

HANDBOOK

The Arms Trade Treaty

A Practical Guide to National Implementation

Edited by Sarah Parker



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The Small Arms Survey

The Small Arms Survey is a global centre of excellence whose mandate is to generate impartial, evidence-based, and policy-relevant knowledge on all aspects of small arms and armed violence. It is the principal international source of expertise, information, and analysis on small arms and armed violence issues, and acts as a resource for governments, policy-makers, researchers, and civil society. It is located in Geneva, Switzerland, at the Graduate Institute of International and Development Studies.

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The ATT Network

The ATT Network was launched in 2013 by the Geneva Forum and the Geneva Centre for Security Policy (GCSP). It is now composed of the Graduate Institute's Centre on Conflict, Development and Peacebuilding (CCDP), the GCSP, the Small Arms Survey, and the United Nations Institute for Disarmament Research (UNIDIR). It serves as an informal platform for information exchange, assisting ATT states parties, and promoting adherence to and effective implementation of the ATT.

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SECTION 1

Introduction




1.1 Context

The Arms Trade Treaty (ATT), the first global, legally binding instrument to regulate the transfer of conventional arms, was adopted by the United Nations (UN) General Assembly on 2 April 2013. It entered into force on 24 December 2014.

The ATT was negotiated over the course of two diplomatic conferences in 2012 and 2013, after preliminary discussions in 2010–12. Comprised of a preamble, principles, and 28 articles, the Treaty:

- sets out its scope, namely the types of conventional arms and transfers it covers;
- prohibits transfers of these conventional arms in certain circumstances—either because the transfer itself is a prohibited act or because the arms will be, or are likely to be, used for unlawful purposes;
- requires states parties to create a formal control regime to regulate transfers at the national level; and
- requires states parties to report on the exports and imports that take place or that the control regime authorizes.

The Conference of States Parties (CSP), which is supported by the ATT Secretariat— see Section 2.2.9—allows for collective oversight of the interpretation, application, and implementation of the Treaty.

1.2 What is the purpose of this Guide?

Many of the ATT's provisions demand action by states parties at the national level. States parties need to exercise control over all transfers of conventional arms that are covered by the Treaty and that fall within their jurisdiction; implement an effective national control regime to authorize or deny proposed transfers, particularly exports; and adopt legislative or other measures to give effect to and enforce the Treaty's provisions at the national level. Some states already have such a regime and associated measures in place, yet many do not.

Further, given that the ATT covers many branches of international law, whether explicitly or implicitly, states parties are also obligated to understand the intricacies of public international law, the law of state responsibility, the law of treaties, the law of the sea, international human rights law, international humanitarian law,

disarmament law, the international law of terrorism, the law on the interstate use of force (known by the Latin phrase *jus ad bellum*), international law governing transnational organized crime, and the workings of the UN Security Council under Chapter VII of the UN Charter. For states with small international law departments, this is a considerable challenge.

Accordingly, this Guide aims to help states understand how the provisions of the ATT are to be interpreted and applied in practice. It explains legal concepts in straightforward language and directs readers to further resources. A list of abbreviations is included at the end of the volume, along with the complete text of the ATT in the Annexe. An index completes the Guide.

1.3 Who can benefit from this Guide?

The main intended users of the Guide are states. It is designed to serve as an invaluable resource for those responsible for applying or implementing the Treaty in the following ministries and government departments: customs, defence, finance, foreign affairs, interior, justice, trade, and transport, along with any other participants in the national control regime whose creation the ATT requires. The Guide can also be helpful for members of civil society who seek to promote compliance with and implementation of the Treaty.

1.4 How can the Guide be used?

To gain a comprehensive understanding of the ATT, the user is encouraged to read the entire Guide. Readers who wish to focus on a particular issue may find it useful to consult relevant sections as well as the index. In addition to this introduction, the Guide comprises the following self-contained sections:

- Overview of the Arms Trade Treaty
- National control systems
- National control lists
- Export controls
- Import controls
- Transit and trans-shipment controls

- Controlling brokers and brokering
- Diversion
- Record-keeping
- Reporting

The complete text of the Arms Trade Treaty appears in the Annexe.

SECTION 2

Overview of the Arms Trade Treaty



2.1 What is the background to the ATT?

By the time states began to elaborate the ATT in 2010, the proposal for a multilateral instrument designed to regulate the trade in conventional arms had already been on the international agenda for a number of years (see Box 2.1).

The UN General Assembly had set the ball in motion in 2006, by recognizing in Resolution 61/89 that ‘the absence of common international standards on the import, export and transfer of conventional arms is a contributory factor to conflict, the displacement of people, crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable development’ (UNGA, 2006a, preambular para. 9).

Through General Assembly Resolution 61/89, UN member states called on the UN Secretary-General to establish a group of governmental experts (GGE) to examine, commencing in 2008, ‘the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms’ (UNGA, 2006a, para. 2). The GGE met for three sessions in 2008 and observed that ‘further consideration of efforts within the United Nations to address the international trade in conventional arms is required on a step-by-step basis in an open and transparent manner’ (UNGA, 2008a, para. 27).

In response to this recommendation, the UN General Assembly established an open-ended working group, which met twice in 2009 (UNGA, 2008b, para. 3). On 2 December 2009, the General Assembly adopted Resolution 64/48, calling for ‘a United Nations Conference on the Arms Trade Treaty to meet for four consecutive weeks in 2012 to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms’ (UNGA, 2009b, para. 4). The resolution was adopted by 151 votes to 1, with 20 abstentions.

Pursuant to Resolution 64/48, four preparatory committee meetings were held between July 2010 and February 2012 (12–23 July 2010; 28 February–4 March 2011; 11–15 July 2011; and, for procedural matters, 13–17 February 2012) to prepare for the Conference on the Arms Trade Treaty. The resolution also specified that the conference would be ‘undertaken in an open and transparent manner, on the basis of consensus, to achieve a strong and robust treaty’ (UNGA, 2009b, para. 5).

The four-week diplomatic conference to negotiate an ATT was held at the UN Headquarters in New York from 2 to 27 July 2012 under the presidency of

Box 2.1 The ATT timeline

May 1997

Nobel Peace Prize Laureates, led by Oscar Arias and supported by non-governmental organizations, write the International Code of Conduct on Arms Transfers, the seed of the ATT movement.

2003

Control Arms joins the cause for a global, legally binding agreement.

6 December 2006

In its first ATT resolution (61/89), entitled 'Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms', the UN General Assembly calls for states' views on the feasibility, scope, and draft parameters for a legally binding instrument and establishes a group of governmental experts (GGE) to examine the same for a treaty (UNGA, 2006a).

17 August 2007

The UN Secretary-General issues *Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms* (UNGA, 2007a), a compilation of the views of 94¹ states in response to Resolution 61/89.

11–15 February, 12–16 May, 28 July–8 August 2008

The GGE convenes over three sessions to examine the feasibility, scope, and draft parameters of the treaty.

26 August 2008

The GGE issues its report examining the feasibility, scope, and draft parameters for a treaty (UNGA, 2008a).

24 December 2008

In its second ATT resolution (63/240), the UN General Assembly establishes an open-ended working group (OEWG) to further consider the recommendations of the Secretary-General's report (UNGA, 2008b).

2–6 March 2009

The OEWG convenes its first substantive session.

July 2009

The OEWG convenes its second substantive session on 13–17 July and submits its report on the 20th (UNGA, 2009a).

2 December 2009

In its third ATT resolution (64/48), the UN General Assembly endorses the OEWG report and decides to convene a UN Conference on the ATT for four weeks in 2012 (UNGA, 2009b). The remaining scheduled OEWG sessions are changed to preparatory committee (PrepCom) meetings.

12–23 July 2010

The first ATT PrepCom begins discussions on the possible structure, contents, principles, parameters, implementation, application, and scope of an arms trade treaty.

28 February–3 March 2011

The second ATT PrepCom meets.

11–15 July 2011

The third ATT PrepCom meets.

13–17 February 2012

The fourth ATT PrepCom meets.

2–27 July 2012

The UN Conference on the ATT convenes in New York but fails to reach consensus on the draft treaty.

24 December 2012

In its fourth ATT resolution (67/234), the UN General Assembly agrees to convene the Final United Nations Conference on the ATT using the draft text A/CONF.271/CRP.1 as a basis for future negotiations (UNGA, 2012).

18–28 March 2013

The Final United Nations Conference on the ATT convenes in New York but fails to reach consensus on the draft text A/CONF.271/2013/L.3; the text is presented to the General Assembly.

2 April 2013

The General Assembly adopts the ATT with 154 votes in favour, 3 votes against, and 23 abstentions (UNGA, 2013c).

3 June 2013

The ATT opens for signature.

24 December 2014

The ATT enters into force.

Source: Parker (2016, pp. 66–67)

Ambassador Roberto García Moritán of Argentina. On 26 July 2012, the president submitted a draft treaty text to conference participants for adoption. The text was not acceptable to all, however; as differences among negotiating states proved difficult to bridge in the time available, the conference ended without adoption of a treaty (Casey-Maslen, Giacca, and Vestner, 2013, p. 5).

The UN General Assembly decided to convene another diplomatic conference through Resolution 67/234, adopted by 133 votes to 0, with 17 abstentions, ‘in order to finalize the elaboration of the Arms Trade Treaty’ (UNGA, 2012, para. 2). This final session of the diplomatic conference was governed by the same rules of procedure as the first session, such that agreement by consensus was again required.

The Final United Nations Conference on the Arms Trade Treaty was convened at UN Headquarters in New York from 18 to 28 March 2013 under the presidency of Ambassador Peter Woolcott of Australia. Daniël Prins of the UN Office for Disarmament Affairs (UNODA) was appointed secretary-general of the conference,

as he had been for the 2012 diplomatic conference. President Woolcott appointed the following facilitators to conduct informal meetings on different aspects of the treaty:

- Ambassador Mari Amano (Japan): brokering;
- Ambassador Paul Beijer (Sweden): scope;
- Roberto Dondisch (Mexico): diversion;
- Bouchaib Eloumni (Morocco): preamble; principles; object and purpose;
- Ambassador Dell Higgie (New Zealand): general implementation; relationship with other international agreements;
- Ambassador Paul van den Ijssel (Netherlands): record-keeping; reporting;
- Ambassador Federico Perazza (Uruguay): final provisions;
- Zahid Rastam (Malaysia): transit and trans-shipment;
- Ambassador Riitta Resch (Finland): other considerations;
- Shorna Kay Richards (Jamaica) and Michelle Walker (Jamaica): prohibitions; and
- Rob Wensley (South Africa): international cooperation; international assistance (Casey-Maslen, Giacca, and Vestner, 2013, p. 6).

During the conference, the president prepared three draft treaty texts, the last of which he circulated on 27 March 2013. On the final day of the conference—28 March 2013—it became clear that three states were planning to block consensus. When the president put his final draft text of the Arms Trade Treaty to the conference for adoption, he made it clear that any state wishing to oppose adoption of the draft text would need to do so unambiguously. In the end, three states formally opposed adoption: the Democratic People’s Republic of Korea, Iran, and Syria (Casey-Maslen, Giacca, and Vestner, 2013, p. 6). Despite this setback, on 2 April 2013, the text of the Arms Trade Treaty was formally adopted by an overwhelming majority of 154 votes to 3, with 23 abstentions,² in UN General Assembly Resolution 67/234B (UNGA, 2013c). The ATT thus became the first global, legally binding treaty governing arms transfers.

In accordance with its Article 21, the ATT was opened for signature at the UN in New York on 3 June 2013. During the formal signing ceremony held that day, a total of 67 states signed the ATT.³

Article 22(1) stipulates that the ATT is to enter into force 90 days after the day on which the 50th state deposits its instrument of ratification, acceptance, or approval with the UN Secretary-General. Following the 50th ratification by a state,

on 25 September 2014, the ATT entered into force on 24 December 2014. In response, UN Secretary-General Ban Ki-moon said in a statement: 'From now on, the States Parties to this important Treaty will have a legal obligation to apply the highest common standards to their international transfers of weapons and ammunition' (UN, 2014). He also called on all states that had not yet done so to accede to the ATT 'without delay'.

2.2 What are the core provisions of the Treaty?

2.2.1 Aim of the Treaty

As defined in Article 1, the object of the ATT is to '[e]stablish the highest possible common international standards for regulating [. . .] the international trade in conventional arms; [p]revent and eradicate the illicit trade in conventional arms and prevent their diversion'. The article goes on to describe the purpose of these goals as '[c]ontributing to international and regional peace, security and stability; [r]educing human suffering; [p]romoting cooperation, transparency and responsible action by States Parties'.

2.2.2 Scope

The ATT regulates the transfer of most conventional arms, the ammunition/munitions they fire, and their parts and components. The arms covered by the Treaty, as listed in Article 2(1), are: battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, and small arms and light weapons. Article 5(3) encourages states parties to apply the Treaty to a broader range of conventional arms. According to Article 2(2), the terms 'trade' and 'international transfer' are synonyms for the purposes of the ATT. Both terms explicitly include export, import, transit, trans-shipment, and brokering under the ATT (Casey-Maslen, Giacca, and Vestner, 2013, p. 20).

2.2.3 Implementation

The implementation of the ATT takes place largely at the national level. A central obligation, set out in Article 5, is for each state party to establish and maintain a national control system to regulate the export, import, transit, and trans-shipment of conventional arms, ammunition/munitions, and parts and components, as well

as related brokering activities. Each state party is required to create and update a national control list of the arms and items that are covered by its control system. This list must be made available to other states parties through the ATT Secretariat — see Section 2.2.9. Under Article 5, each state party also has to designate a national point of contact to exchange information on matters related to its implementation of the Treaty. National implementation of the ATT must be performed in a ‘consistent, objective, and non-discriminatory manner’ (UNGA, 2013a, art. 5(1)).

2.2.4 Regulation of transfer

The term ‘transfer’ is defined under Article 2(2) of the Treaty to include export, import, transit, trans-shipment, and brokering. The core obligations of the Treaty that regulate transfers of arms and related items are found in Articles 6 (on prohibitions), 7 (on export and export assessment), 8 (on import), 9 (on transit and trans-shipment), and 10 (on brokering). Article 6 prohibits a state party from authorizing any transfer of arms, related ammunition/munitions, or parts and components if:

- the proposed transfer would violate UN Security Council arms embargoes adopted under Chapter VII of the Charter;
- the proposed transfer would violate relevant international obligations under treaties to which a state is a party; or
- the state party ‘has knowledge at the time of authorization’ that the arms or items would be used to commit genocide, crimes against humanity, or certain war crimes.

If a transfer is not prohibited under Article 6, each state party must ensure the transfer is regulated in accordance with the other provisions of the Treaty. For example, if the transfer involves an export, the exporting state is required to conduct an export assessment in accordance with Article 7 before it can authorize the export — see Section 5.5.

2.2.5 Diversion

Under Article 11, an exporting state party must seek to prevent diversion of the conventional arms it is transferring. Diversion refers to the process by which arms are delivered to an unauthorized end user or put to an unauthorized end use. States involved in the import, export, transit, or trans-shipment of arms covered

by the ATT must cooperate and exchange information with a view to mitigating the risk of diversion. If diversion is detected, concerned states parties must take appropriate measures to address it; they are encouraged to share information on any effective measures they have taken—► see Section 9.

2.2.6 Record-keeping

As stipulated in Article 12, every state party is obligated to keep national records of export authorizations or of actual exports of conventional arms for at least ten years—but not of ammunition/munitions, or parts and components. The ATT urges states to include specific types of information in their records; states are also encouraged to keep records of arms that are imported or whose authorized transit or trans-shipment route runs through territory under their jurisdiction—► see Section 10.

2.2.7 Reporting

Under Article 13, every state party must report each year on the exports and imports of conventional arms it has authorized or actually made. This obligation does not cover ammunition/munitions, or parts and components. Within one year of becoming a party to the ATT, each state must also submit an initial report on implementation measures, citing measures undertaken. Subsequently, states parties must report on additional implementation measures ‘when appropriate’. All reports are shared with other states parties and each state party has the option to have its reports made publicly available—► see Section 11.

2.2.8 International cooperation and assistance

Under Article 15, states parties are encouraged to facilitate international cooperation. This includes, by mutual agreement, a duty to assist one another in investigations, prosecutions, and judicial proceedings in relation to violations of the ATT. By virtue of Article 16, each state party may seek assistance for its efforts to implement the Treaty.

2.2.9 ATT Secretariat

Article 18 establishes the ATT Secretariat to assist states parties in the effective implementation of the Treaty. The Secretariat’s responsibilities include collating

reports submitted by states parties; maintaining a list of states parties' national points of contact; facilitating the matching of offers of and requests for assistance under the Treaty; supporting the Conference of States Parties; and performing other duties as decided by the CSP. A provisional secretariat hosted by Mexico was appointed to carry out the functions of the ATT Secretariat prior to the first session of the CSP in August 2015, when the permanent ATT Secretariat was established in Geneva, Switzerland.

2.2.10 Meetings of states parties

In accordance with Article 17, the CSP's first session was to be convened within one year of the ATT's entry into force. The session took place in Mexico on 24–27 August 2015. Future conferences may review the interpretation, operation, and implementation of the Treaty, and consider possible amendments to it.

2.3 How can a state become a party to the ATT?

Article 21 of the ATT stipulates that the Treaty 'is subject to ratification, acceptance or approval by each signatory State' and that, following entry into force, 'this Treaty shall be open for accession by any State that has not signed the Treaty' (UNGA, 2013a, art. 21(2)–(3)). In practice, this provision requires any state that has signed the Treaty to ratify, accept, or approve it before the Treaty is legally binding on that state, as part of a two-step process. However, any state that did not sign the Treaty before it entered into force in December 2014 can only become a party via a one-step process: accession.

NOTE: The two-step process of signing a treaty and then ratifying it 'grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty' (UNTC, n.d.b).

The UN has published a guide on how to sign and ratify the ATT (UNODA, n.d.c). The guide contains model instruments that states may deposit with the UN Secretary-General. The terms (and consequences of) 'signature', 'ratification', 'acceptance', 'approval', and 'accession' are explained in more detail below.

Signature of a treaty. If a treaty—such as the ATT—is ‘subject to ratification, acceptance or approval’ by each signatory state (UNGA, 2013a, art. 21(2)), signature by a state does not make the state a party to the treaty. Rather, it shows the willingness of the state to continue the treaty-making process and signals its intention to become a party sometime in the future. The signature is a prerequisite to ratification, acceptance, and approval; it creates an obligation on the part of the signatory state ‘to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty’ (UNTC, n.d.b). However, a state that has only signed a treaty is not legally bound by it and is not required to implement its provisions. Only once the signatory state has deposited its instrument of ratification, acceptance, or approval does it become legally bound by a multilateral treaty (UNODA, n.d.c, pp. 1–2).

Ratification of a treaty. For a state to become a party to a treaty, it must ‘demonstrate, through a concrete act, its willingness to undertake the legal rights and obligations contained in the treaty. In other words, it must express its consent to be bound by the treaty’ (UNOLA, 2012, p. 8). Ratification is one means by which a state can indicate its consent to be bound to a treaty. It is undertaken by depositing (or submitting) an instrument of ratification with the body or agency designated as the ‘depository’ under the relevant treaty. In the context of the ATT, the Depository is the Secretary-General of the United Nations (UNGA, 2013a, art. 27).

Acceptance and approval of a treaty. Acceptance and approval are other ways a state can express its consent to be bound by a treaty and have the same legal effect as ratification. In practice, a state might choose to ‘accept’ or ‘approve’ a treaty—rather than ratify it—if, ‘at a national level, constitutional law does not require the treaty to be ratified by the head of state’ (UNTC, n.d.b).

Accession to a treaty. Accession has the same legal effect as ratification, acceptance, or approval. However, ‘unlike ratification, acceptance or approval, which are preceded by signature to create binding legal obligations under international law, accession requires only one step, namely, the deposit of an instrument of accession’ (UNOLA, 2012, p. 10). The ATT stipulates that, once it enters into force, states may only become parties through accession. What happens if a state that has not signed the ATT deposits an instrument of ratification rather than an instrument of accession? In practice, ‘the Secretary-General, as depositary, treats instruments of ratification that have not been preceded by signature as instruments of accession, and the States concerned are advised accordingly’ (UNOLA, 2012, p. 10).

