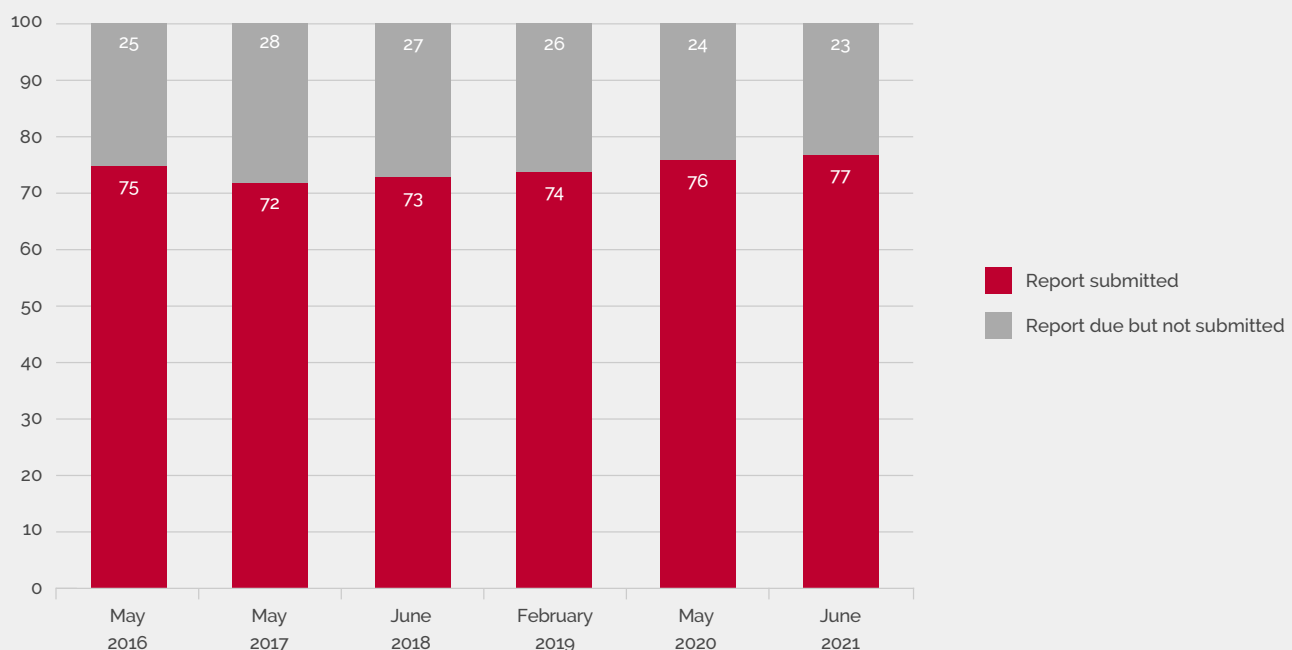
ATT INITIAL REPORTING AT A GLANCE

As of 7 June 2021, 105 States Parties were required to have submitted an initial report on their efforts to implement the Treaty to the ATT Secretariat. Of these, 81 have submitted their initial reports, reflecting a compliance rate of approximately 77 per cent. While the number of submitted reports has increased each year since 2016, the overall compliance rate for ATT initial reporting has remained relatively constant, as demonstrated in Figure 2.1, which provides a snapshot of initial reporting compliance by year, with the annual timeframes determined by the publication schedules of ATT Monitor Annual Reports.

The steady compliance rate raises several concerns about reporting and transparency norms, as well as about the ability to conduct objective assessments of Treaty implementation.

Although States Parties are obligated to submit an initial report on their efforts to implement the ATT, many continue to experience difficulties in meeting this requirement. As of 7 June 2021, 24 States Parties had not submitted their initial reports to the ATT Secretariat – approximately 23 per cent of States Parties required to report.

FIGURE 2.1: RATE OF ATT INITIAL REPORTING COMPLIANCE BY YEAR (IN APPROXIMATE PER CENT)



There are regional trends in these missing reports. Of the 24 States Parties that have yet to submit their initial reports, 13 are from Africa, nine are from the Americas, one is from Asia and one is from Europe. Furthermore, nine of these are among the least developed countries, according to UN figures, and nine are small island developing states.