Further resources

UN Treaty Collection website, featuring an up-to-date list of signatures and ratifications of the ATT
UN guide on how to sign and ratify the ATT

Acknowledgements

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SECTION 3

National control systems



3.1 What is a national control system?

A national control system in the context of the ATT is a regime established at the national level to control the transfer of conventional arms, related ammunition/munitions, and parts and components. It comprises the national legislation, regulations, and administrative procedures established by a government both to administer the import, export, transit, trans-shipment, and brokering of arms and other items and to process applications for licences and authorizations to conduct these activities and monitor their trade. The national control list identifies the arms and items that a national control system seeks to control —► see Section 4 for details on national control lists.

3.2 Why is a national control system necessary?

Each state party is required to implement the ATT at the national level by establishing and maintaining a national control system for the transfer of conventional arms, related ammunition/munitions, and parts and components. This obligation is set out in Article 5 of the Treaty.

A national control system is essential if a state party is to assess effectively each request for authorization to transfer or export conventional arms, related ammunition/munitions, and parts and components, as stipulated in Articles 6 and 7 of the Treaty. This is primarily a matter of national implementation.¹

3.3 How is a national control system constructed?

The ATT does not instruct states parties on how to construct a national control regime; instead, it directs them to establish one and to ensure that (1) it contains a national control list that specifies which conventional arms, related ammunition/munitions, and parts and components are to be regulated by the control regime, and that (2) it covers the minimum scope detailed in the ATT. Moreover, the system must address all the activities that fall under its definition of transfer: export, import, transit, trans-shipment, and brokering. The Treaty also stipulates that states parties must designate competent national authorities² as part of the control system, as well as one or more national points of contact to exchange information on matters related to the implementation of the Treaty.

3.3.1 The authorization process

The national control system must be constructed in a way that requires any individual or entity, whether private or public, to seek authorization through the system prior to exporting any arms, related ammunition/munitions, or parts and components that are contained in the national control list. The system must enable a state to be in a position to assess objectively each request and to make principled and consistent decisions based on the evidence.

Some of the general principles that apply to authorizations are:

- **timing and sequencing:** authorizations should be issued prior to a transfer of conventional arms or other items; they should not be issued retroactively;
- **validity:** transfer authorizations should be limited in time, and the expiry date should be clearly indicated;
- **revocation:** states parties should reassess a transfer authorization that has been granted in certain circumstances, for example if the authorization was obtained on the basis of inaccurate information, if there is a change in the situation in the importing state, or if new relevant information comes to light, as encouraged under Article 7(7) of the Treaty; and
- **reporting:** entities that are granted a transfer authorization should be required to report to or notify the competent national authorities on the use of the authorization, such as by reporting that authorized activities have taken place (UNCASA, 2014a, p. 5).

NOTE: A reporting process that requires entities that are granted a transfer authorization to report to or notify the competent national authorities when the authorized activities have taken place (such as when the arms authorized for export have been delivered to the end user) will assist the authorities in collecting the data required to fulfil the reporting obligation under Article 13(3) of the Treaty — ► see Section 10 for details on record-keeping.

3.3.1.1 Is authorization always required before a transfer can take place?

Under Article 2(3) of the Treaty, international movement of conventional arms by, or on behalf of, a state party are exempt from the application of the Treaty, provided that the conventional arms are being moved for the state's use and that they remain under its ownership. Accordingly, such transfers need not be subjected

to the same authorization process as transfers of conventional arms destined for end users other than the state.

3.3.1.2 What information and documentation should be included in an application for a transfer authorization?

► Based on the International Small Arms Control Standards (ISACS), Box 3.1 suggests some of the key information and documentation that should be included, if it is available, in any application for authorization to transfer conventional arms and other items.


Box 3.1 Applications for transfer authorizations

Information and documentation that should be provided, if available and relevant, in applications for authorization to transfer conventional arms and other items include:

- a) the name and contact details of the applicant for authorization;
- b) the applicant's operating licence or brokering registration;
- c) the import authorization;
- d) the export authorization;
- e) the transit and trans-shipment notifications;
- f) end-user documentation, such as an end-user certificate (EUC) or end-user statement;
- g) the intended end use of the item(s);
- h) the names, contact details, and roles of all parties involved in the transfer, including:
 - 1) brokers;
 - 2) freight-forwarding agents;
 - 3) transport/shipping carriers; and
 - 4) intermediate consignees;
- i) details of the transport route, including the means of transport to be used for each segment; and
- j) a description of the item(s), including:
 - 1) quantity;
 - 2) value;
 - 3) model/type;
 - 4) country of manufacture or most recent import; and
 - 5) if the transfer involves small arms and light weapons:
 - a) calibres;
 - b) serial numbers;
 - c) markings;
 - d) types (such as revolver, pistol, rifle, sub-machine gun, light machine gun, heavy machine gun, grenade launcher, mortar, recoilless rifle, anti-aircraft gun, anti-tank gun, anti-tank rocket system, anti-tank missile system, anti-aircraft missile system, including man-portable air defence systems, or MANPADS); and
 - e) actions (such as manual, semi-automatic, or automatic).

Source: UNCASA (2014a, s. 5.3)

3.3.1.3 What form should a transfer authorization take?

When the competent national authorities decide to grant authorization to transfer conventional arms or other items, they should produce a formal document evidencing the authorization. The authorities should ensure that the document cannot be easily forged or falsified.  Box 3.2 suggests what each transfer authorization should contain.

Box 3.2 Contents of transfer authorizations

Authorizations and notifications of transfers of conventional arms and other items should include the following elements, if relevant and available:

- a) a unique transfer authorization number;
- b) the identities of the competent national authorities issuing the authorization, which can include an official stamp;
- c) the signature, printed name, and position of the designated officials of the competent national authorities that are issuing the authorization;
- d) the name and contact details of the recipient of the authorization;
- e) the date of issuance;
- f) the date of expiration;
- g) the country of export;
- h) the name and contact details of the exporter;
- i) the countries of transit and/or trans-shipment (if known);
- j) the country of import;
- k) the name and contact details of the authorized end user;
- l) the authorized end use of the item(s);
- m) the names and contact details of all parties involved in the transfer, including:
 - 1) brokers;
 - 2) freight forwarding agents;
 - 3) transport/shipping carriers; and
 - 4) intermediate consignees;
- n) details of the transport route, including the means of transport to be used for each segment; and
- o) a description of the consignment, including:
 - 1) quantity;
 - 2) value;
 - 3) model/type;
 - 4) country of manufacture or most recent import (if the item is being re-exported); and
 - 5) if the transfer involves small arms and light weapons:
 - a) calibres;
 - b) serial numbers;
 - c) markings;
 - d) types (such as revolver, pistol, rifle, sub-machine gun, light machine gun, heavy machine gun, grenade launcher, mortar, recoilless rifle, anti-aircraft gun, anti-tank gun, anti-tank rocket system, anti-tank missile system, anti-aircraft missile system, including MANPADS); and
 - e) actions (such as manual, semi-automatic, or automatic).

Source: UNCASA (2014a, s. 5.5)

3.3.2 Competent national authorities

Each state party is required to designate competent national authorities as part of its efforts to establish an effective and transparent national control system to regulate transfers, as specified in Article 5(5) of the Treaty. The authorities must thus have the capacity as well as the necessary mandate to carry out control functions. Each state party has considerable discretion regarding the competent authorities' form, structure, and legislative basis.

The Treaty stipulates that each state party must designate competent national *authorities* (plural), but does not specify how many authorities should be established. A state party may decide to establish a single competent national authority and entrust it with the responsibility of regulating and authorizing the import, export, and brokering of arms and other items, or it may divest responsibility across several competent national authorities. ► If this responsibility is not invested in a single central agency, the principles laid out in Box 3.3 apply.

There is no specific obligation to make the competent national authorities inter-ministerial bodies, although arms transfers are likely to be of relevance to numerous government ministries and agencies, such as border control and customs, defence, finance, foreign affairs, interior, justice, trade, and transportation—► see Table 4.2 for relevant ministries and agencies. Police forces and judicial bodies should play a critical role in enforcing national legislation and regulating or enforcing the actions of state agencies (Casey-Maslen, Giacca, and Vestner, 2013, p. 23).

Competent national authorities typically comprise a political authority and a national authority, both of which should be established in arms control legislation and policy. The competent national authorities should ensure that arms transfer decision-making is both transparent and predictable. In addition, the authorities

Box 3.3 Principles governing decentralized authorities

- The number of state agencies mandated to issue authorizations should be kept to a minimum, in line with the efficient, effective, and timely administration of the authorization system.
- There should be clear and direct lines of communication between the agencies concerned.
- Information should be shared among these agencies on a regular basis regarding the import, export, and brokering of any conventional arms.
- Within each agency, the number of officials mandated to sign transfer authorizations should be kept to a minimum.

Source: UNCASA (2014a, s. 5.2.3)

should seek to ensure adequate coordination among government bodies that are involved in the regulation of arms transfers (Lamb, 2012, p. 66).

The central role of the **political authority** is to authorize or deny applications for arms transfers, and to establish measures to prevent corruption and bribery in connection with the arms trade. Political authority and oversight of arms transfers is typically vested in the executive arm of the state. The political authority is also responsible for ensuring adequate coordination between the relevant government bodies. Hence, in many states that frequently trade arms, the political authority is generally a body composed of representatives from government departments, ministries, and agencies that deal with issues relevant to the arms trade (Lamb, 2012, p. 66).

The **national authority** typically fulfils the arms transfer control implementation function; it is usually located within an appropriate government ministry, such as defence or foreign affairs, or it is a separate government body. The national authority should be staffed with personnel with the necessary arms transfer expertise. More specifically, a national authority should be able to:

- establish and maintain a system to administer arms transfer controls, such as authorization requests (mainly through registration and the issuing of licences) and the processing of EUCs;
- attend to the administrative requirements and instructions of the political authority;
- maintain accurate records in relation to arms transfers;
- compile relevant reports when required;
- facilitate regular inspection and compliance visits to verify that companies and individuals with export, import, and brokering licences are acting in compliance with national laws and regulations; and
- conduct outreach activities to inform brokers and transport businesses of national arms transfer control obligations (Lamb, 2012, p. 67).

A dedicated national body is in a position to verify the authenticity of arms import requests and arms transfer documentation (such as EUCs) and produce its own documentation. In this way, such an entity may be able to uncover any fraudulent arms transfer documentation and thereby prevent the diversion of arms to illegal markets and problematic destinations.

Each state will need to ensure that its national competent authorities are given the necessary human, technical, and financial resources to enable them to ensure

effective control over international arms transfers, exchange relevant information with partner states, and address measures to prevent diversion.

3.3.3 National points of contact

Each state party must designate a national point of contact to exchange information on Treaty implementation; it must also provide up-to-date details of that point of contact to the ATT Secretariat, in accordance with Article 5(6) of the Treaty. The national point of contact may be part of the national competent authority, but this is not a Treaty requirement.³

3.4 What is the role of national legislation?

While the ATT does not explicitly require legislation to create the control regime, Article 14 contains a provision on enforcement that requires states parties to take ‘appropriate measures’ to enforce national laws and regulations that implement the Treaty. Arms control legislation embeds the ATT’s arms transfer control requirements in the domestic legal frameworks of states parties. Policies help to elaborate the detailed context in which the legislation is framed, guided, and formulated.

The ATT calls on states parties to adopt or have in place measures—such as legislative provisions and administrative guidance—for:

- national control lists (as per Article 5(2));
- the designation of competent national authorities as part of a national control system to regulate imports, among other activities (as per Article 5(5));
- the prohibition of certain transfers (as per Article 6);
- export assessments (as per Article 7);
- arms importation mechanisms (as per Article 8);
- transit and trans-shipment processes (as per Article 9);
- the regulation of brokering (as per Article 10);
- the maintenance of records (as per Article 12); and
- the enforcement of adopted control measures (as per Article 14).

As a rule of thumb, specific legislation is typically needed, in particular to make circumvention (or attempted circumvention) of the national control regime a criminal offence, as well as to set out the sanctions for violation of that legislation. Violations include unauthorized export, import, transit, trans-shipment, and brokering of arms

and related items. Individuals engaged in such activities should be prosecuted under relevant national criminal law. Details of the types of criminal offences that may be established for different types of transfer are provided in the relevant sections of this Guide. ► See Section 5.4 on export controls; Section 6.3.6 on import controls; Section 8.3.3 on controlling brokers and brokering; and Section 10.5.2 on record-keeping.

Ideally, the national control regime itself should have a statutory basis. The criteria that the regime uses to make decisions to grant or deny authorization, on the other hand, should be laid down in administrative regulations or provisions, as these may need to change over time.

In its preamble, the ATT also references the UN Disarmament Commission Guidelines for international arms transfers, which offer further details on possible arms control legislation and policy (UNGA, 1996). These guidelines recommend that legislation and policy include the following measures, among others:

- respect for UN Security Council arms embargoes;
- a system of export and import licences for international arms transfers with requirements for full supporting documentation;
- identification of the types of arms that civilians, the police, the military, and other security forces are permitted to possess;
- measures to prevent corruption and bribery in connection with arms transfers; and
- punitive measures for those found responsible of illicit arms trafficking or related acts (UNGA, 1996).

Further resources

ATT Implementation Toolkit (UNODA)

European Union ATT implementation support programme, adopted under Council Decision 2013/768/CFSP on 16 December 2013

ISACS: National Controls over the International Transfer of Small Arms and Light Weapons

Acknowledgements

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SECTION 4

National control lists



4.1 What is a national control list?

In general terms, a national control list comprises items that are subject to special regulation by a state because of their sensitive or dangerous nature. The establishment of a national control list of conventional arms, related ammunition/munitions, and parts and components is an essential part of ATT implementation. Article 5(2) specifically requires such a list from each state party. The national control list promotes confidence among all states parties and can also ensure broader transparency, in line with Article 5(4), which encourages each state to make its control list publicly available. In turn, industry can benefit from a more open environment.

4.2 What arms and items must be included?

Put simply, a national control list must encompass at least as many conventional arms as are covered in applicable UN agreements as well as treaties and regional instruments to which a state is a party. Sections 4.2.1 and 4.2.2 review the arms and other items that must be included in the national control lists of states parties to the ATT.

4.2.1 Conventional arms

The conventional arms that must be included in a national control list are set out in Articles 2 and 5 of the ATT. Under Article 2(1), these must encompass all conventional arms within the following categories:

- battle tanks;
- armoured combat vehicles;
- large-calibre artillery systems;
- combat aircraft;
- attack helicopters;
- warships;
- missiles and missile launchers; and
- small arms and light weapons.

Article 5(3), which encourages each state party to apply the ATT to the 'broadest range of conventional arms', stipulates that small arms and light weapons must 'not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty'. The other conventional arms must 'not

cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force' of the ATT.

► Table 4.1 presents the definitions of the categories covered by the UN Register of Conventional Arms as of 24 December 2014, the date of the ATT's entry into force.

Table 4.1 Categories of the UN Register of Conventional Arms

Category	Definition
I: Battle tanks	'Tracked or wheeled self-propelled armoured fighting vehicles with high cross-country mobility and a high-level of self-protection, weighing at least 16.5 metric tons unladen weight, with a high muzzle velocity direct fire main gun of at least 75 millimetres calibre' (UNGA, 2003a, annexe IV).
II: Armoured combat vehicles	'Tracked, semi-tracked or wheeled self-propelled vehicles, with armoured protection and cross-country capability, either: (a) designed and equipped to transport a squad of four or more infantrymen, or (b) armed with an integral or organic weapon of at least 12.5 millimetres calibre or a missile launcher' (UNGA, 2003a, annexe IV).
III: Large-calibre artillery systems	'Guns, howitzers, artillery pieces combining the characteristics of a gun or a howitzer, mortars or multiple-launch rocket systems, capable of engaging surface targets by delivering primarily indirect fire, with a calibre of 75 millimetres and above' (UNGA, 2003a, annexe IV).
IV: Combat aircraft	'Fixed-wing or variable-geometry wing aircraft designed, equipped or modified to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons or other weapons of destruction, including versions of these aircraft which perform specialized electronic warfare, suppression of air defence or reconnaissance missions. The term "combat aircraft" does not include primary trainer aircraft, unless designed, equipped or modified as described above' (UNGA, 2003a, annexe IV).
V: Attack helicopters	'Rotary-wing aircraft designed, equipped or modified to engage targets by employing guided or unguided anti-armour, air-to-surface, air-to-subsurface, or air-to-air weapons and equipped with an integrated fire control and aiming system for these weapons, including versions of these aircraft which perform specialized reconnaissance or electronic warfare missions' (UNGA, 2003a, annexe IV).
VI: Warships	'Vessels or submarines armed and equipped for military use with a standard displacement of 500 metric tons or above, and those with a standard displacement of less than 500 metric tons, equipped for launching missiles with a range of at least 25 kilometres or torpedoes with similar range' (UNGA, 2006b, para. 124).
VII: Missiles and missile launchers	'(a) Guided or unguided rockets, ballistic or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometres, and means designed or modified specifically for launching such missiles or rockets, if not covered by categories I through VI. [...] this sub-category includes remotely piloted vehicles with the characteristics for missiles as defined above but does not include ground-to-air missiles. (b) Man-Portable Air-Defence Systems (MANPADS)' (UNGA, 2003a, annexe IV).

Small arms and light weapons, which are not listed among the seven UN Register categories, must also be defined in national control list legislation. As Article 5(3) specifies, such definitions must not cover less than the descriptions used in relevant UN instruments. The minimum requirements are set out in the 2005 International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, known as the International Tracing Instrument (ITI),¹ which states:

For the purpose of this instrument, 'small arms and light weapons' will mean any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas. Antique small arms and light weapons and their replicas will be defined in accordance with domestic law. In no case will antique small arms and light weapons include those manufactured after 1899:

(a) 'Small arms' are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns;

(b) 'Light weapons' are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres (UNGA, 2005a, para. 4).

Other definitions of small arms and light weapons may be broader, and states parties may avail themselves of such language as long as the definitions encompass at least the above-cited ITI categories. It is important to note that the definition in the introductory text (or *chapeau*) in Paragraph 4 of the ITI is much broader than the two separate ones listed for 'small arms' and 'light weapons' under Paragraphs 4(a) and 4(b); indeed, the latter two are not exhaustive, since they specify that the listed materiel is cited 'inter alia'. Thus, while shotguns, for example, do not fall within the small arms categories listed, they are covered by the phrase 'any man-portable lethal weapon' in the introductory definition of Paragraph 4. The Small

Arms Survey has proposed additions to the ITI definitions, notably regarding single-rail-launched rockets and 120 mm mortars that can be transported and operated as intended by a light vehicle (Small Arms Survey, n.d.).

4.2.2 Ammunition/munitions and parts and components

In addition to the definitions for the eight categories of arms given in its Article 2(1), the ATT specifies in Article 3 that the export of all ammunition/munitions fired, launched, or delivered by any of the arms covered by the Treaty must also be regulated through the national control system—and therefore be included in the national control list. Further, Article 4 of the Treaty requires regulation of the export of parts and components of the arms listed in Article 2(1) ‘where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2(1)’.²

States parties that lack expertise in ammunition and parts and components will find that a great deal of competence in this area is publicly available. For one, the Wassenaar Arrangement³ website provides access to its Munitions List (ML), which is updated annually (WA, n.d.a). The ML3 includes language on the kinds of ammunition that Wassenaar Arrangement participating states attempt to control:

ML3. Ammunition and fuze setting devices, as follows, and specially designed components therefor:

- a. Ammunition for weapons specified by ML1., ML2. or ML12.;*
- b. Fuze setting devices specially designed for ammunition specified by ML3.a.*

Note 1 Specially designed components specified by ML3. include:

- a. Metal or plastic fabrications such as primer anvils, bullet cups, cartridge links, rotating bands and munitions metal parts;*
- b. Safing and arming devices, fuzes, sensors and initiation devices;*
- c. Power supplies with high one-time operational output;*
- d. Combustible cases for charges;*
- e. Submunitions including bomblets, minelets and terminally guided projectiles.*

Note 2 ML3.a. does not apply to any of the following:

- a. Ammunition crimped without a projectile (blank star);*
- b. Dummy ammunition with a pierced powder chamber;*

- c. Other blank and dummy ammunition, not incorporating components designed for live ammunition; or*
- d. Components specially designed for blank or dummy ammunition, specified in this Note 2.a., b. or c.*

Note 3 ML3.a. does not apply to cartridges specially designed for any of the following purposes:

- a. Signalling;*
- b. Bird scaring; or*
- c. Lighting of gas flares at oil wells (WA, n.d.a).*

Two points need to be made here. First, examination of the other categories under the Munitions List (ML1, ML2, and so on) demonstrates that great care has gone into defining the weapons categories agreed upon by the Wassenaar Arrangement's participating states, and precision is vital if ML3 and its language on ammunition are to be of value. Second, ML3's Note 1 contains precise language on parts and components, and it offers an example (among many in the Munitions List) of how states that seek to create their own ATT national control lists can usefully draw on this information.

In addition to the required categories of arms, ammunition/munitions, and parts and components, states parties may wish to consider integrating other classes of items into their national control lists. For example, they might choose to include less-lethal weapons that are not covered by the ATT, such as electric-shock weapons.

4.3 How detailed does a national control list need to be?

Government authorities can use a national control list to limit specific sensitive items by law, control their export or import, or perhaps prohibit their export altogether.

NOTE: The greater the precision applied to the definitions in the national control list, the greater the chance that the implementation of the relevant law will be straightforward.

Government officials who are responsible for arms control under the ATT can benefit from precise definitions of weapons categories, as these can facilitate the

process of identifying weapons. Sub-categories such as ammunition/munitions and parts and components should also be clearly defined. Such clarity and precision will permit government officials to understand sections of a national control list more readily and to place fewer strains on national resources as a result.

4.4 Who is responsible for a national control list?

A national control list is generally included in national legislation or official policy documents that govern the export and import of controlled items. Various government agencies involved in the regulation and processing of arms transfers should play a role in the administration and implementation of a national control list, and the competent national authorities should provide the requisite administrative support— see Section 3.3.2.

The creation of the national control list is an important legal responsibility and should be undertaken with the informed consent of the highest national authorities. At a minimum, states parties should involve the agencies and ministries listed in Table 4.2 in the creation of a national control list. The ministry of foreign affairs may be the body best placed to interact with the ATT Secretariat on the national control list, as required by Article 5(6) of the Treaty, as well as with the governments of other states parties.

Effective coordination among national authorities that represent different issues is essential to the successful creation of the national control list, and to the ongoing productivity and ease of operation of the ATT process within a national

Table 4.2 Key agencies and personnel to be involved in creating a national control list

Ministry or authority	Key sector or personnel
Customs and border control	Customs enforcement officials
Defence	Armed forces and police
Finance	Customs enforcement officials
Foreign affairs	Experts engaged in Treaty reporting
Interior	Intelligence-gathering and border security organizations
Justice	Prosecutorial authorities
Trade	Local businesses, such as arms and ammunition manufacturers, distributors, and exporters

government. Interaction among the ministries listed in Table 4.2, as well as others involved in national legislation and practice, may be coordinated by the nation's executive authority—either the office of the prime minister or that of the president, whichever wields executive authority in government—in the generation of a national control list. The stakeholders may be assisted in these tasks by the competent national authorities whose establishment the Treaty requires.

The national control list should not be included in national ATT implementing legislation, as it may require rapid amendment at a future date. Although the ATT does not require such updates, changes to technology will almost certainly be reflected in future work of Groups of Governmental Experts to amend the UN Register category definitions—▶ see Box 11.2; states that do not attempt, from time to time, to keep up with these amendments may eventually find themselves out of step with international practice.

Resources available to states parties that seek to update their national control lists include the Wassenaar Arrangement Munitions List and the Common Military List of the European Union (EU), both of which are updated annually. They represent the consensus work of specialists from many of the world's largest and most sophisticated producers and exporters of arms, ammunition, and parts and components. Although neither the Wassenaar Arrangement nor the EU is a globally representative body, states can take advantage of the expertise these lists represent, as well as their regular updating, to avoid having to use scarce national resources to, in effect, 'reinvent the wheel' in national control list definitions. As the Wassenaar Arrangement points out:

Although the Arrangement does not have an observer category, a diverse outreach policy is envisaged in order to inform non-member countries about the [Wassenaar Arrangement] objectives and activities and to encourage non-members to adopt national policies consistent with the objectives of greater transparency and responsibility in transfers of conventional arms and dual-use goods and technologies, maintain fully effective export controls and adhere to relevant non-proliferation treaties and regimes (WA, n.d.b).

Wassenaar Arrangement outreach activities have led states as disparate as China, Israel, and Singapore to adopt aspects of its Munitions List in their national arms transfer legislation.⁴

While customs officials may be partially responsible for implementing and interpreting the national control list on a day-to-day basis, several other groups need to be made aware of ATT-linked export and import issues. In particular, as UNODA points out, there is a need to involve national authorities with responsibilities in the control of imports and exports of conventional arms, including:

- officials in charge of export, import, transit, and trans-shipment licences;
- procurement officials (from the ministries of commerce, defence, and interior);
- officials from the ministry of foreign affairs;
- law enforcement officials (such as the police, customs agents, and intelligence officials);
- ombudsmen offices; and
- monitoring entities of civil society (UNLIREC, n.d.).

Further resources

Multinational control lists

European Union Common Military List

Wassenaar Arrangement Control Lists

Selected national control lists

Australian Defence and Strategic Goods List

Canada Export Control List

Singapore Strategic Goods Control List

UK Strategic Export Control Lists

US Registration and Licensing of Brokers

Guides on how to prepare national control lists

Arms Trade Treaty Handbook (Institute for Security Studies) (focusing on African states)

ATT Implementation Toolkit (UNODA)

United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR)

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Acknowledgements

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SECTION 5

Export controls



5.1 Introduction

In Article 5, the ATT tasks states parties with establishing and maintaining a national control system for all transfers—including exports—of conventional weapons falling within the scope of the ATT. Similarly, Articles 3 and 4 require states to establish and maintain such a system to control the export of ammunition/munitions as well as parts and components, respectively.

5.2 What is an export?

An export is a transfer of conventional arms, related ammunition/munitions, or parts and components from the jurisdiction of one state to that of another. While the term ‘export’ is not defined in the ATT, its use is well established in international law. Exports typically cover both sales and gifts of goods and potentially also loans and leases. They may be conducted between states, between a state and a private company in another state, between a private company and a foreign state, and even between individuals in separate states. The term ‘export’ also covers ‘re-exports’ and ‘re-transfers’ —▶ see Box 5.1.

An export normally involves either the international physical movement of arms or a transfer of control or ownership—or both the movement and the transfer. If a state party moves conventional arms—without related ammunition/munitions or parts and components—across an international border for its own use, however, the ATT ‘shall not apply’ as long as those conventional arms remain under that state’s ownership, as stipulated in Article 2(3).

Box 5.1 What are ‘re-exports’ and ‘re-transfers’? Are they covered by the Treaty?

Re-export involves the export of goods that have been imported from another country (the country of origin or original exporting state). In some jurisdictions, goods in transit are considered re-exports (or exports) when they leave the territory of the transit state. The original exporting state may opt to place restrictions on the importing state’s ability to re-export the weapons, such as by requiring the importing state to notify the original exporting state that it is re-exporting the weapons or to obtain permission to re-export (Parker, 2016, p. 94).

Re-transfer involves the sale or transfer of weapons that were originally imported from another state to a different end user within or outside the importing state; the latter case is also known as re-export (Parker, 2016, p. 94).

Since re-exports are covered by the term ‘export’, the Treaty applies to these transactions. If a re-transfer involves the international movement of arms or items, it will also be considered an ‘export’ for the purposes of the Treaty.


5.3 What are the options for regulating exports?


The ATT makes it clear that exports of conventional arms, related ammunition, and parts and components out of the jurisdiction of a state party require an authorization granted by the competent national authorities of the exporting state party. This regulation applies irrespective of whether the transfer is being made by the state itself, a private company, or an individual. As part of the authorization application process, every proposed export must undergo an assessment by the relevant authority to determine whether it is prohibited under the terms of the ATT or whether there are associated risks that warrant denial of an authorization to export.

In establishing an export control regime, states must ensure that key legislation and policy are in place regarding:

- which arms or items may never be exported and which are subject to the control system's regulation;
- which states may not be sent exports and which states require special attention;
- who may apply for authorization;
- how authorization may be sought;
- how long an authorization may last; and
- under which circumstances an authorization may be revoked.

5.3.1 Licensing and authorization

The national control system established in accordance with Article 5(5) of the Treaty must include an export control regime that ensures that any proposed export of arms, ammunition/munitions, or parts and components out of the jurisdiction of a state is authorized under the national control system— see Section 3.

An export control regime must allow the officials who are responsible for granting or denying authorizations to make their decisions in an objective manner and on the basis of all available evidence. For these conditions to be met, the competent national authorities established under Article 5(5) should ideally involve representatives from relevant ministries and agencies (such as border control and customs, defence, finance, foreign affairs, interior, justice, trade, and transportation— see Table 4.2), although the ATT does not explicitly require such interaction. Representatives of civil society could also usefully be represented in the national control system.

In the United Kingdom and other jurisdictions, the authorization to export any given items is sometimes referred to as a *licence*. Licences, which tend to authorize the export of certain items to specific destinations, typically identify the end user. A licence may allow the export of:

- specific items as listed on the licence;
- specific quantities and values of each item; or
- specific consignees and end users for the exports.

In addition to issuing export licences or authorizations, a national control regime may register companies to qualify them to seek authorization for exports of conventional arms or related items. While not all states require registration as a prerequisite for the submission of export applications, the United States, for instance, generally considers applications from exporters only if they are registered with the US Department of State's Directorate of Defense Trade Controls.

5.3.1.1 Applications for a licence or authorization to export

Applications for a licence or authorization to export arms or ammunition should contain as much of the information and documentation listed in Box 3.1 as is available at the time of application—▶ see Section 3. At a minimum, however, applications should contain:

- the name and contact details of the applicant (the exporter);
- the applicant's operating licence, if applicable;
- the import authorization (issued by the importing state);
- end-user documentation (such as an end-user certificate or certified end-user statement);
- the intended end use of the item(s);
- the names, contact details, and roles of all parties involved in the transfer, including:
 - brokers;
 - freight-forwarding agents;
 - transport or shipping carriers; and
 - intermediate consignees;
- details of the transport route, including the means of transport to be used for each segment; and

- a description of the item(s), including:
 - quantity;
 - value;
 - model or type;
 - country of manufacture; and
 - if the transfer involves small arms and light weapons: calibres; serial numbers; markings; types; and actions (UNCASA, 2014a, s. 8.4.1).

The state should check whether the requisite documents are provided in the application.

5.3.1.2 Assessment of applications to export

The following steps summarize the process of assessing an application for an export authorization.


Step 1: Does the application for export authorization comply with the national legislation and policy of the exporting state? The competent national authorities must determine whether the intended export items, destination, or end user violate national legislation or a national arms embargo. If so, the request for authorization must be denied.

Step 2: Does the application for export authorization violate the ATT prohibitions? If the export does not violate national legislation or a national arms embargo, the competent national authorities must determine whether any of the circumstances described in Article 6 of the Treaty exist—▶ see Section 5.4. If so, the transfer is prohibited under the Treaty and must be denied.

Step 3: If the export is not prohibited under Article 6 of the ATT, what risks are involved? If the export is not prohibited under Article 6 of the Treaty, the competent national authorities reviewing the application must conduct a risk assessment under Article 7 of the Treaty—▶ see Section 5.5. If they determine that there is an overriding risk of any of the negative consequences outlined in Article 7(1), they must deny the export.

5.3.1.3 Form and content of export authorizations

If an application for an export licence or authorization is not denied during the assessment phase, an export authorization may be granted. Such an authorization need not take a printed form; it is assumed that electronic authorizations are acceptable.

An export authorization should contain as much information as is available at the time of its issuance. In addition to the elements set out in Box 3.2— see Section 3—the ISACS guidelines suggest that, at a minimum, it should contain the import authorization number (UNCASA, 2014a, s. 8.6).

The authorization should also contain the official stamp and address of the issuing national control authority.

5.3.2 Which weapons should be controlled?

Article 6 obligates states parties not to authorize exports or other transfers of conventional arms, ammunition/munitions, and parts and components if the circumstances outlined in Article 6 exist—for example, if the importing state or end user is under a Security Council arms embargo. Accordingly, states parties need to ensure that they do not authorize exports of conventional arms, ammunition/munitions or parts and components in these circumstances.

In addition, Article 7 of the ATT expressly requires states parties to conduct an export assessment prior to the authorization of any export of conventional arms covered by Article 2, ammunition/munitions covered by Article 3, and parts and components covered by Article 4.

Note that Article 5(3) encourages states parties to apply the provisions of the Treaty to the broadest range of conventional weapons. Accordingly, states parties need to ensure that they do not authorize exports of conventional arms, ammunition/munitions, or parts and components in these circumstances.

5.3.3 Criminal offences

In order to discourage illicit arms trafficking and diversion, states parties should ensure that under domestic law it is a criminal offence to knowingly:

- export or attempt to export conventional arms, ammunition/munitions, or parts and components in violation of export control laws;
- organize, direct, aid, abet, or facilitate the commission of an offence in violation of national export control laws;
- violate or attempt to violate a condition of an export licence or authorization;
- submit false information in connection with an application for an export licence or authorization;

- engage in corrupt practices in relation to arms exports; and
- violate or attempt to violate an arms embargo imposed by the UN Security Council acting under Chapter VII of the UN Charter (UNCASA, 2014a, ss. 11.3, 11.4).

5.3.4 Simplified procedures for ‘low-risk’ arms exports

With regard to small arms and light weapons, ISACS guidelines recommend that states consider introducing simplified export control practices for arms in ‘low-risk situations’. Such procedures, which should be ‘kept to a minimum’, can be used for the temporary or short-term export of small amounts of arms for hunting, sports shooting, exhibitions, or repairs (UNCASA, 2014a, 5.2.5(a)). This approach is consistent with the preamble of the Treaty, which refers to the ‘legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law’ (UNGA, 2013a, para. 14).

5.4 What transfers must be prohibited?

Article 6, entitled ‘Prohibitions’, requires each state party to the ATT to deny authorization of any exports or other transfers of conventional arms, related ammunition/munitions, and parts and components covered by the Treaty in a set of defined circumstances, as discussed in Sections 5.4.1–5.4.8. The prohibitions in Article 6 are absolute, allowing for no exceptions.

5.4.1 Measures adopted by the Security Council under Chapter VII of the UN Charter

The Security Council adopts enforcement measures under Chapter VII whenever it considers them necessary to maintain or restore international peace and security, such as in response to a threat to the peace, a breach of the peace, or an act of aggression. According to Article 41 of the UN Charter, the Security Council may then decide:

what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures (UN, 1945, art. 41).

NOTE: The obligations cited in Article 6(1) of the ATT only cover binding measures taken under Chapter VII of the UN Charter. Thus, the ATT does not strictly cover Security Council resolutions that merely encourage states to impose arms embargoes.¹

Under Security Council arms embargo regimes, UN member states are typically obligated to prevent not only the direct supply of arms and related materials to embargoed destinations, but also their indirect supply, as may occur through diversion or re-export to prohibited recipients other than the stated end user from a third country. ► See Table 5.1 for a list of Chapter VII arms embargoes that were in force as of 1 June 2016.

Table 5.1 Mandatory UN arms embargoes in force as of 1 June 2016

Embargoed state or entity	In force since	UN Resolution number
Central African Republic	December 2013	2127
Democratic Republic of the Congo (non-state armed groups only)	July 2003	1493
Eritrea	December 2009	1907
Iran	December 2006	1737
Iraq	August 1990; non-state armed groups since 2004	661
Lebanon (non-state armed groups only)	August 2006	1701
Liberia	November 1992; non-state armed groups since 2009	788
Libya	February 2011	1970
North Korea	October 2006	1718
Somalia	January 1992	733
Sudan (Darfur region only)	July 2004	1556
Yemen	April 2015	2216
Al-Qaeda and associated individuals and entities	January 2002	1390
The Taliban	January 2002	1390

Source: SIPRI (n.d.)

5.4.2 What international obligations under international instruments are ‘relevant’?

Article 6 of the ATT also prohibits exports and other transfers that would violate obligations under international agreements to which the exporting state is a party, such as those relating to conventional arms. Examples are disarmament treaties, some of which are listed below, and the 2001 Firearms Protocol, as well as other treaties of more general application, such as the UN Charter, the UN Convention against Transnational Organized Crime of 2000, and the UN Convention against Corruption of 2003 (UN, 1945; UNGA, 2000; 2001a; 2003b).

NOTE: Regional arms embargoes may be among ‘relevant international obligations under international agreements’.

The ATT covers the following disarmament treaties:

- the Anti-Personnel Mine Ban Treaty (1997);
- the Convention on Cluster Munitions (2008); and
- regional instruments, such as:
 - the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, their Ammunition and Related Materials of 2006 (ECOWAS Convention); and
 - the 2010 Central African Convention for the Control of Small Arms and Light Weapons (Kinshasa Convention, which, as of this writing, was not yet in force).²

Thus, for example, a state party to the ATT that is also a party to the Anti-Personnel Mine Ban Treaty would simultaneously violate both agreements if it were to export any remotely delivered anti-personnel mine—except for the purposes of destruction or for use in mine clearance training or research. Similarly, as all cluster munitions covered and prohibited by the Convention on Cluster Munitions also fall within the scope of the ATT, a state that is a party to both treaties would simultaneously violate them by exporting any cluster munitions—except for permitted purposes.

The provision in Article 6 may also be interpreted as a prohibition of arms transfers to armed non-state actors, such as rebel or terrorist groups. A state party

that provides conventional arms to an armed group that is seeking to overthrow a government will probably violate its obligations under the UN Charter.³

As noted above, treaties that prohibit corruption are also brought within the scope of Article 6. Indeed, the relationship between corruption and arms transfers, particularly in relation to the illicit market, is clear (Norton-Taylor, 2013; Transparency International, n.d.). Corruption in arms transfers would include, for instance, illicit payments made to secure contracts or to bypass official control systems.

At least two UN treaties are potentially relevant to such illicit payments:

- the Convention against Corruption (2003); and
- the Convention against Transnational Organized Crime (2000).

Under the former, states parties are obligated to take the necessary action to ensure that the procurement of arms and other items is ‘based on transparency, competition and objective criteria in decision-making, that are effective [. . .] in preventing corruption’ (UNGA, 2003b, art. 9(1)). Arguably, therefore, a failure to establish an effective preventive system for the procurement of arms would amount to a simultaneous violation of the Convention against Corruption and the ATT.

Under the Convention against Transnational Organized Crime, states parties commit to taking a series of measures, including the creation of domestic criminal offences (such as for participation in an organized criminal group, money laundering, corruption, and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance, and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities (UNGA, 2000).

With respect to companies, a state party to the Convention against Transnational Organized Crime is obligated to ‘adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group’⁴ and for certain offences established in accordance with the Convention (UNGA, 2000, art. 10(1)). If a company is engaged in corrupt activities, such as providing bribes for the international export of arms, its export application must be denied—and domestic criminal law enforced.

5.4.3 What constitutes ‘knowledge’ for the purposes of Article 6(3)?

Under Article 6(3), each state party to the ATT must deny authorization of any transfer of conventional arms, related ammunition/munitions, and parts and components covered by the Treaty if it ‘has knowledge at the time of authorization’ that the arms or related items would be used to commit genocide, crimes against humanity, or certain war crimes. One test for determining whether a state has such knowledge is set out in a decision by the International Court of Justice with respect to complicity in genocide (ICJ, 2007). To be complicit, the organs of the state must ‘at least’ be ‘aware that genocide [is] about to be committed or [is] under way’. In such a case, the state would be providing support—such as arms or related items—‘with full knowledge of the facts’ (ICJ, 2007, para. 432).