Table 2.1: Initial report submissions by region (as of 7 June 2021)

| Region | Number of States Parties Due to Report | Number of States Parties that Have Reported | Regional Reporting Rates |
|----------|--|---|--------------------------|
| Africa | 26 | 13 | 50% |
| Americas | 27 | 18 | 67% |
| Asia | 8 | 7 | 88% |
| Europe | 39 | 38 | 97% |
| Oceania | 5 | 5 | 100% |

Many of these 24 States Parties have been delinquent in completing their initial reports for several years, with the majority of these having missed the due date by more than three years. This record of non-reporting may indicate larger challenges concerning available resources and/or capacity constraints that may limit States Parties' ability to complete their initial reports, as well as potential uncertainties regarding Treaty reporting requirements and deadlines. It also likely reflects a lack of political will for and prioritization of meeting Treaty obligations.

Some regional trends may also reflect where additional outreach on reporting, such as workshops or individual country trainings, has been done or is absent. Therefore, it remains important for ATT stakeholders to continue to engage with and investigate obstacles to ATT reporting in order to support States Parties in meeting their Treaty requirements, as well as to better understand implementation and non-compliance.

Table 2.2: Reporting delinquency timelines

| | 6 months–1 year late | 1–2 years late | 3+ years late |
|--------------------------|----------------------|----------------|---------------|
| Number of States Parties | 26 | 13 | 50% |



[I]T REMAINS IMPORTANT FOR ATT STAKEHOLDERS TO CONTINUE TO ENGAGE WITH AND INVESTIGATE OBSTACLES TO ATT REPORTING IN ORDER TO SUPPORT STATES PARTIES IN MEETING THEIR TREATY REQUIREMENTS...

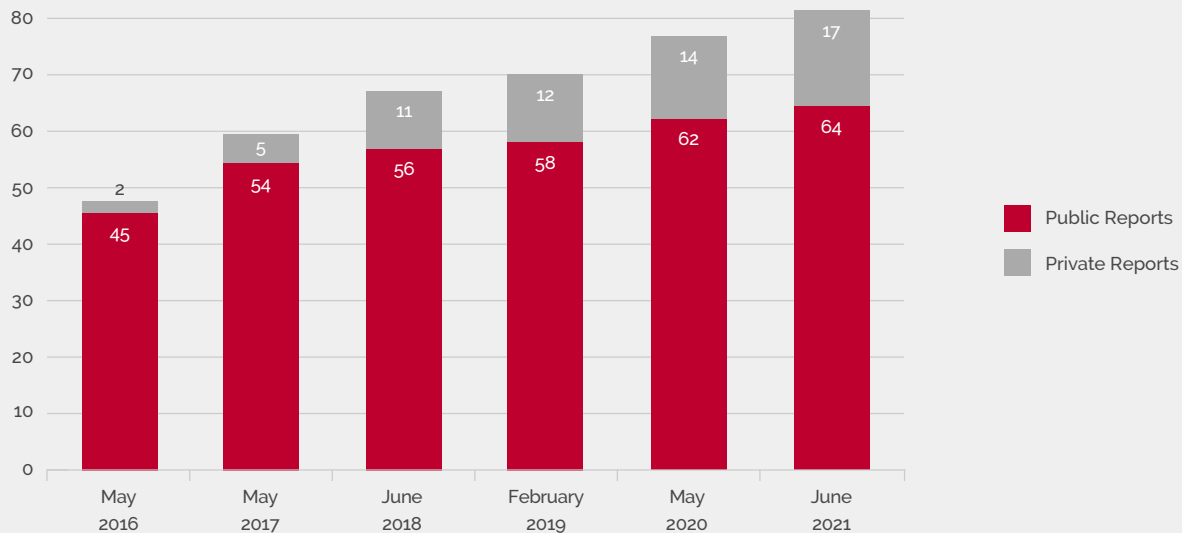
While the Treaty requires States Parties to report on updates made to their national transfer control systems, there is still no formal or standardized way for them to update their initial reports to reflect changes to their national implementation measures.