5.4.4 What is genocide?

Genocide was proclaimed a crime under international law by the UN General Assembly in 1946 and was formally prohibited in the 1948 Genocide Convention (UNGA, 1946; 1948).

Genocide refers to acts committed with intent to destroy, ‘in whole or in part, a national, ethnical, racial or religious group, as such’. Acts of genocide include killing or inflicting serious bodily or mental harm on members of the group, deliberate starvation, and forcibly transferring children of the group to another group (UNGA, 1948, art. 2; 1998, art. 6). Such acts may be committed in times of ‘peace’ as well as in situations of armed conflict (UNGA, 1998, art. 6).

5.4.5 What are crimes against humanity?

Crimes against humanity are crimes that ‘shock the conscience of humanity’. They are committed knowingly by the perpetrator as part of a widespread or systematic attack against a civilian population (Casey-Maslen, Giacca, and Vestner, 2013, p. 25). Acts constituting crimes against humanity include murder, extermination, enslavement, forcible transfer of population, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, sexual violence, persecution, enforced disappearance, and apartheid (UNGA, 1998, art. 7). As with genocide, crimes against humanity can be committed in times of ‘peace’ as well as in situations of armed conflict.

5.4.6 What are grave breaches of the Geneva Conventions?

War crimes are serious violations of international humanitarian law that occur during international armed conflicts (for example, those between two or more states) or non-international armed conflicts (for example, between a state and an organized armed group) and that are connected with the conflict (Casey-Maslen, Giacca, and Vestner, 2013, p. 25). Article 6(3) of the ATT does not specifically cover all war crimes; by citing grave breaches of the 1949 Geneva Conventions, it covers only war crimes committed in the context of international armed conflict. These encompass prohibited acts, including murder, torture, and physical and sexual violence against wounded or shipwrecked combatants, prisoners of war, and ‘protected persons’, such as civilians in the power of the enemy (Geneva Conventions, 1949, I, art. 50; II, art. 51; III, art. 139; IV, art. 147). Grave breaches do not apply to the fighting between parties to an armed conflict.

5.4.7 What are ‘attacks directed against civilian objects or civilians protected as such’?

The phrase ‘attacks directed against civilian objects or civilians protected as such’, which appears in Article 6(3), is not found anywhere else in international humanitarian law (Casey-Maslen, Giacca, and Vestner, 2013, p. 25). Protocol I, an amendment to the Geneva Conventions of 1949, provides that: ‘The civilian population as such, as well as individual civilians, shall not be the object of attack’ (Protocol I, 1977, art. 51(2)). In Article 6(3) of the ATT, the words ‘protected as such’ signal that civilians who participate directly in hostilities—such as by taking up arms and fighting against the enemy—are excluded from protection under this provision (Casey-Maslen, Giacca, and Vestner, 2013, p. 25). Civilian objects are all objects that are not lawful military objectives—meaning, for example, that they are not housing fighters or military equipment (Protocol I, 1977, arts. 51(1)–(2)).

5.4.8 What other war crimes may be covered?

By referring to ‘other war crimes as defined by international agreements’ to which states are parties, Article 6(3) of the ATT covers grave breaches under Protocol I to the Geneva Conventions and all war crimes included in the 1998 Rome Statute of the International Criminal Court. A state that is not a party to the Rome Statute

may nevertheless be a party to other treaties that identify war crimes, such as the 1907 Hague Regulations or 1977 Additional Protocol II (see Table 5.2).

In its declaration following the adoption of the ATT, Switzerland stated that war crimes ‘encompassed, among others, serious violations of common article 3 to the 1949 Geneva Conventions’ (UNTC, n.d.a). Serious violations of Common Article 3, which applies in all non-international armed conflicts, include violations against ‘persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed “hors de combat” by sickness, wounds, detention, or any other cause’ (Geneva Conventions, 1949, common art. 3(1)).⁵

Table 5.2 Treaties that define war crimes

Year adopted	Treaty title	Type of armed conflict covered	
		International	Non-international
1868	St. Petersburg Declaration on exploding bullets	✓	
1899	Hague Declaration on expanding bullets	✓	
	Hague Regulations	✓	
1907	Hague Regulations	✓	
1949	Geneva Conventions	✓	
	Geneva Conventions: Common Article 3		✓
1954	Hague Convention on Cultural Property	✓	
1977	Protocol I to the Geneva Conventions	✓	
	Protocol II to the Geneva Conventions		✓
1995	Protocol on Blinding Laser Weapons	✓	
1996	Protocol II to the Convention on the Use of Certain Conventional Weapons	✓	✓
1997	Anti-Personnel Mine Ban Treaty	✓	✓
1998	Rome Statute of the International Criminal Court: Articles 8(2)(a) and (b)	✓	
	Rome Statute of the International Criminal Court: Articles 8(2)(c) and (e)		✓
1999	Second Protocol to the Hague Convention on Cultural Property		✓

5.5 Export assessment

As explained in Section 5.3.1.2 (Step 3), if a proposed export is not prohibited by any of the provisions in Article 6 of the ATT, it must still be assessed in accordance with Article 7.

NOTE: Article 7 relates only to exports; the import, transit, trans-shipment, and brokering of arms and other items are regulated under Articles 8–10.

Thus, before deciding whether to authorize a proposed export of conventional arms, related ammunition/munitions, or parts and components, a state party must assess the risk or potential that the arms or items to be exported would contribute to or undermine peace and security or that they could be used to commit or facilitate a serious violation of international humanitarian or human rights law, or acts constituting offences under international agreements relating to terrorism or transnational organized crime. An exporting state must refuse any request for authorization if its assessment concludes that the risk of any of the negative consequences listed in Article 7(1) of the Treaty is ‘overriding’ — ► see Section 5.5.3.2.

5.5.1 What is an export assessment and when does it need to be reviewed?

An export assessment is a systematic review of a request for authorization from a state to export arms and related items to a particular entity in a given country and, often, for a specific use. In accordance with Article 7(5) of the ATT, the exporting state party must take measures to ensure that all export authorizations are ‘detailed and issued prior to the export’.

The assessment entails consideration of the recipient of the export (is the end user a desirable recipient of weapons?) and how the exported materiel will be used (is this a lawful or desirable end use of the weapons?). The assessment also takes into account how the export might affect or be perceived by the recipient’s neighbours in the region.

In making an ‘objective and non-discriminatory’ assessment as required by the ATT, states parties might thus consider:

- the type and quantity of weapons to be exported;
- their normal and reasonably foreseeable uses;

- the general situation in the country of final destination and its surrounding region;
- the intended end user;
- actors involved in the export; and
- the intended route of the export (Casey-Maslen, Giacca, and Vestner, 2013, p. 26).

As discussed in Section 3.3.1, Article 7(7) of the ATT encourages each state party to reassess previously granted authorizations if it ‘becomes aware of new relevant information’. The state may learn, for example, that the recipient state is engaged in widespread repression or that armed conflict is breaking out in that country. If such a change in circumstances has occurred, the export authorization may be revoked, although there may be a need to consult with the importing state before doing so.

5.5.2 Who conducts export assessments?

The ATT assumes that each state party accords the necessary authority and resources—human, financial, and technical—to its national control regime to conduct export assessments. Risk assessments may be carried out by a secretariat for the national control regime, by mandated individuals or entities involved in that regime, or, arguably, even by an external body that has been contracted by the state. Contracting out the export assessment does not absolve the state from full responsibility for the quality of that assessment, nor for any failure to abide by the rules set forth in the ATT.

Article 8(1) of the ATT requires national control authorities to take into account information provided by the importing state, thereby including the importing state in the assessment process.

5.5.3 What criteria must be applied as part of an export assessment?

5.5.3.1 The impact on peace and security

In determining whether arms or related items proposed for export will support or undermine peace and security, a state party will need to assess the potential impact on the situation in its own state and in the importing state, in the region of the importing state, and internationally. To do so, it may choose to consider the following questions:

- What is the nature of the relationship among the states of the region?
- Are there territorial claims or disputes among them, including questions of unlawful occupation with the intent of annexation?
- Are there economic, ethnic, religious, or other disputes or conflicts among them?
- Are any states in the region prepared to use force or the threat of the use of force in a manner inconsistent with the UN Charter to resolve disputes with other states of the region? (WA, 1998, para. 2a)
- Would the exported arms or military items initiate or fuel an arms race in the region?
- Would the exported arms or military items exacerbate conflict or instability locally, regionally, or even internationally?
- Would the exported arms or military items enable the importing state to defend itself against external aggression or internal acts of terrorism?

While this process can facilitate the export assessment required by the ATT, it may be difficult to answer such questions with any degree of certainty. Similarly, evaluating the relative weight of various foreseen outcomes may prove a challenge. For example, an exporting state may expect an export of arms to enable a state to address a terrorist threat, yet it may simultaneously anticipate that the importing state's neighbours will perceive the import as a destabilizing act.

If a state party were to find that, on balance, the items proposed for export would undermine peace and security, the request for authorization must be denied per Article 7(1)(a).

If, on the other hand, the state party were to determine that the items would contribute to peace and security, it would need to conduct a further risk assessment before deciding whether an authorization might lawfully be granted in accordance with the ATT—► see Section 5.5.3.2.

5.5.3.2 The risk of negative consequences

As outlined in Article 7(1)(b) of the ATT, the next step involves the assessment of whether the arms or items could be used to commit or facilitate the following offences:


- a serious violation of international humanitarian law (under treaties to which the exporting state is a party or under customary international law);

- a serious violation of international human rights law (under treaties to which the exporting state is a party or under customary international 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 organized crime to which the exporting state is a party.

NOTE: The phrase ‘commit or facilitate’ is used to mean that the weapons need not necessarily inflict the harm that is to be avoided, but that they could be used, for example, to round up civilians who are then raped, tortured, or burnt alive.

Each of these categories is discussed in greater detail below, followed by a review of the following points regarding the assessment of negative consequences linked to the authorization of a proposed export:

- ‘overriding risk’ as a risk assessment threshold;
- risk mitigation measures; and
- gender-based violence.

In addition, states parties must assess the risk of diversion of the exported arms or items. The obligation to assess the risk of diversion appears in Article 11, not in Article 7— see Section 9.5.

The notion of a **serious violation of international humanitarian law** (IHL) includes all war crimes (serious violations of IHL for which there is individual responsibility under international criminal law) as well as:

- isolated instances of conduct of a serious nature that are not included among grave breaches of Protocol I of 1977;⁶
- conduct that takes on a serious nature because of the frequency of the individual acts committed or because of its systematic repetition, although such conduct is included among those grave breaches of Protocol I of 1977; and
- ‘global’ violations, such as acts whereby a particular situation, a territory, or a whole category of persons or objects is withdrawn from the protection of international humanitarian law (Protocol I, 1977, art. 89, commentary).

Examples of serious violations of IHL would be an indiscriminate attack in an internal armed conflict, the use of an indiscriminate weapon or one that might cause unnecessary suffering, the use of human shields, and the failure to take sufficient precautions in attack⁷ during the conduct of hostilities.

The International Committee of the Red Cross urges exporting states to take the following points into account in assessing whether the arms to be exported could be used to commit or facilitate a serious violation of IHL:

- whether a recipient that is, or has been, engaged in an armed conflict has committed serious violations of IHL;
- whether a recipient that is, or has been, engaged in an armed conflict has taken all feasible measures to prevent violations of IHL or cause them to cease, including by punishing those responsible;
- whether the recipient has made a formal commitment to apply the rules of IHL and taken appropriate measures for their implementation;
- whether the recipient state has in place the legal, judicial, and administrative measures necessary for the repression of serious violations of IHL;
- whether the recipient disseminates IHL, in particular to the armed forces and other arms bearers, and has integrated IHL into its military doctrine, manuals, and instructions;
- whether the recipient has taken steps to prevent the recruitment of children into the armed forces or armed groups and their participation in hostilities;
- whether accountable authority structures exist with the capacity and will to ensure respect for IHL;
- whether the arms or military equipment requested are commensurate with the operational requirements and capacities of the stated end user; and
- whether the recipient maintains strict and effective control over its arms and military equipment and their further transfer (ICRC, 2007, p. 5).

The notion of a **serious violation of international human rights law** includes any international crimes (such as summary executions, torture, and slavery) as well as other violations of the following human rights, especially when violations are gross or consistent:

- the rights to liberty and security of person;
- the right to freedom of thought, conscience, and religion;

- the rights to freedom of assembly and of expression; and
- the rights to health, education, food, and housing (Karimova, 2014).

Useful advice for evaluations is provided in the *User's Guide* to the 2008 EU Council Common Position on arms exports, whose Criterion Two covers serious violations of human rights (EU, 2008):

Regarding the qualification of a human rights violation as 'serious', each situation has to be assessed on its own merits and on a case-by-case basis, taking into account all relevant aspects. Relevant factor in the assessment is the character/nature and consequences of the actual violation in question. Systematic and/or widespread violations of human rights underline the seriousness of the human rights situation. However, violations do not have to be systematic or widespread in order to be considered as 'serious' for the Criterion Two analysis. According to Criterion Two, a major factor in the analysis is whether the competent bodies of the UN, the EU or the Council of Europe [. . .] have established that serious violations of human rights have taken place in the recipient country. In this respect it is not a prerequisite that these competent bodies explicitly use the term 'serious' themselves; it is sufficient that they establish that violations have occurred. The final assessment whether these violations are considered to be serious in this context must be done by Member States. Likewise, the absence of a decision by these bodies should not preclude Member States from the possibility of making an independent assessment as to whether such serious violations have occurred (EU, 2015b, ch. 2, s. 2.6).

Terrorist offences are criminal acts that are prohibited under terrorism-related treaties to which the exporting state is a party, and that would be committed or facilitated using conventional arms or related items exported by the state. In this context, the definition of a terrorist bombing provided in the 1997 Terrorist Bombings Convention is of particular importance:

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a state or government facility, a public transportation system or an infrastructure facility:

- (a) *With the intent to cause death or serious bodily injury; or*
- (b) *With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss (UNGA, 1997, art. 2(1)).*

In assessing the likelihood that the exported conventional arms could be used to target civilians in such terrorist acts, the exporting state should note that the Terrorist Bombings Convention explicitly excludes acts of armed forces in an armed conflict and certain acts covered by international human rights law, notably any law enforcement (policing) functions (UNGA, 1997, art. 19(2)).⁸

States parties to the ATT may also be parties to the UN Convention against Transnational Organized Crime and its Protocols, which define offences relating to **transnational organized crime** to include:

- participation in an organized criminal group (UNGA, 2000, annexe 1, art. 5);
- trafficking in persons (annexe 2, art. 3);
- smuggling of migrants (annexe 3, art. 3); and
- illicit manufacturing and trafficking in firearms (UNGA, 2001a, art. 3).

The exporting state should assess the extent to which the arms or items could be used to commit or facilitate international organized crime offences, including corruption and trafficking in weapons or persons. At least two treaties are potentially relevant to such illicit payments:

- the Convention against Transnational Organized Crime (2000);⁹ and
- the Convention against Corruption (2003) (UNGA, 2000; 2003b).

The risk assessment threshold: ‘overriding risk’. According to one interpretation of the ATT, if an exporting state assesses that there is a risk that the arms or items to be exported could be used to commit or facilitate any of these negative consequences, that risk must be compared with the likelihood that the arms or items would contribute to peace and security (Article 7(3)). If the risk of misuse is higher than the likelihood that the items would contribute to peace and security, export authorization must be denied. If, on the other hand, such a contribution is more likely than misuse, there is no obligation under the ATT to deny the authorization. According to another interpretation of the Treaty, if the risk is substantial, despite any risk mitigation measures, export authorization must be denied.

Risk mitigation measures. Article 7(2) permits states parties to consider whether the level of risk identified by this assessment could be mitigated through security measures, such as training, accompaniment, monitoring, or end-user or end-use commitments undertaken by the importing state. In other words, if

a proposed export has the potential to undermine peace and security, present a risk of violations of international human rights law or IHL, or facilitate offences under terrorism or organized crime conventions, mitigation measures may be applied to reduce the risk. If, for example, the risk arises as a result of poor command and control—rather than deliberate policy—mitigation measures could involve the training of commanders and officers, supported by independent oversight and evidence of effective accountability measures. Other options include confidence-building measures and jointly developed and agreed programmes by the exporting and importing states.

Gender-based violence. Article 7(4) of the ATT requires an exporting state party to take into account the risk that the arms or related items will be used to commit or facilitate serious acts of gender-based violence (GBV) or serious acts of violence against women or children.¹⁰ If any of these acts amounts to a serious violation of human rights law or IHL, or constitutes an act of terrorism or transnational organized crime, the procedure for denial must be followed.

Reaching Critical Will, the disarmament programme of the Women's International League for Peace and Freedom, defines GBV as follows:

GBV is violence that is directed at a person based on her or his specific sex or gender role in society. It is linked to the gendered identity of being a woman, man, intersex, transsexual, or transgendered. The term GBV recognises that violence takes place as a result of unequal power relations and discrimination in society on the basis of one's sex or gender.

There are various different types of GBV that can be grouped into these four categories:

- Sexual violence: Sexual harassment, rape, forced prostitution, sexual violence during conflict, and harmful customary or traditional practices such as female genital mutilation, forced marriages, and honour crimes.
- Physical violence: Physical assault, domestic violence, human trafficking and slavery, forced sterilization, and forced abortion.
- Emotional and psychological violence: Abuse, humiliation, and confinement.
- Socioeconomic violence: Discrimination and/or denial of opportunities and services; prevention of the exercise and enjoyment of civil, social, economic, cultural, and political rights (Acheson and Gandenberger, 2015, p. 5).

5.5.4 What sources of information are available to inform an export assessment?

States parties to the ATT should use credible sources of information in their export assessments. They may refer to the *User's Guide* to the EU Common Position, which recommends consultation of information provided by UN bodies such as:

- the General Assembly (including country-specific resolutions);
- the Security Council;
- the Human Rights Council;
- the Economic and Social Council;
- the Office of the High Commissioner for Human Rights;
- special procedures and other mandate-holders; and
- treaty bodies (EU, 2015b, annexe).

Reports by the US Department of State on the situation of human rights in other states may also be a valuable source of information (USDoS, n.d.).

Amnesty International and Human Rights Watch are among the leading non-governmental organizations that produce credible reports on the human rights situations in many states; they also document human rights violations by entities that use force, such as the army, the police, other security forces, and paramilitary groups (AI, n.d.; HRW, n.d.).

States are also encouraged to exchange information with the potential importing state.

5.6 How are export controls enforced?

It is the responsibility of enforcement agencies to make public the legal and regulatory aspects that govern transfers of arms and related items so that actors engaged in such transfers may know their legal obligations (UNCASA, 2014a, s. 11.1). According to ISACS, outreach to the arms industry can improve compliance with national laws, regulations, and administrative procedures relating to the transfer of weapons. Such outreach can also provide pertinent information that enables industry bodies to put in place their own internal regulatory mechanisms (s. 11.2).

It is not enough to adopt and publicize laws and regulations; they must also be effectively policed and enforced. Circumvention by individuals or companies

of arms export legislation is normally a criminal offence, potentially punishable by a fine or a term of imprisonment. Failure to abide by the conditions of a licence should lead to its revocation.

Further resources

Establishing an export control regime

Arms Export Control (European Union External Action Service)

ATT Implementation Toolkit (UNODA)

‘Do I Need an Export Licence?’ (United Kingdom)

Guidelines for Completion of a Form DSP-5 Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data (US Department of State Directorate of Defense Trade Controls)

International Ammunition Technical Guidelines (IATG)

International Transfer of Ammunition Module

End User and End Use of Internationally Transferred Ammunition Module

ISACS

National Controls over the International Transfer of Small Arms and Light Weapons

National Controls over the End User and End Use of Internationally Transferred Small Arms and Light Weapons

Conducting an export assessment

Amnesty International human rights reports

Applying the Arms Trade Treaty to Ensure the Protection of Human Rights (Amnesty International)

ATT Implementation Toolkit (UNODA)

Gender-based Violence and the Arms Trade Treaty (Reaching Critical Will)

Human Rights Reports (US Department of State)

Human Rights Watch reports

Protecting Civilians and Humanitarian Action through the ATT (International Committee of the Red Cross)

UN Security Council Sanctions Committees

What Amounts to ‘a Serious Violation of International Human Rights Law’? (Geneva Academy of International Humanitarian Law and Human Rights)

Acknowledgements

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SECTION 6

Import controls



6.1 Introduction

The importation of conventional arms is specifically addressed in Article 8 of the ATT. In accordance with Article 2, which identifies imports as one type of *transfer*, the prohibitions set out in Article 6 apply to this activity.

The ATT devotes considerably less attention to arms import controls than to the conditions and guidelines for the export of arms. However, while only a small minority of states manufacture and are primary exporters of arms, the vast majority of UN member states import arms on a fairly regular basis. Effective conventional arms control is a dynamic process that requires importers or recipients to be as diligent as exporters in relation to control measures that seek to prevent the arms from being used in a way that undermines the objectives of the ATT, in particular through diversion to illicit markets.

Arms import control systems and structures within recipient states are crucial considerations for exporting states that are parties to the ATT. A key reason for this is that the Treaty requires exporting states parties to undertake a risk assessment of the conditions in the importing state prior to transferring the arms. Specifically, as laid out in Article 8(1), the importing state party:

shall take the measures to ensure that appropriate and relevant information is provided [. . .] to the exporting state party, to assist the exporting state party in conducting its national export assessment.

Such risk assessments may be compromised in the absence of adequate arms import controls.

6.2 What is an import?

An **arms import** is either the physical movement of conventional arms from a place outside the territory of the state that is importing the arms, or the transfer of their registration or ownership. It may or may not entail the exchange of currency. For example, arms may be gifted or loaned.

An **arms importer** is an individual or entity that makes an arms import declaration, or on whose behalf a customs clearing agent or an authorized person makes such a declaration. The importer may be a person who gains possession of the arms or to whom the arms are entrusted (UNODA, 2011, p. 12).

6.3 What are the options for regulating imports?

Under Article 8(2) of the ATT, each state party that imports arms should ‘take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms’. While the ATT does not specify which measures are to be taken to regulate imports as part of a national control system—▶ see Section 3—they could include adoption of a requirement to obtain authorization from the relevant authority to import arms. Administrative instruments have also been designed to implement arms control policy and legislation. ▶ The most common such measures are end-user and delivery verification certificates, which are discussed in Sections 6.3.2 and 6.3.3.

More specifically, states parties need to apply—at a minimum—the prohibitions included in Article 6 to imports of conventional arms, ammunition/munitions, and parts and components (as these apply to all types of transfer falling under Article 2). Importing states parties also need to take measures to prevent diversion, and to address it as soon as it is detected, as laid out in Articles 11(1) and 11(4).

In addition, the ATT emphasizes the importance of communication and the exchange of information between arms importers and exporters as a means of harmonizing arms transfer controls, as well as reducing the risk of fraudulent arms transfers and the diversion of arms to illicit markets and into the hands of terrorists. Critically, Article 11(4) of the ATT requires both exporters and importers of arms to alert ‘affected’ states parties in the event that a diversion of conventional arms transfers is discovered.

6.3.1 Licensing and authorization

As with the export, transit, and trans-shipment of arms, the most commonly used arms import authorization instrument is a licence or permit. Issued by an authorized government agency, this official document permits a specific type of arms transfer by an identified individual or entity within a designated period of time under specific conditions. States have typically used the terms ‘licence’ and ‘permit’ interchangeably. In some cases, they utilize import certificates, such as international import certificates,¹ which are common documents endorsed and recognized by states parties to certain multilateral agreements, such as those of NATO and the European Union (UNODA, 2011).

The validity of an import licence is typically linked to supporting documentation, such as the following:

- **bill of lading:** Accepted as both a receipt and a contract, a completed bill of lading is an essential legal document for the shipping of goods. It specifies the type, quantity, and destination of the goods as received by the carrier, and that the carrier is required to deliver the goods to the consignee.
- **certification from arms suppliers:** This documentary proof is furnished by arms suppliers to demonstrate that they are registered and/or certified with the relevant authorities in the countries where the arms shipment originated.
- **end-user certificate (EUC):** This document is signed by the relevant authority to indicate that the importing state is the final recipient of the arms. (► See 6.3.2 for a detailed description.)
- **invoice:** These can include invoices from the arms suppliers, arms brokers, and shipping companies.
- **manifest:** This document provides a detailed listing of the goods that are being shipped.
- **official letter:** Such a document appears on official letterhead and can be supplied by the designated exporting and importing authorities, as well as arms suppliers.
- **waybill:** This document is compiled by the carrier of goods and specifies the particulars of the goods being shipped, the entire shipment route, and the various shipment costs.

Nonetheless, no international standards or guidelines govern all conventional arms import licensing.

Based on a review of state practice, the Stockholm International Peace Research Institute (SIPRI) has identified four broad approaches that states take to control arms imports:

- all arms imports require a licence;
- only certain categories of arms—such as small arms—require an import licence (since an official import licence is considered unwarranted because the armed forces are the only entities legally permitted to possess major conventional weapons);
- only arms imports by non-state entities require a licence; or
- customs authorities control arms imports at the point of entry (Bromley and Holtom, 2011a, p. 5).

6.3.2 End-user certificates

Under Article 8(1) of the ATT, an importing state party must provide information to an exporting state party to help it undertake its export assessment under Article 7. This information may be provided through end-use or end-user documentation (see Box 6.1).

In an end-user certificate, an arms importer (usually a government authority) declares in writing that the imported arms are entirely for its exclusive use. The importer is usually required to undertake not to transfer or re-export the imported arms without the prior written permission of or notification to the original exporter (Lamb, 2012, p. 70). An EUC should be authenticated by the relevant government authority, with an official stamp or seal. It should also include a verifiable signature of the designated representative of the relevant government authority.

Although there is no agreed or standard template for an EUC, such a document should include at least the following information:

- a date of issue;
- a date of expiry;
- the name and contact details of the exporter;
- a description of the arms being transferred, such as the type, model, quantity, value, and unique identifiers, including serial numbers;
- a destination state;
- transit states, if applicable;
- the name, designation, and contact details of the end user within the importing state;

Box 6.1 Definitions: end use and end user

End use


The intended use of the weapons being transferred. Normally the export licence application or associated documentation indicates how the end user intends to use the items being exported.

End user (or ‘ultimate consignee’)

The person or entity in the importing state that ultimately receives and uses the exported items, such as the armed forces or internal security forces.

NOTE: For the purposes of making an export licensing decision, the end user is the person or entity that is the declared final intended user of the goods at the time of the decision regarding the licence application.

Source: Parker (2009, p. 64)

- the order number or contract number of the arms import;
- the importing state's specified undertakings concerning the end use (for example, an undertaking that the weapons will not be re-transferred without the prior authorization of the original exporting state);
- assurances that proof of import will be provided, such as through a delivery verification certificate— see Section 6.3.3; and
- the signature of the authorized representative of the end user (Bromley and Griffiths, 2010; UNODA, 2011).

According to ISACS, an EUC should appear on an official government form or official letterhead of the competent national authority that issues it. EUCs may be printed on paper that cannot easily be forged or issued as secure electronic documents (UNCASA, 2014b, s. 6.2.4).

Different types of EUC exist in practice. In state-to-state transactions, for instance, a government-issued EUC is typically a requirement. It should bear the official stamp or seal of the government authority in the importing state to indicate that it is an authentic document (UNODA, 2011, p. 9). In the case of exports to non-state entities (such as commercial companies), a privately issued EUC from the non-state entity (often referred to as an end-user statement) is common (Bromley and Griffiths, 2010). An end-user statement is a less official document that comprises an affidavit that the arms will not be used in contravention of the conditions of the end-user statement, or re-sold or re-exported without the permission of the original exporter.

The Wassenaar Arrangement, the *User's Guide* to the EU Common Position, and the Organization for Security and Co-operation in Europe (OSCE) all provide detailed guidance on what EUCs should contain (WA, 2014; EU, 2015b, p. 5; OSCE, 2004; 2011). In practice, however, many arms-exporting states issue EUCs without many of the core elements that appear in that guidance (UNODA, 2011).

6.3.3 Delivery verification certificates

A delivery verification certificate (DVC) is an official document or statement that is issued by arms-importing states to confirm that the authorized arms transfer has been received by, and is in the possession of, the intended end user; it serves as proof of delivery (Lamb, 2012, p. 71). Supporting documentation that closely corresponds to the information on the certificate should be provided with the DVC.

There is no internationally agreed template for what information a DVC should include and practice varies widely among importing states that produce DVCs, both in terms of the information included and with respect to security features (Lamb, 2012, p. 71).

The ISACS guidelines recommend that a DVC should contain:

- a unique identification number;
- the name, address, and contact details of the exporter and of the authorized end user;
- the import authorization number;
- the bill of lading or air waybill number;
- details of the place, date, and means of arrival of the consignment;
- a description of the consignment, including the contract or purchase order number, quantities, makes, models, and types;
- the stamp or seal of the customs administration or other competent authority of the importing state;
- certification by the customs administration or other competent authority of the importing state that the authorized end user has taken possession of the consignment;
- the date of the certification; and
- the signature, name, and position of the authorized representative of the customs administration or other competent national authority making the certification (UNCASA, 2014b, s. 7.2.4).

According to ISACS, only customs authorities should be authorized to issue DVCs, and only a small number of customs officials should be permitted to do so.

6.3.4 Import licence, EUC, and DVC authentication

For arms import administrative mechanisms to be effective, security and verification measures should be in place to guarantee that the documents are genuine. As part of the authentication process, authorized representatives of the exporting state must confirm 'the authenticity of the signature, the capacity in which the person certifying the document has acted and, where appropriate, the identity of the seal or stamp which it bears' (UNODA, 2011, p. 1). Importing states can assist with this process by undertaking due diligence checks on the information provided in the arms transfer documentation.

6.3.5 Which weapons should be controlled?

In principle, the ATT expressly requires states parties to regulate imports of conventional arms covered by Article 2, not of ammunition/munitions or parts and components. Yet, since Article 5(3) encourages states parties to apply the provisions of the Treaty to the broadest range of conventional weapons, import regulations should also cover ammunition/munitions and parts and components—which states parties might also be obligated to include in their controls based on other international obligations, especially concerning small arms and light weapons.²

In addition, Article 6 requires states parties not to authorize imports or other transfers of conventional arms, ammunition/munitions, and parts and components if the circumstances outlined in Article 6 exist—for example, if the importing state or end user is under a Security Council arms embargo. At a minimum, states parties thus need to ensure that their national control systems give them the ability to prevent imports of ammunition/munitions and parts and components under these circumstances.

6.3.6 Criminal offences

In order to discourage illicit arms trafficking and diversion, states parties should ensure that under domestic law it is a criminal offence to knowingly:

- import or attempt to import conventional arms in violation of import control laws (for instance, without an official import licence/permit or EUC);
- submit false information in connection with an application for an import licence/permit;
- engage in corrupt practices in relation to arms imports;
- transfer imported arms to persons or entities not specified in the relevant EUC;
- violate or attempt to violate an arms embargo imposed by the UN Security Council acting under Chapter VII of the UN Charter;
- manipulate or misuse EUCs or DVCs, particularly to:
 - forge or tamper with EUCs, DVCs, or related documents;
 - use such documents under false pretences;
 - violate undertakings made in such documents;
 - use an EUC in connection with arms imports in excess of, or other than, those itemized in the EUC; and
 - re-use an EUC after the arms import for which it was originally intended has been delivered (UNCASA, 2014a, ss. 11.3, 11.4; 2014b, s. 8.3).

6.3.7 National control lists

National control lists for conventional arms and related items are required by the ATT, and each state party must provide its own national control list to the ATT Secretariat. States parties are encouraged to make these lists publicly available. Control lists are typically used as key regulatory measures by exporting states. However, control lists can also be useful for importing states, as they can assist in implementing the provisions and restrictions stipulated in national policy and legislation as well as reduce the risk of diversion. 🟡 See Section 4 for details on national control lists.

6.3.8 Simplified procedures for ‘low-risk’ arms imports

With regard to small arms and light weapons, ISACS guidelines recommend that states consider introducing simplified import control practices for arms in ‘low-risk situations’. Such procedures, which should be ‘kept to a minimum’, can be used for the temporary or short-term import of small amounts of arms for hunting, sports shooting, exhibitions, or repairs (UNCASA, 2014b, s. 6.5(a)). This approach is consistent with the preamble of the Treaty, which refers to the ‘legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law’ (UNGA, 2013a, para. 14).

6.4 How are import controls enforced?

Article 14 of the ATT requires states parties to ‘take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty’. Furthermore, Article 11 tasks them with using law enforcement and other means to prevent, detect, and investigate the diversion of conventional arms.

In addition to relying on existing government ministries and departments that have a responsibility for implementing policy and legislation for arms imports, states parties may consider establishing a specialized monitoring and enforcement agency, if such a body is not in existence. Such an enforcement agency may fulfil the role of an inspectorate, which can seek to ensure that arms imports, as well as internal governmental arms control functions and processes, are conducted in compliance with arms control policy and legislation.

On the one hand, this inspectorate should be independent from the main government entities with vested interests in arms imports (such as the military and the police) in order to prevent undue influence. On the other, it should be directly linked to the ministry of justice and empowered to undertake routine physical inspections, confiscate documents and conventional arms that may relate to illegal activities, and initiate criminal proceedings as appropriate.

Such an agency would be well placed to assist with post-shipment inspections and EUC verifications of arms transfers. In such cases, designated representatives of exporting states carry out physical inspections and EUC compliance visits in relation to the imported arms within the importing country. Such checks often take place when the arms consignment has been transferred into insecure contexts, or when the government in question lacks the necessary resources to guarantee the safety of the arms.

Further resources

ATT Implementation Toolkit (UNODA)

How To Guide: Small Arms and Light Weapons Legislation (UN Development Programme)

ISACS:

National Controls over the End-user and End-use of Internationally Transferred Small Arms and Light Weapons

National Controls over the International Transfer of Small Arms and Light Weapons

Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto (UN Office on Drugs and Crime)

Study on the Development of a Framework for Improving End-use and End-user Control Systems (UNODA)

Template for End User Certificates for Small Arms and Light Weapons (OSCE)

UN Disarmament Commission guidelines for international arms transfers (UN General Assembly Resolution 46/36H)

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SECTION 7

Transit and trans-shipment controls¹



7.1 Introduction

Transit and trans-shipment of conventional arms are specifically addressed in Article 9 of the ATT. In accordance with Article 2, these activities form part of the collective term *transfer* and are thus subject to the prohibitions set out in Article 6.

7.2 What is transit?

Transit is a term commonly used to indicate certain movements of goods, including in legal and political instruments concerning arms transfer controls. The term is rarely defined in treaties as there is no consensus regarding its scope.

Yet, from a customs perspective, international transit is considered in an annexe to the 'Revised Kyoto Convention'² of the World Customs Organization (WCO) (WCO, 1973, annexe E). This annexe and its guidelines set out customs formalities for 'goods that are transported under Customs control from one Customs office to another in an operation during which one or more frontiers are crossed'. For customs purposes, the importance of transit procedures mostly relates to the payment of duties and taxes. Hence, while this approach is relevant, implementation of the ATT rules should not depend on customs procedures.

A simple definition of transit, in line with the term's ordinary meaning, would be 'the action of passing through or across a place' (Oxford Dictionaries, n.d.b). The *User's Guide* to the EU Common Position on arms exports suggests that EU member states should define transit as 'movements in which the goods (military equipment) merely pass through the territory of a Member State' (EU, 2015b, ch. 1, s. 5.2). In its Arms Trade Act, Belgium's Flemish Parliament defines transit as 'the transportation of goods that are exclusively brought into Belgium to be transported through its territory into another country' (Flemish Parliament, 2012).³

An important aspect of transit is that the goods are *exclusively* brought into a country to be transported through its territory into another country, not to enter the local market. If goods are brought into the country for transformation or integration into other goods and subsequent re-export, the movement should be qualified as an import followed by an export, not as transit.⁴

Transit can take place by road, rail, air, or sea. All of these forms of transport should be regulated; the ATT does not differentiate between them. Based on national considerations or international obligations, certain types of transit may

be treated differently — see Section 7.4. To ensure clarity, however, these should be outlined in the transit control measures rather than in the definition of transit.

A common understanding of transit and its scope can help to avoid gaps in the transfer control chain. Thus, in years to come, the ATT CSP could follow the example set by the CSP of the 1992 Chemical Weapons Convention, which established the following common definition of ‘transit operations’:

the physical movements in which scheduled chemicals pass through the territory of a state on the way to their intended state of destination. Transit operations include changes in the means of transport, including temporary storage only for that purpose (OPWC, 2008, para. 2).

7.3 What is trans-shipment?

Like transit, trans-shipment is rarely defined and similarly lacks a universally agreed definition. In national arms trade control legislation and in the ATT, trans-shipment is mostly mentioned as a sub-category of transit. The *User’s Guide* to the EU Common Position on arms exports clarifies this relationship in its suggested definition of trans-shipment:

transit involving the physical operation of unloading goods from the importing means of transport followed by a reloading (generally) onto another exporting means of transport (EU, 2015b, ch. 1, s. 5.2).

This meaning is in line with the customs approach: the Revised Kyoto Convention defines trans-shipment as a movement by which ‘goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation’ (WCO, 1973, annexe E). The guidelines to the Kyoto Convention go on to state that ‘trans-shipment can be regarded as a simplified application of the transit system’ (WCO, 2000, p. 3).

As with transit more generally, trans-shipment controls should be independent of customs procedures. In other words, when conventional weapons move through a state and are loaded from one means of transport onto another in the process, trans-shipment controls should be applied regardless of domestic customs procedures.

Box 7.1 What is the difference between ‘transit’ and ‘trans-shipment’?

In practice, transit and trans-shipment are not different types of goods transfers. Rather, trans-shipment is a specific form of transit.

Transit refers to movements of goods that pass through the territory of a state on their way from the exporting state to the importing state. *Example:* an aircraft with weapons on board lands in a state merely to re-fuel before making its way to its destination state.

Trans-shipment is a form of transit in which the goods change means of transport; in other words, the goods are offloaded from one means of transport and loaded onto another. *Example:* an aircraft with weapons on board lands in a state. The weapons are offloaded and loaded onto another aircraft or ship before continuing to the destination state.⁵

In addition to applying different customs procedures, many states distinguish between transit and trans-shipment in their arms trade control legislation and practice in view of each activity’s particular risks and challenges. As many states associate trans-shipment with elevated risks of diversion, they tend to regulate trans-shipment transactions more strictly than general transit, in terms of the scope of goods, the application of control measures, or the selection of assessment criteria—► see Section 7.4.4.

Trans-shipment can involve movement by road, rail, air, or sea. Conventional weapons often arrive from another state by truck to be loaded onto an aircraft destined for a third state. Trans-shipment can also entail the reloading of goods from one means of transport to another of the same type, for example when weapons arrive on one aircraft merely to be loaded onto another.

While transfer is sometimes classified under transit rather than trans-shipment, other approaches exist: Belgium’s Flemish Region and Serbia, for instance, use the term trans-shipment to cover situations in which goods are unloaded from a means of transport and then reloaded onto that same means of transport (Flemish Parliament, 2012; Serbia, 2014). If the shipment of weapons touches the ground in such cases, trans-shipment controls apply. ► Box 7.1 summarizes the differences between ‘transit’ and ‘trans-shipment’.

7.4 What are the options for regulating transit and trans-shipment?

As in many other instruments that regulate the transfer of conventional weapons, the substantive guidance in the ATT on transit and trans-shipment controls is limited. In general, Article 9 obligates states parties to take appropriate measures to regulate transit or trans-shipment of conventional arms under their jurisdiction⁶ ‘where necessary and feasible’ and ‘in accordance with relevant international law’. More specifically, states parties are required to apply—at a minimum—

the prohibitions included in Article 6 to the transit and trans-shipment of conventional arms, ammunition/munitions, and parts and components (as these apply to all types of transfer under Article 2). Transit and trans-shipment states parties also need to take measures to prevent diversion, and to address it as soon as it is detected, as per Articles 11(1) and 11(4).