Only five States Parties have provided information on 'any new measures undertaken in order to implement' the ATT, as required under Article 13.1 of the Treaty (Hungary, Japan, New Zealand, Slovenia and Sweden). They each provided updates in different ways, underscoring the lack of standardization and challenges with identifying new elements in updated reports.

One of the most concerning trends in reporting over the first five years is the increasing rate of private reporting. Private reports, which can only be viewed by other States Parties, limits public understanding, analysis, insights and identification of trends regarding States Parties' interpretation and implementation of the Treaty's provisions. Private reporting also impedes the ability to identify implementation gaps, needs and potential assistance.

Of the 81 submitted initial reports to date, 17 are private, representing approximately 21 per cent of all submitted ATT initial reports. Private reports continue to represent an increasing share of overall initial reports, as shown in Figure 2.3. As noted in last year's ATT Monitor Annual Report, two of the 47 initial reports submitted by May 2016 were private, representing 4 per cent of all submitted reports. The percentage of private reports has increased every year since.

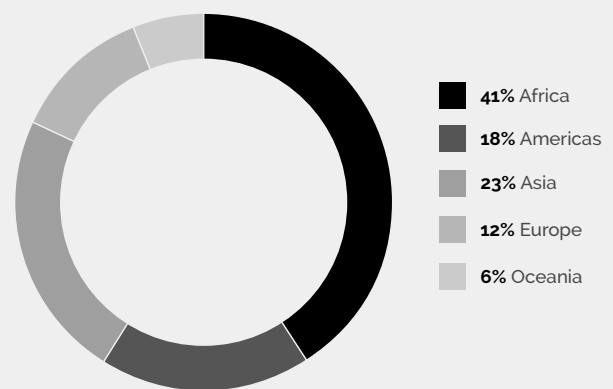
FIGURE 2.2 – NUMBER AND PERCENTAGE OF REPORTS SUBMITTED PER REPORTING YEAR



Of the 17 States Parties that elected to make their initial reports private, seven are in Africa, three are in the Americas, four are in Asia, two are in Europe and one is in Oceania. Of these:

- Seven of the 13 States Parties in Africa that submitted initial reports did so privately, representing nearly 54 per cent of the regional total of submitted reports.
- Three of 18 States Parties in the Americas that submitted initial reports did so privately, representing approximately 17 per cent of the regional total of submitted reports.
- Four of seven States Parties in Asia that submitted initial reports did so privately, representing 57 per cent of the regional total of submitted reports.
- Two of 28 States Parties in Europe that submitted initial reports did so privately, representing five per cent of the regional total of submitted reports.
- One of five States Parties in Oceania that submitted initial reports did so privately, representing 20 per cent of the regional total of submitted reports.

FIGURE 2.3: REGIONAL BREAKDOWN OF PRIVATE INITIAL REPORTS (AS A PROPORTION OF ALL SUBMITTED INITIAL REPORTS)



INSIGHTS ON IMPLEMENTATION

Sixty-four States Parties have provided publicly available initial reports to the ATT Secretariat. Initial reports offer an overview of key elements of States Parties' national transfer control systems and provide important insights into national interpretations of Treaty provisions. However, because the reporting templates give States Parties the option of simply responding yes or no to questions regarding several aspects of Treaty implementation, it is often difficult to get a complete picture of what Treaty implementation looks like.

NATIONAL CONTROL SYSTEM

Article 5.2 of the ATT obligates States Parties to 'establish and maintain a national control system, including a national control list.' Of the 64 States Parties that have submitted public initial reports, 52 indicated that their national control system includes a national control list. The Treaty also obliges States Parties to have national systems to control exports of conventional arms, ammunition, and parts and components, as well as to regulate the import, transit and brokering of conventional arms.

According to publicly available reports, 54 States Parties indicated that their national system maintains controls for exports, 60 indicated their system contains import controls,

58 indicated their national control system covers transit/trans-shipment, and at least 49 States Parties indicated that their national system regulates brokering. Five States Parties (the Dominican Republic, Jamaica, Luxembourg, the Republic of Moldova and Zambia) noted that they were drafting, reviewing and/or updating their national systems/legislation to include controls for brokering, though the status of those efforts is unclear based on available reporting.