To regulate transit and trans-shipment effectively, each state party should ensure its control system is underpinned by four principles:

- Banning prohibited transit and trans-shipment transactions is not sufficient; additional control measures are needed.
- Different types of transit may require different control measures.
- As implied by the words ‘where necessary and feasible’, transit and trans-shipment controls should be tailored to the specific situation and the particular needs of the state in question.
- Control measures need to be clear in their material scope, assignment of responsibility, and assessment criteria, and should be governed by robust enforcement mechanisms.

7.4.1 Licensing and authorization

The classic control measure to regulate any type of transfer of conventional weapons, including transit and trans-shipment, is the systematic requirement for a licence or other type of prior authorization. While such a measure allows for a thorough assessment of every transaction, it might not always be necessary, viable, or even permissible in order to implement the necessary controls.

Article 9 of the ATT provides that state parties’ measures need to be ‘in accordance with relevant international law’. In this sense, the 1982 UN Convention on the Law of the Sea and the 1944 (Chicago) Convention on International Civil Aviation are particularly relevant (UN, 1982; ICAO, 1944).

A systematic transit or trans-shipment licence obligation has a serious impact on the flow of goods, puts an administrative burden on both government administrations and involved actors, and can prejudice the commercial interests of ports and airports, especially those known as transit hubs. Many states have therefore applied other measures, which vary in their degree of control. States parties should assess the necessity and feasibility of different measures in view of their national transit and trans-shipment situation, keeping in mind that a state party should

always have the necessary legal provisions and tools in place to act against possibly illicit (or undesirable) transit and trans-shipment of conventional weapons.

A system of prior licensing can maintain a certain degree of flexibility for legitimate transit and trans-shipment operators. States can issue types of licences that apply to more than one transaction, or apply procedures that, in practice, are similar to notification.

Apart from a prior licensing requirement, the most common measures that states apply to the transit and trans-shipment of conventional weapons are systematic prior notification requirements and ad hoc controls, as described in Sections 7.4.2 and 7.4.3.

7.4.2 Systematic prior notification requirements

A prior notification requirement is a less burdensome version of a licence requirement. Rather than applying for authorization, the responsible party merely notifies the competent authority of the details of the transit or trans-shipment. On this basis, the authority can conduct an initial assessment of the transaction and determine whether there are valid grounds to apply an authorization procedure or to conduct an inspection. This method does not duplicate information requirements in the framework of customs procedures; the summary information that needs to be provided to customs is not sufficient to allow the necessary assessment of the transaction—► see Section 7.4.7.2.

7.4.3 Ad hoc controls on potentially illicit or undesirable transfers

Ad hoc controls allow authorities to control certain transfers that are not subject to a systematic licensing or notification requirement. Enabling legislation lists the situations in which these ad hoc controls can apply. These controls generally entail:

- inspecting the shipment and/or (temporarily) seizing it; or
- subjecting the transaction to an authorization procedure or prohibition.

To trigger such controls, there must be a reasonable suspicion that one of the listed situations is occurring or about to occur. The prohibitions in Article 6 of the ATT are prime examples of situations that could be dealt with using ad hoc controls.

The application of ad hoc controls and the existence of a reasonable suspicion are not dependent on any prior notification of the parties involved in the transaction (beyond fulfilling basic customs, and possibly transport-related, requirements). It

relies in the first place on cooperation and efficient information exchange between the competent authority and other state agencies, such as customs authorities, the intelligence services, and authorities in charge of transport security. International cooperation is also important: transit and trans-shipment transactions involve at least an exporting state and potentially other transit or trans-shipment states, which may have information on potentially illicit transfers. In that regard, relevant provisions include Article 11(4) of the ATT, which requires states parties that detect diversion to alert other potentially affected states parties, as well as the more general Article 14 on enforcement.

One thing should be clear: states parties that do not apply any control measures or that grant absolute exemptions for certain transactions are not complying with the Treaty. A state party needs to be able to intervene if a transit or trans-shipment violates any of the prohibitions in Article 6 and, more generally, if intervention is required by international law.⁷

7.4.4 Relevant factors

State practice varies as to which of the control measures mentioned above are applied to different types of transit and trans-shipment activities. This variation reflects the fact that states take a number of factors into account, mostly based on their own particular situation.

As noted in Box 7.1, the most important factor used to differentiate control measures is the element of trans-shipment, which many states consider a diversion risk. Therefore, many jurisdictions apply stricter controls to trans-shipment. Belgium's Flemish Region, for example, systematically requires a licence only for trans-shipment. Not all states make this differentiation, however: Germany and the United Kingdom generally apply the same controls to both trans-shipment and transit (Van Heuverswyn, 2013, pp. 73, 96). The same goes for Barbados in its Customs Act and for South Africa in its definition of 'conveyance' (Epps, Lamb, and Merrell Wetterwik, 2012; South Africa, 2002, s. 1(vii)).

A second factor that states take into account is the means of transport. Very few states have systematic controls on transit by road, or on shipments that transit without unloading through territorial airspace or territorial waters. This lack of controls is due to the international law considerations referred to in Section 7.4.1, but also relates to the location and size of the respective state.

Third, some states differentiate their control measures based on the nature and sensitivity of the items. For example, Germany only subjects transit and trans-shipment of 'war weapons' to systematic licensing requirements (Van Heuverswyn, 2013, p. 73). As the ATT requires transit and trans-shipment regulations only for the conventional weapons covered under Article 2, such differentiation might be less relevant for ATT implementation. However, other international instruments containing specific transit and trans-shipment requirements on small arms and light weapons should be taken into account.⁸ Whenever these apply, states parties will have to comply with them when implementing ATT rules on transit and trans-shipment.

Fourth, states take into account the exporting and importing states, as well as the end user. They adapt their transit and trans-shipment controls, among other things, on the basis of their relations with other states and their membership in intergovernmental organizations and other control regimes. For example, EU member states are principally prohibited from applying systematic transit controls on conventional weapons that pass through on the way from one member state to the other (EU, 2009). Many members of NATO and of the Wassenaar Arrangement, such as Germany, also apply a flexible approach to transit and trans-shipment of conventional weapons coming from or going to fellow members. The Netherlands applies a system of general licences to transits to and from allied states. Conversely, states can also apply strict measures for certain destinations. For example, in the UK certain conventional arms always require a transit or trans-shipment licence, while others only require such a licence for a list of countries of concern or for the list of embargoed destinations (Van Heuverswyn, 2013, pp. 73, 83ff.).

A similar factor that states parties to the ATT may take into account is the attitude of the exporting or importing state to the ATT itself. Considering the obligations the ATT imposes on exporting states (and, to a lesser extent, importing states), states might apply more flexible measures to transit and trans-shipment of conventional weapons coming from or going to ATT states parties.

Taking into account all these factors and the available control measures, every state party needs to implement the transit and trans-shipment regulations that fit its situation and needs. This should be done in light of the assessment required by the ATT as well as in line with other international obligations, especially regarding small arms and light weapons. Generally, states apply a systematic licensing requirement to trans-shipment, sometimes using more flexible licences and a

lighter assessment for trans-shipment to and from allied states. In contrast, in the case of transit many states seem to apply only ad hoc controls or, at most, a systematic prior notification requirement. Both approaches still allow the state to veto the transaction, but they are less burdensome on legitimate trade.

7.4.5 Which weapons should be controlled?

In principle, the ATT expressly requires states parties to regulate the transit and trans-shipment of conventional arms covered by Article 2, not of ammunition/munitions or parts and components. Yet, since Article 5(3) encourages states parties to apply the provisions of the Treaty to the broadest range of conventional weapons, such regulations should also cover ammunition/munitions and parts and components—which states parties might also be obligated to include in their controls based on other international obligations, especially concerning small arms and light weapons.

In addition, Article 6 requires states parties not to authorize transfer—including the transit and trans-shipment—of conventional arms, ammunition/munitions, and parts and components if the circumstances outlined in Article 6 exist—for example, if the importing country or end user is under a Security Council arms embargo. At a minimum, states parties must thus ensure that their national control systems give them the ability to prevent the transit and trans-shipment of ammunition/munitions and parts and components in these circumstances.

7.4.6 Who should be responsible for complying with obligations?

Effective application and enforcement of transit and trans-shipment controls benefits particularly from the clear assignment of responsibility for compliance with the relevant obligations. The reasons for this are twofold:

- Transit, and especially trans-shipment, involves a number of actors in different states. Without clear assignment of responsibility, both practical and criminal liability issues can arise.
- In general, the two key parties to the transaction, namely the exporter and carrier, are not established in the state where the obligations need to be fulfilled. The exporter is the primary responsible actor who decides to send the arms and holds the relevant information, while the carrier is physically in control of the arms during transit or trans-shipment.

In practice, it is often an actor in the transit or trans-shipment state, such as a customs agent or freight forwarder, who will fulfil the applicable obligations. However, the fundamental question arises as to whether that actor should do so as the responsible party. For the transit or trans-shipment state, this is an attractive option because there is a link with its jurisdiction, and extraterritorial enforcement would be unnecessary. Moreover, transit and trans-shipment could arguably be seen as stand-alone activities in the supply chain for which the involved actors should be made accountable, not the exporter.

Box 7.2 Actors in the transit and trans-shipment process

Carrier* or transport service provider: the company that transports the goods for the exporter; in cases of trans-shipment, two or more carriers may be involved, such as a shipping company followed by an airline.

Customs broker,* customs agent, or clearing agent: the company that is contracted to fulfil customs obligations on behalf of the exporter or the importer.

End user: the person or entity in the importing state that ultimately receives and uses the exported items, such as armed forces or internal security forces (Parker, 2009, p. 64).

NOTE: For the purposes of making an export licensing decision, the end user is the person or entity that is the declared final intended user of the goods at the time of the decision regarding the licence application.

Exporter or consignor: the person or entity that holds the contract with the consignee in the state of destination and/or that has the power to determine the sending of the conventional arms out of the customs territory.

Freight forwarder*: the company that organizes the shipments for the exporter in order to get the goods to the importer. This service comprises all related procedures, in some cases including customs formalities. In general, the forwarder does not move the goods directly, but contracts a carrier. In cases of trans-shipment, a freight forwarder will be responsible for carrying out the operation of trans-shipment. The forwarder may also involve other parties in these processes.

Importer or consignee: the person or entity that holds the contract with the consignor and/or is the intended recipient of the goods in the customs territory of the destination state. The consignee is the first recipient of exported materiel. The goods may remain with the consignee (who would thus be the end user) or they may be forwarded on to the end user. Several intermediate consignees may be involved in effecting delivery, and the end user is the ultimate consignee (Parker, 2009, p. 64).

Shipping agent: the representative of the carrier with whom the customs broker and the freight forwarder deal.

* Carriers, customs brokers, and freight forwarders can be involved in the export of conventional arms even if no transit obligations need to be fulfilled in one or more intermediary states. In the cases of transit and trans-shipment, they are indispensable; these transactions will often require the involvement of multiple actors in different states.

The problem is, however, that in case of an *illicit* transfer, there will not necessarily be an identifiable involved party in the transit or trans-shipment state. It seems appropriate to designate the exporter, who is the principal of the transaction and is most aware of its details, as the primary party responsible for complying with the transit or trans-shipment obligations. At the same time, the exporter should be required to involve an actor or entity that is established in the transit or trans-shipment state, and that could be made accountable as the secondary party responsible for compliance with the specific national formalities. Alternatively, the exporter and carrier could be assigned joint primary responsibility. This would most logically be a customs agent or freight forwarder, who would then have to fulfil the administrative formalities linked to the transit or trans-shipment obligations on behalf of the exporter—■ see Box 7.2.

State practice on this varies. The Netherlands has a system along the lines described above, whereby the exporter and the carrier have responsibility for complying with transit and trans-shipment obligations. In Belgium's Flemish Region, France, Germany, and the UK, transit licence applicants must be based locally; in Belgium's Flemish Region and France, applicants are further limited to agents who have general prior authorization, or who belong to a recognized professional group (Van Heuverswyn, 2013).

7.4.6.1 Which criteria should be applied?

The control measures that a state party puts in place must allow it to:

- avert transit and trans-shipment that would violate Article 6 of the Treaty;
- prevent diversion from the end user and end use authorized by the exporting state; and
- prevent any illicit or undesirable end use (in the case of an intercepted illicit transfer).

Excluding illicit transfers, the assessment should mostly offer reassurance that in the period between export and import the conventional arms are not diverted to an end user or end use that is prohibited by the ATT or not in line with the authorization of the exporting state. This is especially true if the exporting state is also a state party. However, states' own international obligations might require them to refuse transit or trans-shipment of weapons of which the export was legitimately authorized by the exporting state, for example in the case of a regional arms embargo.

States parties can opt to extend their assessment of transit and trans-shipment transactions beyond this required minimum. Many states apply the same assessment criteria to (certain) transit and trans-shipment transactions as they do to exports, and thus reassess the transfer as a whole. In this process, they may or may not consider the assessment of the exporting state. In that sense, all EU member states are required to apply EU common export criteria to all the types of transit and trans-shipment they subject to licensing. South Africa, for one, also applies its export criteria by law to all 'conveyance' (South Africa, 2002, p. 15).

Thus, a state party to the ATT could choose to apply the export assessment criteria in Article 7 (and possibly Article 11(2) concerning diversion) to transit and trans-shipment transactions. This option might especially be considered for transit and trans-shipment of conventional arms that originate in states that are not parties to the ATT, as such states are not formally required to conduct the ATT export assessment.

7.4.7 Administrative procedures and required documentation

7.4.7.1 Competent national authorities

The obligation in Article 5(5) of the Treaty to designate competent national authorities also applies to the regulation of transit and trans-shipment. In many states, the relevant authority is also the one that deals with export controls; such consolidation is recommendable, as the substantive assessments to be made are largely similar. The regulation of transit and trans-shipment could thus be handled by the ministry of foreign affairs (as in the Flemish Region of Belgium), the ministry of economy (as in Japan), or the ministry of defence (as in Albania and Mexico). However, some states might approach transit and trans-shipment as matters more related to transport or customs, and therefore designate relevant authorities in those areas. A case in point is France, where the customs authorities process transit applications while the ministry of defence processes export applications (Van Heuverswyn, 2013, p. 61).

Different authorities can also be competent for different types of transit. In Serbia, for example, the ministry of interior deals with transit by land and waterways and the civil aviation directorate deals with transit by air. In any event, designating a competent authority does not exclude other government authorities from the decision-making process; for instance, the ministry of foreign affairs may give substantive input into a licensing process led by the ministry of economy.

In some states, interagency committees serve as competent authorities, including in South Africa and the United Arab Emirates. In the latter country, the committee is chaired by the ministry of foreign affairs and includes representatives from the ministries of interior and economy, the federal customs authority, and the armed forces. Furthermore, the designated authority needs to work closely with other national authorities, such as the intelligence services and the customs authorities, as well as with international partners—► see Sections 7.4.7.3 and 7.5.

7.4.7.2 Licensing and notification procedures

If a state party opts to implement licensing and general notification obligations, it should set clear timeframes to allow sufficient time for the assessment of the proposed transit or trans-shipment.

The following minimum information should be required:

- details of the applicant, exporter, consignee, and end user;
- states of origin, shipment, and end use (and of transit or trans-shipment if the arms or items transit or are trans-shipped through other countries along the way);
- a description of the conventional arms in question, including their weight and/or quantity (reference to the tariff code can also be useful); and
- a description of the end use.

To substantiate this information, the following documentation should be required at a minimum:

- a copy of the export licence or authorization; and
- a copy of the import licence or authorization, if applicable, or a copy of the end-user certificate or both.

These details and documents are vital because information included in summary customs declarations does not always allow authorities to establish the applicability of transit controls, or to conduct the assessment of the transaction in light of the relevant criteria mentioned above.

States parties might also consider providing an enabling clause in their regulations to allow the relevant authorities to demand other necessary information and documentation, such as air waybills, manifests, or contracts.

In handling concrete cases, states parties should not hesitate, as necessary, to contact the authorities in the exporting and importing state. Such communication

can be very useful in verifying information and documentation provided in the course of a licensing or notification procedure. If the exporting state is also a state party to the ATT, it is required under Article 7(6) to comply with requests of transit or trans-shipment states parties to make available appropriate ‘information about the authorization in question’, albeit ‘subject to its national laws, practices or policies’.


There is no corresponding obligation on the importing state, but all importing, transit, trans-shipment, and exporting states parties are generally required to cooperate and exchange information in order to mitigate the risk of diversion, pursuant to their national laws and as appropriate and feasible, as stipulated in Article 11(3). Contact should be fairly easily established, as Article 5(6) of the Treaty obligates states parties to ‘designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty’.

In an authorization procedure, the outcome of the assessment should lead to either a denial or an authorization. Ideally, either of these should contain the minimum information mentioned above and should be shared with the enforcement authorities.

Although the ATT explicitly encourages states parties to equip themselves with the legal tools to reassess *export* authorizations only if they become aware of new relevant information, such reassessments are also advisable for transit and trans-shipment authorizations.

In a notification procedure, the outcome of the assessment should lead either to silent consent to the transaction or to the application of the authorization procedure, inspection of the shipment, or both.

7.4.7.3 Ad hoc controls

Ad hoc controls are rarely initiated on the basis of advance information, but rather in response to information the competent authority receives from other state agencies or international partners. In such cases, both the competent authority and the enforcement authorities must decide whether it is necessary to inspect and/or (temporarily) seize the shipment, and whether to subject the transaction to an authorization procedure or prohibition. In the course of such a procedure, involved parties should be notified and asked to provide relevant information and documentation along the lines presented above— see Section 7.4.7.2.

States parties should also consider complementing ad hoc controls with an obligation on any involved party in a transit or trans-shipment transaction to notify the competent authority if it becomes aware of the applicability of an ATT prohibition or if it detects diversion of the arms or items.

7.5 How are transit and trans-shipment controls enforced?

To ensure compliance, transit and trans-shipment control measures—and the follow-on decisions that competent authorities take—need teeth. This demands first and foremost deterrent sanctions and targeted controls.

Controls should primarily entail documentary and physical checks of transit and trans-shipment transactions at the point of exit. These are generally carried out by customs authorities, border police, or both, depending on the situation in a specific state, as they are the eyes of the decision-making authorities concerning cross-border flows of goods. 🟡 However, controls cannot be effective without the measures outlined in Sections 7.5.1–7.5.3.

7.5.1 Open communication and information exchange

The competent authorities should share information on permitted and denied transit and trans-shipment authorizations with the enforcement authorities, preferably via a shared information technology system. The enforcement authorities should share the results of conducted inspections with the competent authority. This requires good interagency cooperation and clear agreements on mutual assistance.


7.5.2 A clear focus on potentially problematic transit and trans-shipment transactions

As the volume of goods in transit—especially in transit hubs—can be enormous, whereas the timeframe for controls is generally very limited, proper risk assessment by customs authorities is vital if inspections are to focus on possibly illicit transit or trans-shipment of conventional arms without unnecessarily obstructing the free flow of goods. Effective inspections are also important in order to ensure the proper application of further ad hoc controls. This requires good cooperation between customs authorities and border police on the one hand, and the competent transit and trans-shipment control authorities, intelligence services, and international partners on the other.

In that regard, reference is often made to initiatives undertaken by the WCO concerning firearms, such as a recommendation concerning the UN Firearms Protocol that proposes a number of basic customs requirements for the import, export, and transit of firearms (WCO, 2002; 2011). In March 2015, the WCO also announced the adoption of a WCO small arms and light weapons strategy, which is to include practical steps to assist customs administrations in implementing the provisions of the ATT (WCO, 2015).⁹

7.5.3 A robust system of protective measures

For the event that states parties have a reasonable suspicion that the transit or trans-shipment of conventional arms violates Article 6, they need to have the tools in place to be able to suspend a transaction and, if necessary, to inspect and (temporarily) seize the shipment.

As laid out in Article 9, these protective measures must be ‘in accordance with relevant international law’. In that sense, concerning transit, reference is often made to the right of innocent passage under the UN Convention on the Law of the Sea (UNCLOS), and to the (Chicago) Convention on International Civil Aviation. The fact that measures must be in accordance with the right of innocent passage should, however, not be understood as prohibiting states parties from establishing *any* control measures, or from providing enforcement authorities with tools to block suspicious transit and trans-shipment transactions (UN, 1982; ICAO, 1944;  see Box 7.3).

7.5.3.1 Expertise and training

Effective interagency cooperation presupposes a thorough mutual knowledge of the applicable rules, the scope of controls, possible measures, and current administrative procedures. Successful controls rely heavily on a common understanding of concepts used in national legislation and sanctions regimes, but also of more practical matters such as acceptable documentation.

The training of officials involved in transit and trans-shipment controls is therefore key. Outreach to actors involved in the transit and trans-shipment process, such as customs agents and freight forwarders, is equally important, as they will often be the actors who fulfil the transit or trans-shipment obligations in practice. Both national obligations and the export regime as a whole should be addressed in this process.

Box 7.3 The right of innocent passage and its relationship to ATT Articles 6 and 9

The right of innocent passage is a legal concept according to which a coastal state cannot hamper the passage of foreign (merchant) ships through its territorial sea as long as the passage ‘is not prejudicial to the peace, good order or security of the coastal State’ and ‘take[s] place in conformity with this Convention and with other rules of international law’ (UN, 1982, art. 19(1)).¹⁰ While Articles 17 to 26 of UNCLOS codify the right of innocent passage, freedom of navigation has been considered one of the core principles of the international law of the sea since the 17th century. The right of innocent passage is firmly established as a rule of customary international law, meaning that it applies to all states, not only states parties to UNCLOS.

More specifically, the right of innocent passage means that coastal states are not permitted to:

- (a) impose requirements on foreign ships that have the practical effect of denying or impairing the right of innocent passage; or
- (b) discriminate in form or in fact against the ships of any state or against ships carrying cargoes to, from, or on behalf of any state (UN, 1982, art. 24).

Activities to be considered ‘prejudicial to the peace, good order or security of the coastal State’ are listed in Article 19(2) of UNCLOS. These include ‘any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations’ and the general category ‘any other activity not having a direct bearing on passage’ (UN, 1982, arts. 19(2)(a), 19(2)(l)).

Relationship to Articles 6 and 9 of the ATT

In the context of the ATT, the right of innocent passage raises particular issues for transit control measures, such as the extent to which states parties may adopt measures ‘in accordance with relevant international law’—as spelled out in Article 9 of the ATT—to prevent violations of Article 6.

Transit of cargo in violation of the international obligations outlined in Article 6 of the ATT can hardly be deemed to enjoy a right of innocent passage, for two main reasons. First, the three paragraphs of Article 6 clearly require states parties to prevent transfers that contravene their international obligations.¹¹ Second, there is a general requirement that passage must take place in conformity with international law to be recognized as ‘innocent’.¹²

Thus, the right of innocent passage—which is implicitly evoked in Article 9 of the ATT—should not be interpreted as blocking states parties from enforcing any of the prohibitions in Article 6 of the ATT with regard to transit through their territorial seas. Rather, states parties should adapt their transit controls so that they do not amount to undue interference with genuine innocent passage. In that respect, all transit controls in the territorial sea should focus on ad hoc controls and inspections if there is a reasonable suspicion of an illicit transfer. In contrast, systematic licensing obligations could be considered undue interference. In order to apply ad hoc controls, the obligations of the actors involved in the transit operation and the rights of the competent authorities must be duly described and published.

Over and above this interpretation of the Treaty, two specific sets of considerations support the view that the right of innocent passage does not preclude transit controls in a state’s territorial sea. These concern transfers that either violate Chapter VII measures, such as UN arms embargoes, or contribute to violations of peremptory norms of international law, as examined below.

Violations of UN Security Council arms embargoes and other Chapter VII measures

Arms embargoes and other Chapter VII measures adopted by the UN Security Council put in place a specific legal regime that, in principle, takes precedence over states' other general international obligations (UN, 1945, arts. 25, 103). That regime could thus take precedence over the right of innocent passage. Nevertheless, a number of such resolutions reflect the position that a certain degree of transit control to prevent embargo violations does not in principle contradict the right of innocent passage (and state practice supports this).

In its resolutions instituting arms embargoes, the UN Security Council generally urges member states to conduct inspections, including transit controls. For example, Resolution 2216 (2015) on Yemen calls on member states to inspect cargo en route to Yemen in their territory—thus including territorial waters—if they have reasonable grounds to believe that the cargo contains embargoed items (UNSC, 2015, para. 15). The resolution calls for consistency with the law of the sea, but on inspection the general wording reflects an understanding that transit controls in themselves do not necessarily conflict with the law of the sea. More explicitly, Resolution 2182 (2014) authorizes member states to inspect vessels going to or from Somalia in Somali territorial waters if they have reasonable grounds to believe the vessel is carrying weapons in violation of the arms embargo (UNSC, 2014b, para. 15). The resolution calls on states 'to avoid undue delay to, or undue interference with, the exercise of the right of innocent passage or freedom of navigation', implicitly recognizing that a qualified inspection regime does not conflict with this right as such (UNSC, 2014b, para. 16).

Regional arms embargoes also seem to reflect such state practice. For example, EU Council Decision 2011/137/CFSP concerning Libya requires EU member states to, among other things, conduct inspections if they reasonably suspect that a vessel is carrying goods in violation of the embargo (EU, 2011, art. 4(1)).¹³ The EU Council Decision 2012/739/CFSP concerning Syria specifically calls on member states to conduct such inspections 'in their territorial sea' (EU, 2012a, art. 23(1)).

Debate persists as to the need for consent of the vessel's flag state to the inspections. Some embargo regimes, such as the aforementioned Somalia resolution, explicitly require member states to make good-faith efforts to seek this consent prior to inspections (UNSC, 2014b, para. 16).

Violations of peremptory norms of international law

Even clearer is that the right of innocent passage cannot be interpreted as obstructing effective transit controls in cases of transfers prohibited by Article 6(3) of the ATT—that is, if a state party has knowledge that weapons will be used in core international crimes, such as genocide, crimes against humanity, or war crimes. The prohibitions on these crimes constitute peremptory norms of international law and entail obligations that are the concern of all states; all states owe these obligations *erga omnes*—to the international community as a whole.

Thus, states are obligated not only to respect these norms themselves, but also to act in order to ensure they are respected by other states. This entails cooperating 'to bring to an end through lawful means any serious breach' of the norms (UNGA, 2001c, art. 41(1)). Concretely, in light of Article 6(3) of the ATT, a state is therefore obligated to act when it has knowledge that weapons in transit will be used in the commission of genocide, crimes against humanity, or war crimes, and also when the transit occurs in its territorial sea.

The same applies to the peremptory norms of international law embodied in the UN Charter, such as the prohibition on aggression. States should act to prevent aggression, even when it is not directed at themselves. In that sense, the UNCLOS exception to innocent passage regarding ships engaging in violations of the UN Charter should not be read as relating exclusively to violations directed at the coastal state itself.

7.5.3.2 Checklist

An effective regime to regulate the transit and trans-shipment of conventional weapons includes, at a minimum:

- explicit definitions of transit and trans-shipment;
- control measures that are feasible in the national context and in accordance with international law (options include systematic licence requirements, notification requirements, and ad hoc controls);
- a clear scope of conventional weapons to which the control measures apply;
- allocation of responsibility for compliance with the control measures among the involved parties;
- clear assessment criteria;
- efficient administrative procedures entailing, among other things, designating competent authorities, setting timeframes, and outlining information requirements; and
- a robust enforcement regime with deterrent sanctions, efficient interagency cooperation and information exchange, risk assessment procedures, the right to suspend transactions and inspect shipments, and sufficient training and outreach.

Further resources

ATT Implementation Toolkit (UNODA)

Best Practice Guide on UN Security Council Resolution 1540 Export Controls and Transshipment (OSCE)

‘Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport’ (Wassenaar Arrangement)

‘Elements for Controlling Transportation of Conventional Arms between Third Countries’ (Wassenaar Arrangement)

ISACS: *Border Controls and Law Enforcement Cooperation*

‘Rough Seas: Maritime Transport and Arms Shipments’ (International Peace Information Service)

‘Transit and Trans-shipment Controls in an Arms Trade Treaty’ (SIPRI)

UN Security Council Resolution 1540 (2004) is a useful source for transit and trans-shipment controls even though it does not deal with conventional weapons.

The following WCO instruments are useful in the context of enforcement of transit and trans-shipment controls—and strategic trade control in general:

- the recommendation on the insertion in national statistical nomenclatures of a subheading concerning firearms;

- the recommendations concerning the UN Firearms Protocol;
- the Strategic Trade Control Enforcement (STCE) Implementation Guide; and
- the Glossary of International Customs Terms.

Acknowledgements

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SECTION 8

Controlling brokers and brokering



8.1 Introduction

Brokering of conventional arms is specifically addressed in Article 10 of the ATT. In accordance with Article 2, brokering activities form part of the collective term *transfer* and are thus subject to the prohibitions set out in Article 6.

8.2 What is brokering?

The term ‘brokering’ is not defined in the Treaty and there is no internationally agreed definition of ‘brokering’ or of ‘broker’. An **arms broker** is generally understood to be a ‘middleman’ or intermediary who arranges or negotiates contracts between third parties for the sale or supply of arms and other military items; therefore, **brokering** is the act of arranging or negotiating those deals (UKBIS, 2014, p. 12). Parties to an arms deal include buyers, sellers, transporters, financiers, and insurers (Parker, 2016, p. 92).

NOTE: While the terms ‘broker’ and ‘dealer’ may not have distinct definitions, they are usually differentiated in the small arms field. ‘Dealer’ is used in a domestic context—and in national law—to refer to a person who trades in or distributes firearms within a state or who is a retailer selling weapons on the domestic market. In contrast, a ‘broker’ may arrange the sale of weapons, their transport, or financing either domestically or internationally, but that broker does not necessarily take physical possession of the arms (Parker, 2016, p. 92).

The closest thing to an accepted definition can be found in the final report of the UN Group of Governmental Experts established to consider the issue of illicit brokering in small arms and light weapons, which describes a ‘broker’ as:

a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise (UNGA, 2007b, para. 8).

The GGE report specifically notes that a broker could:

- (a) serve as a finder of business opportunities to one or more parties;
- (b) put relevant parties in contact with each other;

- (c) assist parties in proposing, arranging or facilitating agreements or possible contracts between them;
- (d) assist parties in obtaining the necessary documentation;
- (e) assist parties in arranging the necessary payments (UNGA, 2007b, para. 9).

These may be considered ‘primary’ brokering activities. The report also lists activities that are closely associated with brokering but ‘that do not necessarily in themselves constitute brokering’, although they might be undertaken by brokers as elements of a deal. These ‘ancillary’ or ‘secondary’ activities do not form part of the main contract negotiation but nevertheless contribute to the eventual supply of the goods. They can include ‘acting as dealers or agents [in small arms and light weapons], providing for technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services’ (UNGA, 2007b, para. 10). Other examples would include obtaining necessary documentation or authorizations, such as export, import, or transit licences or clearances.

► Box 8.1 discusses the benefits of a broad definition of ‘broker’ in national legislation.

Guidance on the scope of the term and the nature of activities involved in brokering is also available in other instruments, such as the EU Council Common Position on brokering, which defines brokering activities as:

- activities of persons and entities:
 - negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country; or

Box 8.1 Why have a broad definition of ‘broker’?

A long chain of people may be involved in ‘secondary’ activities or services relating to an arms deal. They may liaise with the ‘main’ broker or they may interact directly with the buyer or the seller. The longer the chain, the more remote these individuals are from the core transaction.

For example, a freight forwarder may be contracted by one of the principals—the seller, buyer, or broker—to arrange delivery of the arms; the forwarder then contracts a shipping company to transport them and arrange insurance for the cargo. Meanwhile, the insurance company sells on the risk insured through re-insurance contracts. Under a broad definition of ‘brokering’, which includes all ancillary activities, all these contracted parties may be considered ‘brokers’, even though none of them was actually involved in arranging or negotiating the sale of the arms.

Any consideration of the regulation of arms brokering or of arms brokers must take into consideration the various levels of engagement with a particular transaction that different parties may have.

Source: UKBIS (2014, p. 12)

- who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country (EU, 2003, art. 2(3)).

In addition, participating states of the Wassenaar Arrangement define brokering as:

activities of negotiating or arranging contracts, selling, trading or arranging the transfer of arms and related military equipment controlled by Wassenaar Participating States from one third country to another third country [. . .]. Participating States may also define brokering activities to include cases where the arms and military equipment are exported from their own territory (WA, 2003, para. 1).

The EU Council Common Position suggests that while, typically, the arms being transferred are not located in the same state as the broker, member states may define brokering activities to cover situations in which they are.

8.3 What are the options for regulating brokers and brokering?

The ATT suggests that brokers may be required to register or to obtain written authorization before engaging in brokering. Other measures proposed in other instruments include:

- requiring licensing of brokering (UNGA, 2001a, art. 15(1)(b); 2001b, para. II.14);
- establishing appropriate penalties for all illicit brokering activities performed within the state's jurisdiction and control (UNGA, 2001b, para. II.14);
- requiring disclosure on import and export licences or authorizations, or on accompanying documents, of the names and locations of brokers involved in the transaction (UNGA, 2001a, art. 15(1)(c));
- including information on brokers and brokering in exchanges of information (art. 15(2)); and
- keeping records regarding brokers and brokering (art. 15(2)).


► All these measures are discussed in Sections 8.3.1–8.3.6.

8.3.1 Registration

Registration is a process whereby individuals or companies that wish to engage in brokering must apply to the relevant authority, possibly fulfil certain criteria, and be recorded or 'registered' as having been granted permission to undertake

brokering activities. Some states that regulate brokering have adopted a two-stage licensing process whereby only a person or an entity registered as a broker can apply for a licence to conduct a specific brokering activity. In such systems pre-licensing registration is a prerequisite to obtaining a licence, but it does not guarantee that a licence to conduct a particular brokering activity will be granted.

NOTE: ‘Registration of brokers can be a pre-screening device and the registration records can assist in enforcement of controls nationally and in the exchange of information internationally’ (UNODC, 2011, p. 74).

While the licensing process gives governments an opportunity to assess whether to authorize specific brokering activities— see Section 8.3.2.2—registration allows governments to judge the reliability of the persons and entities that wish to engage in arms brokering in advance. Moreover, it permits governments to reject those that are unsuitable through pre-qualification testing, involving, for instance, ‘a mandatory requirement to attend certain training courses, or an assessment of the broker’s “competence” against a range of relevant criteria (a so-called “fit and proper person” test)’ (UKBIS, 2014, para. 25).

The types of criteria that may be considered in determining whether a person should be registered as a broker could include:

- the financial position of the applicant;
- whether the applicant has a criminal record; and,
- if the applicant was previously registered as a broker, whether he or she complied with the conditions of the previous registration, or if it was cancelled for any reason.

Registration also enables governments to monitor registered brokers and helps prevent convicted brokers from engaging in future brokering activities (O’Farrell, 2013, p. 20). It also enables the government to keep brokers informed of amendments to regulations through information dissemination (such as industry updates).

8.3.1.1 Register

Registration is generally accompanied by the establishment of a register of arms brokers or some kind of record. The register serves as a list of ‘authorized’ or

‘approved’ brokers. Establishing a register, which implies the centralization of relevant information, allows for better intra- and inter-governmental cooperation (O’Farrell, 2013, p. 21). Registers that are publicly available increase transparency since the names of all persons permitted to conduct brokering activities can be accessed. However, making the names publicly available may raise concerns about commercial sensitivity and confidentiality (UKBIS, 2014, para. 21).

The register should be maintained by the national authority with responsibility for registering brokers and should contain the following information:

- the name and contact details of every registered broker;
- the dates each broker’s registration was granted and is due to expire (if it is not granted indefinitely);
- any conditions that apply to each broker’s registration; and
- details of each licence or authorization to conduct brokering activities granted to each registered broker.

8.3.1.2 Duration

Generally, registration is valid for a few years and is renewable. In some states, registration is valid indefinitely, although the state may impose a requirement that it be notified of any changes in the information pertinent to the broker’s registration.

8.3.1.3 Cancellation, suspension, and revocation

The legislation or regulations establishing the register and its operations should give the competent authority the power to cancel, suspend, or revoke a broker’s registration in certain circumstances, such as:

- if the registered broker fails to comply with conditions associated with the registration;
- if the registered broker is convicted of a criminal offence or ceases to be a ‘fit and proper person’ for some other reason; or
- if the broker provided false or misleading information to obtain the registration.

In the event a broker’s registration is cancelled, there should be a provision to ensure that any licence or authorization granted to the broker to conduct brokering activities is automatically revoked. States could also consider including a requirement in the relevant legislation that the broker must forward all business records to the competent authority.

8.3.2 Licensing and authorization

Each brokering activity necessary to arrange a transfer of arms should be subject to a licence or written authorization issued by the competent authority of the state in whose jurisdiction the brokering activities take place—► see Box 8.2. In practice, licensing systems for brokering activities are usually integrated into the general legislative framework governing the transfers of arms and military equipment (Anders et al., 2006, p. 67).

At the centre of a licensing system for brokering activities is legislation or policy on:

- the activities or services that are subject to control, that is, ones that are legally defined as ‘brokering activities’ (for example, contract mediation, arranging transport related to arms transfers, or providing financing for such transfers—► see Section 8.2);
- the types of deals whose brokering requires a licence (for example, brokering related to imports or exports, or to the transfer of weapons between two other countries);
- the actors and the location of their activities that are subject to the controls (for example, only persons operating on the state’s territory, or also nationals operating overseas, under extraterritorial jurisdiction);

Box 8.2 Jurisdiction over brokers and brokering activities

Brokering activities may be conducted in the broker’s state of nationality, residence, or registration, but they may also be conducted in another state. The arms or items that are subject to the brokering activity do not necessarily pass through the territory of the state where the brokering activity is conducted, nor does the broker necessarily take ownership or physical possession of the arms or items (UNODC, 2011, p. 78).

Accordingly, a state party may not only wish to exercise jurisdiction over individuals and entities that conduct brokering activities from its own territory, but it may also seek to have an extraterritorial dimension to its brokering controls. That is, it may decide to extend the controls to cover its nationals, permanent residents, and companies when they conduct arms brokering activities abroad (UNODC, 2011, p. 78). Indeed, according to a brokering study conducted by the UN Institute for Disarmament Research, ‘given the international nature of arms brokering—which commonly spans many countries—at least some degree of extraterritoriality becomes essential for a meaningful functioning of national controls’ (Anders et al., 2006, p. 74).

In the United States, for example, every US national—wherever he or she is located—is required to register with the Directorate of Defense Trade Controls before engaging in brokering activities, even if the brokering activities are carried out abroad and regardless of whether the weapons were manufactured in the United States (US, n.d.a, ss. 129.2–3). In this way, the United States has extraterritorial jurisdiction over nationals who are conducting brokering activities abroad.

- the types of goods whose brokering requires a licence; and
- any exemptions from the requirement to obtain a brokering licence (Anders et al., 2006, p. 67).

In addition, a licensing system for brokering activities needs to establish the process through which brokering licence applications can be assessed and ultimately granted or denied. The system thus should include the following elements:

- the types of agents eligible to apply for brokering licences (natural or legal persons);
- the national competent authority responsible for assessing licence applications;
- the information that must be provided during the application process;
- the criteria used to assess brokering licence applications; and
- the types of licences that can be granted (Anders et al., 2006, p. 68).

Some states have established two types of licences for brokering activities: individual licences and open licences. Individual licences are issued for single transfers to a specified recipient; in contrast, open licences allow a range of activities, such as the trading of specific goods between specified countries (Anders et al., 2006, p. 84).

8.3.2.1 Applications for a licence or authorization for brokering activities

Applications for a licence or authorization to conduct brokering activities should contain as much of the information and documentation listed in Box 3.1 as is available at the time of application—► see Section 3. At a minimum, however, applications should contain:

- the name and contact details of the person or company applying for the licence or authorization (the broker);
- details of the applicant's registration as a broker;
- the state of import;
- the import authorization; and
- the name and contact details of the end user (UNCASA, 2014a, s. 10.5).