PROHIBITIONS

Article 6 of the ATT prohibits arms transfers in three specific circumstances. Of the 64 States Parties that submitted publicly available initial reports, 56 – or approximately 88 per cent – indicated that they prohibit arms transfers in all circumstances detailed in Article 6.¹

For example, Bulgaria noted that its national control system prohibits arms transfers in all circumstances detailed in the Treaty text. It elaborated further by stating: 'The Council of Ministers adopts Decree about the List of States and Organizations against which the Republic of Bulgaria Imposes a Prohibition or Restrictions on the Sale and Deliveries of Arms and their Related Equipment, in Compliance with Resolution of UNSC and Decisions of EU and the OSCE (regularly updated).'



**AN UH-60 BLACK HAWK
IN KOSOVO.**

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STAFF SGT. TAWNY SCHMIT

¹ The Treaty prohibits arms transfers if they (1) would violate a State Party's obligations under measures adopted by the UN Security Council acting under Chapter VII of the UN Charter, in particular arms embargoes; (2) would violate a State Party's relevant international obligations under international agreements to which it is a party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms; and (3) if the State Party has knowledge at the time of authorization 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 against civilian objects or civilians protected as such or other war crimes.

EXPORTS

The ATT initial reporting template features several questions related to arms exports. Information provided in initial reports can help improve the understanding of how national export-control systems work in practice. For example, 53 out of 64 publicly reporting States Parties revealed in their initial reports that they have measures in place to ensure authorizations are detailed and issued prior to exports. Forty-nine States Parties reported they have systems in place through which they can reassess export authorizations if they become aware of new and relevant information.

For example, Zambia reported that its national authorities can reassess export permit applications for firearms but also that this procedure is not codified in its relevant legislation. Therefore, Zambia indicated that its 'new legislation to implement the ATT will explicitly include provisions that permit reassessment of export permit applications'. Sweden, by comparison, indicated that it maintains the authority to revoke an export license permanently or for a specific period of time.

DIVERSION

Several articles within the ATT underscore the importance of preventing and mitigating the risk of diversion. The ATT initial report template offers States Parties an opportunity to report on their counter-diversion efforts. Sixty – or approximately 94 per cent – of States Parties that reported publicly indicated they have measures in place to prevent diversion, while 51 indicated that their national control systems include measures to be taken when diversion is detected.

Examples of measures that States Parties indicated they have in place to prevent diversion include examining parties involved in a transfer, requiring end-use and/or end-user documentation, and checking destinations against watch and/or entity of concern lists. And examples of measures that States Parties indicated they have in place to be taken when a diversion is detected include alerting other potentially affected States Parties, using international tracing mechanisms to identify points of diversion – such as the International Tracing Instrument.



WHILE THE MAJORITY OF REPORTING STATES PARTIES DO NOT ELABORATE IN THEIR INITIAL REPORTS ON SPECIFIC ENFORCEMENT MEASURES, SOME (FOR EXAMPLE, CANADA, ESTONIA AND THE NETHERLANDS) PROVIDED LINKS TO THEIR RELEVANT LAWS THAT SUPPORT NATIONAL ENFORCEMENT OF THE ATT. OTHER STATES PARTIES (FOR EXAMPLE, GERMANY, ICELAND, THE REPUBLIC OF KOREA AND SWITZERLAND) OFFERED INSIGHTS ON THE TYPES OF PUNISHMENTS THAT CAN BE INCURRED (FOR EXAMPLE, FINES, IMPRISONMENT) FOR VIOLATIONS OF THEIR NATIONAL ARMS TRANSFER CONTROLS.

ENFORCEMENT

Of the 64 States Parties that made their initial reports publicly available, 56 – or approximately 88 per cent – indicated that they have measures in place to enforce national laws and regulations as they pertain to ATT implementation.

While the majority of reporting States Parties do not elaborate in their initial reports on specific enforcement measures, some (for example, Canada, Estonia and the Netherlands) provided links to their relevant laws that support national enforcement of the ATT. Other States Parties (for example, Germany, Iceland, the Republic of Korea and Switzerland) offered insights on the types of punishments that can be incurred (for example, fines, imprisonment) for violations of their national arms transfer controls.

Fifty-three publicly reporting States Parties – or approximately 83 per cent – indicated that their national legislation allows for the provision of joint assistance in investigations, prosecutions and judicial proceedings in the event that relevant laws and regulations are violated.



THE CHALLENGES OF THE INITIAL REPORT TEMPLATES

With initial reporting compliance relatively stable at 77 per cent, nearly a quarter of States Parties continue to experience difficulties meeting their ATT reporting requirements. The ATT Working Group on Transparency and Reporting (WGTR) retains as one of its priority issues the need to improve reporting compliance. In 2015, the WGTR developed provisional initial and annual reporting templates to encourage consistent reporting and support assessments of Treaty implementation through standardized information collection. However, both reporting templates have presented challenges to clear and comprehensive reporting. As detailed in the Stimson Center's report, 'The ATT Reporting Templates: Challenges and Recommendations', the reporting templates present challenges across three broad categories: the language and statements used, the format of certain questions and omitted content.²

Specifically, the initial reporting template has a complicated structure and contains several questions that lack specificity or depth to allow States Parties to elaborate on specific measures and practices they have in place to implement the ATT.

In some cases, a tick box in the initial report template is the only means through which States Parties can indicate whether their national control system includes implementation measures, with no way to describe the ways in which that system works. Moreover, the template confusingly separates voluntary and mandatory Treaty obligations (listed as 'binding' and 'non-binding' obligations) in two separate sections of the reporting template. Although the Treaty itself does not include different statuses for measures to implement the Treaty, the distinction in the reporting template has confused States Parties as to what information they must and should provide in their initial reports.³ Furthermore, and as noted elsewhere, the template does not yet offer an easy and intuitive way for States Parties to update (or indicate updates to) their initial reports when their national measures change.

These challenges can compound other complications that States Parties experience in meeting their ATT initial reporting requirements. Therefore, it will remain important to monitor progress towards revising the reporting templates and to continue engaging States Parties on good reporting practices for informative understandings of Treaty implementation.

² Arms Trade Treaty-Baseline Assessment Project (ATT-BAP) (2020). 'The ATT Reporting Templates: Challenges and Recommendations'. http://www.armstrade.info/wp-content/uploads/2014/10/Reporting-Templates-Challenges-and-Recommendations_Web-Version.pdf.

³ For more information, see Ibid.

CONCLUSION

Initial reports are a required and necessary element of the ATT. However, over the first five years of the Treaty, States Parties' reporting compliance is not living up to the promise or requirements of the ATT.

Twenty-four States Parties remain non-compliant with their initial reporting obligation and an increasing share of States Parties have elected to make their initial reports private. Numerous challenges in ATT initial reporting prevent gaining a complete picture of ATT implementation. These challenges are due in part to the reporting templates – how questions are phrased and organized – as well as to the absence of political will and capacity in completing initial reports, a lack of urgency for States Parties to complete their initial reports on time and an increasing number of private reports.

As a result, initial reports are not providing the insights required to effectively monitor ATT implementation. The ability to identify global progress and good practice is therefore limited. In many cases, it is not possible to discern whether the Treaty is being effectively implemented or to match gaps and needs with assistance and resources.

Transparency is a central part of the ATT's object and purpose. If States Parties do not comply with their Treaty obligations, it is impossible to identify good practice, lessons learned and improved national practice to ensure that arms transfers do not contribute to human suffering. It is also not possible to measure whether the ATT is having the desired effect in more effectively regulating global arms transfers to prevent human suffering. ATT initial reports are not simply an afterthought of the Treaty – they are a key metric in identifying its effectiveness. Without universal compliance with the reporting requirements and increased public reporting, the ATT cannot live up to its original intent.

SEIZED WEAPONS IN MOGADISHU, SOMALIA.

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**MERLIN MK2 HELICOPTERS
ONBOARD HMS QUEEN ELIZABETH.**

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