8.3.2.2 Assessment of applications to conduct brokering activities

Step 1: As discussed in Section 5, Article 6 of the ATT, entitled 'Prohibitions', sets out the obligation on each state party not to authorize any transfer of conventional arms, related ammunition/munitions, or parts and components covered by

the Treaty in a set of defined circumstances—▶ see Section 5.4. The prohibitions in Article 6 are absolute, allowing for no exceptions, and they also cover brokering activities.

When considering an application for a licence or authorization to conduct brokering activities, the competent authority must determine whether any of the circumstances outlined in Section 5.4 are present. If so, the competent authority must not authorize the brokering activity for which authorization is sought.

Step 2: If the circumstances described in Article 6 of the ATT are not present, and the licence or authorization is not refused on these grounds, the competent authority should consider conducting a risk assessment of the proposed brokering activity along the same lines as the ‘export assessment’ delineated in Articles 7 and 11(2) of the Treaty, before granting or refusing the authorization.

NOTE: Under Article 7, states parties are formally required to conduct a risk assessment only of exports, not of brokering activities. Yet, given that the activities of a broker may result in an export of conventional arms, ammunition/munitions, or parts and components, it would be prudent for a state to consider the potential risks involved in the transaction prior to granting a licence or authorization to conduct the activity.

A risk assessment of a proposed brokering activity should follow the same process as an export assessment—▶ see Section 5.5.

8.3.2.3 Denial of applications to conduct brokering activities

The competent authority should consider denying an application for a licence or authorization to conduct a brokering activity if:

- the information required as part of the application has not been provided;
- any of the circumstances covered by the prohibitions in Article 6 of the ATT are present; or
- an assessment finds an overriding risk of diversion or any of the negative consequences described—▶ see Section 5.5.3.2.


As noted above, however, denial of a brokering licence on these ground is not a requirement of the ATT.

8.3.2.4 Form and content of brokering authorizations

A licence or authorization to conduct brokering activities should contain as much of the relevant information and documentation as is available at the time of application. ISACS recommends that, at a minimum, applications should contain:

- a) a unique brokering authorization number;
- b) the identity of the competent national authority issuing the authorization, which can include its official stamp;
- c) the signature, printed name, and position of the designated official of the competent national authority issuing the authorization;
- d) the name and contact details of the recipient of the authorization (the broker);
- e) the date of issuance;
- f) the date of expiration;
- g) the country of import;
- h) the name and contact details of the end user (authorized by the importing state);
- i) the end use of the items (authorized by the importing state); and
- j) a description of the consignment, including:
 - 1) the quantity;
 - 2) the make; and
 - 3) the model or type (UNCASA, 2014a, s. 10.7).

8.3.3 Criminal offences

A comprehensive national control system is enforced by domestic criminal law penalties for violations of the transfer controls in place —  see Section 3. In addition to the general offences listed in this Guide, specific offences with respect to brokering could include:

- engaging or attempting to engage in brokering activities without:
 - being a registered broker; or
 - holding a valid licence or authorization for the brokering activity;
- breaching or attempting to breach a condition of:
 - registration as a broker; or
 - a licence or authorization to conduct a brokering activity;
- failing to provide relevant information or providing false information to obtain a licence;

- failing to notify competent authorities of changes in the information based on which a broker was registered; and
- failing to keep brokering records.

Depending on the nature of the offence, administrative or criminal penalties should apply.

8.3.4 Disclosure of brokers' identification on key documentation

Disclosure of the names and locations of brokers involved in a transaction on import and export licences or authorizations, or accompanying documents, ensures that information pertaining to the transaction is comprehensive and transparent. This, in turn, assists government agencies involved in the transfer in verifying the legitimacy of the transaction, which helps to prevent diversion.

8.3.5 Which weapons should be controlled?

In principle, the ATT requires brokering regulations on conventional arms only if they are covered by Article 2. Yet since Article 5(3) encourages states parties to apply the provisions of the Treaty to the broadest range of conventional weapons, brokering regulations should also cover ammunition/munitions and parts and components, which states parties might also be obligated to include in their controls based on other international obligations, especially concerning small arms and light weapon.¹

In addition, Article 6 requires states parties not to authorize transfers—including brokering—of conventional arms, ammunition/munitions, or parts and components if the circumstances outlined in Article 6 exist—for example, if the importing country or end user is under a Security Council arms embargo. At a minimum, states parties must thus ensure that their national control systems give them the ability to prevent the brokering of ammunition/munitions and parts and components in these circumstances.

8.3.6 Competent authorities

Article 5(5) of the ATT, which obligates each state party to designate competent national authorities, also applies to the regulation of brokering. In many states, it is the same authority that deals with export controls; this approach is particularly encouraged if the state party applies the same assessment criteria to exports and

brokering activities. If responsibility for assessing brokering licence applications resides with a different agency, there should be close collaboration and information sharing between the different competent authorities to ensure consistency of decision-making.

8.4 How are brokering controls enforced?

Enforcing brokering controls requires the establishment of a mechanism that facilitates knowledge and awareness of relevant laws, regulations, and administrative procedures, and that also promotes compliance with brokering controls.

It is important to make applicable laws, regulations, and administrative procedures publicly available and to keep individuals and entities that are engaged in brokering abreast of changes and amendments to the brokering controls, as well as international developments such as arms embargoes, international treaties, and regional agreements that may have an impact on their operations. To promote awareness, states can support outreach to industry through information dissemination, regular industry updates, and training. Information and guidance provided by the competent authority should be as accessible, accurate, and unambiguous as possible to avoid misunderstandings and inadvertent non-compliance.

NOTE: Careful scrutiny of entities that are engaged in brokering activities during the registration phase can improve compliance by ensuring that only ‘responsible’ persons are operating as brokers, thus reducing the need for enforcement action such as prosecution for violations of brokering controls.

States parties also need to ensure they have the powers under relevant national legislation to investigate and prosecute violations of brokering controls. They should have the power to inspect brokers’ premises and records to ensure brokers are complying with national brokering controls; under criminal law, appropriate penalties should serve to deter and punish violations.

NOTE: If a state party establishes extraterritorial jurisdiction over brokering activities conducted overseas, it will only be able to arrest and try—and thus enforce its jurisdiction over—a national who violates its brokering

laws while overseas when that person is in the state's territory, either through extradition or otherwise.

States parties will also need to ensure the relevant competent authority has the capacity and resources to enforce these controls; the training of officials involved in administering brokering controls is therefore key.

Further resources

Arms Brokering Controls: How Are They Implemented in the EU? (Groupe de recherche et d'information sur la paix et la sécurité)

ATT Implementation Toolkit (UNODA)

Best Practice in the Regulation of Arms Brokering (Saferworld)

Developing a Mechanism to Prevent Illicit Brokering in Small Arms and Light Weapons: Scope and Implications (UN Institute for Disarmament Research)

Elements for Effective Legislation on Arms Brokering (Wassenaar Arrangement)

ISACS: National Controls over the International Transfer of Small Arms and Light Weapons: Section 10 on brokering controls

Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition: Chapter XVI on brokers and brokering activities (UN Office on Drugs and Crime)

Model Law to assist Pacific states to implement the ATT: Part V on brokers and brokering activities (New Zealand and Small Arms Survey)

A Pre-Licensing Register of Arms Brokers: Call for Evidence (UK Department for Business Innovation and Skills)

Acknowledgements

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SECTION 9

Diversion



9.1 Introduction

Article 11 of the ATT includes a series of commitments aimed at preventing, addressing, and promoting awareness of the diversion of conventional arms. Under this provision, all states parties involved in a transfer have obligations to prevent and address the diversion of arms that are being transferred. The ATT does not obligate states parties to prevent and address the diversion of ammunition/munitions, or parts and components, but states parties may choose to do so. Cooperation and information sharing among states involved in a transfer are central elements of this provision, highlighting the reality that addressing the diversion of conventional arms is not something that states can achieve alone.

9.2 What is diversion?

The term ‘diversion’ is not defined in the Treaty, nor is there an agreed international legal definition. The term derives from the word ‘divert’, which means to cause to change course, take a different route, or reallocate to a different purpose (Oxford Dictionaries, n.d.a). The term has been generally defined as follows:

arms diversion is the process by which holdings or transfers of arms that are authorised by relevant states (and are subject to their legal controls) are delivered to unauthorised end-users, or are put to unauthorised uses by authorised end-users (Greene and Kirkham, 2009, p. 9).

In the specific context of arms transfers, diversion has been defined as:


the transfer of controlled items authorized for export to one end user, but delivered to an unauthorized end user or used by the authorized end user in unauthorized ways (Schroeder, 2008, p. 114).


Both definitions cover unauthorized *possession* as well as unauthorized *use*; this dual concept of diversion is reflected in preambular paragraph 3 of the ATT, which notes the need to prevent the diversion of conventional arms ‘to the illicit market, or for unauthorized end use and end users’. The operative word in both definitions is ‘unauthorized’, which underscores that diversion is not simply the movement of arms from the legal to the illicit sphere, but rather the unauthorized change in possession or use. Thus, if a state deliberately authorizes the delivery

of arms to an illicit end user, such as an insurgent group operating in another country, the transfer would not constitute ‘diversion’.

In this sense, diversion is a form of illicit transfer that differs from other such types, especially with respect to control strategies: ‘Preventing diversion requires a very different set of strategies and tools from other forms of illicit transfer, such as authorized but covert state-sponsored arms transfers to terrorists and insurgents’ (Schroeder, 2008, p. 114). This is an important consideration with respect to the interpretation and implementation of the obligations in Article 11, notably the obligations to take measures to prevent and address diversion.

Diversion can occur at any point in the life of a weapon, from the time of its manufacture, during the transfer or supply chain (regardless of whether the weapon is sold internationally or domestically), through to its delivery to the authorized end user, and, arguably, years thereafter.

The obligations in the ATT relate to preventing and addressing the diversion of ‘transferred conventional arms’. Some of the obligations in Article 11 concern preventing the diversion of conventional arms during their transfer—so-called ‘transfer diversion’. For example, Article 11(2) requires exporting states to prevent the ‘diversion of the transfer of conventional arms’ by assessing the risk of diversion of the export, which states parties should do as part of an export assessment— see Section 5.5.

Other provisions relate to preventing the diversion of ‘transferred arms’ and do not limit the obligation to prevent diversion during transfer, that is, between the moment of departure from the exporting state to the point of delivery in the importing state or to the end user. Arguably, therefore, the obligation to prevent diversion extends to preventing the diversion of arms that have been imported into a country even after they have been delivered and throughout the ‘life’ of those arms. This includes diversion from stockpiles and holdings through theft or loss—so-called ‘stockpile diversion’, defined as ‘the unauthorized transfer of arms and ammunition from the stocks of lawful users to the illicit market’ (Bevan, 2008, p. 43— see Section 9.2.2).

Sections 9.2.1 and 9.2.2 explore the characteristics of and the root causes of ‘transfer diversion’ and ‘stockpile diversion’ from national arsenals, respectively. The aim is to give the broadest coverage possible in an effort to assist those who wish to address diversion in all its forms as part of their implementation of Article 11.

► See Section 9.5 for details on measures that can be taken to limit or prevent the different forms of diversion.

9.2.1 Transfer diversion

Diversion can occur at most points in the transfer chain: in the country of origin (point of embarkation); en route to the intended end user (in transit); at the time of or shortly after delivery to the declared recipient (point of delivery); and sometime after importation (post-delivery) (Schroeder, 2008, p. 115).

Most diversions are planned and executed across several stages of the transfer chain. The measures necessary to divert weapons while they are in transit are often taken long before the ship or aircraft carrying the weapons leaves the port or airport of origin.

Most in-transit and point-of-delivery diversions involve transportation by air or sea. Aircraft and ships that are used in major diversions are typically registered under flags of convenience (whereby they are registered in a state other than that of the vessel's owners, often as a means of reducing operating costs or avoiding regulations of the owner's country); they tend to be owned by offshore shell companies that frequently change their names and shift their locations and assets from country to country (Schroeder, 2008, p. 115). A classic example is the case of the *Otterloo*, a ship used to divert Nicaraguan assault rifles to Colombia in November 2001. The *Otterloo* was the only vessel officially owned by Trafalgar Maritime Inc., a front company established in Panama in July 2001, several months prior to the diversion. Once the rifles were delivered to Colombia, the *Otterloo* sailed to Panama; five months later, the ship was sold by Trafalgar, which was then quickly dissolved (Schroeder, 2008, p. 116).

Another key feature of transfer diversion is the use—or misuse—of documentation. Traffickers may forge transfer documents—such as end-user certificates, bills of lading, and flight plans—to include false information about the shipment or the parties involved. Alternatively, diversion may involve appropriate, yet corrupt, government officials who sign authentic transfer documents (Schroeder, 2008, p. 118).

9.2.2 National stockpile diversion¹

Arms and ammunition may be diverted from a stockpile under the control of a state's defence and security forces (termed 'the national stockpile').

Weapons and ammunition are not usually held permanently in any one place. In the national stockpile, they may be relocated from one military base to another in response to patterns of deployment, changing demand, and the need for repairs or alterations. Effective physical security therefore needs to apply to arms and ammunition everywhere and at every stage.

A typology of national stockpile diversion follows in Sections 9.2.2.1–9.2.2.2.

9.2.2.1 Low-order national stockpile diversion

Low-order diversion of the national stockpile involves small-scale theft of arms and ammunition by individuals—including military and security personnel—and small groups of people. It is usually linked to the local rather than the international illicit market and can involve criminal gangs, for example.

NOTE: Small arms, light weapons, and their ammunition are particularly susceptible to low-order diversion because they are widely distributed throughout national stockpiles, whereas larger conventional arms are rarely deployed to smaller units of a country's security forces.

Weak oversight and poor physical security measures facilitate several forms of diversion, including theft by personnel (intra-security force diversion) and external actors (extra-security force diversion).

Lower-order, **intra-security force diversion** involves the theft of arms and ammunition by military, police, or paramilitary personnel, and can take two forms:

- **theft from storage sites:** This form of diversion may be carried out by personnel with regular access to stocks, such as those who are responsible for guarding or distributing weapons. Certain facilities or depots may be especially susceptible to this type of diversion, including small facilities, such as police stations, and those where oversight of personnel is inadequate and inventory management is lax.
- **diversion of individual stocks:** This type of theft occurs when security personnel who have been issued their own weapons and ammunition sell it on the illicit market. Such conduct is more likely to occur if a state allows personnel to keep their individual arms and ammunition with them at all times (even when they are not on duty). If a state issues arms and ammunition only in time of need, there are fewer opportunities for such theft.

This type of diversion is generally motivated by personal economic gain, especially if security force personnel are paid poorly or irregularly.

Low-order, **extra-security force diversion** involves theft from national stockpiles by non-state actors, who may target weapons storage facilities or the personal weapons held by security personnel, exploiting poor stockpile management practices. This type of diversion occurs in one of two ways:

- via unauthorized entry: Poorly guarded armouries are susceptible to unauthorized access. Smaller stockpiles seem to be the most vulnerable to non-violent theft by unauthorized personnel, since larger stockpiles—which are generally held in barracks and on larger campuses—tend to have more layers of security to bypass.
- by force: Non-state actors may capture arms and ammunition from state security forces, whether on the battlefield or by storming military facilities. Non-state armed groups that are otherwise poorly equipped can often sustain their engagement in conflicts by regularly capturing materiel. Such diversion may be large-scale or small-scale (involving only one or more soldiers carrying weapons and ammunition).

9.2.2.2 High-order national stockpile diversion

The theft of large quantities of arms and ammunition—‘sometimes running into many hundreds of tonnes of weaponry’ (Bevan, 2008, p. 56)—constitutes high-order stockpile diversion. As with low-order diversion, poor stockpile management practices are a contributing factor, but other factors include weak state structures, a lack of accountability within political and military administrations, and associated loopholes in transfer regulations. Such circumstances present opportunities for weapons diversion, particularly for high-level individuals.

Interacting factors that appear to be central in facilitating high-order diversion include:

- political instability and economic downturn, which cause all levels of security force personnel (and indeed society at large) to look for short-term opportunities to make money or obtain other benefits;
- illicit activity that emerges across a country as state institutions weaken, increasing illicit demand for military materiel by rogue actors such as organized criminals or non-state armed groups; and

- weakened security force oversight and accounting mechanisms, which can hamper the prevention or identification of diversion.

The greatest danger of high-order diversion arises when those with responsibility for weaponry are able to misuse their authority to divert arms and ammunition under their control, while continuing to be supplied with military equipment from the national stockpile.

High-order diversion is particularly likely to happen as a result of the following circumstances:

- conspiracy among officials: This type of diversion may occur when a state's stockpile management system becomes non-transparent, and senior individuals—and sometimes entire departments—have unregulated control over stockpiles, including the management and transfer of weapons and ammunition. This situation may arise as a consequence of administrative breakdown following major political upheaval (for example, in Ukraine and other Eastern European states in the early 1990s) or loss of control over large parts of the security sector (such as in Russian Federation in the 1990s). In such situations high-order diversion involves the wholesale redirection of large volumes of military equipment out of the state's national stockpiles and onto the illicit market.
- military collapse: The most favourable conditions for the large-scale diversion of arms and ammunition come about in the wake of a military collapse, which may occur as a consequence of the collapse of the state itself (as in the case of Liberia and Somalia in the 1990s); as a result of the military's brief loss of control of national stockpiles (as in Albania in 1997); or when armed forces disband yet retain their weapons (as in Iraq in 2003). In such circumstances, state forces lose control over stockpiles or disband, and weapons held by these forces are easily dispersed throughout society in the ensuing chaos.

9.3 Options for preventing and addressing diversion

Sections 9.2.1 and 9.2.2 illustrate that arms and ammunition can be diverted from a wide range of sources, using various methods and involving many different actors. Accordingly, measures to prevent and address diversion are also many and varied. As it is beyond the scope of this Guide to provide a comprehensive overview of every measure that a state party may employ to prevent and address

diversion, this section presents an overview of some of the general principles to be applied so as to avoid or at least reduce the likelihood of diversion, as well as some specific considerations for addressing the problem.

9.3.1 General principles for preventing and addressing diversion

The best way for a state to prevent the diversion of arms and ammunition is to ensure it has an effective national control system in place that is comprehensive in scope and covers *all* arms-related activities, not just those pertaining to international transfer, as required under Article 5 of the ATT—▶ see Section 3 on national control systems. The UN Programme of Action on small arms² and the associated International Tracing Instrument establish a framework that outlines the elements that such a control system should cover, namely:

- the manufacture of arms;
- the marking, record-keeping, and tracing of arms;
- stockpile management and security;
- surplus identification and disposal;
- the collection and destruction of confiscated, seized, and unwanted arms;
- public awareness of arms-related issues;
- disarmament, demobilization, and reintegration in conflict and post-conflict settings;
- border management; and
- international transfers (export, import, transit, trans-shipment, and brokering) (UNGA, 2001b; 2005a).

NOTE: If UN member states fully implemented their commitments under the UN Programme of Action and ITI with respect to controlling small arms and light weapons, as well as their obligations to regulate international transfers in accordance with the ATT, they would be implementing a comprehensive array of measures aimed at preventing and addressing diversion and thereby simultaneously implementing the obligation to prevent and address diversion (of small arms at least) under Article 11 of the ATT.

9.3.2 Preventing and addressing transfer diversion

Transfer controls, including those required by the ATT, are essential to preventing diversion of transferred arms and ammunition. They can be divided into three

categories that roughly correspond to the applicable stage of the transfer: (1) pre-shipment controls; (2) in-transit and point-of-delivery controls; and (3) post-delivery controls. ■ These controls are explored in Sections 9.3.2.1–9.3.2.3, which are followed by an overview of which states have responsibilities to take measures to prevent diversion at each stage of a transfer.

9.3.2.1 Pre-shipment controls

Pre-shipment controls include the steps taken to monitor and control the end use of arms transfers prior to their arrival at the port from which they are to be exported (port of exit) (Schroeder, 2008, p. 127). Article 11(2) of the ATT outlines some of the pre-shipment (or indeed, pre-authorization) measures an exporting state party may take to prevent diversion, namely:

- **‘examining parties involved in the export’:** Routine screening of *all* parties to the transfer (exporters, freight forwarders, intermediate consignees, brokers, shipping agents, and end users) can help ensure all actors are legitimate and responsible. Licensing officers look for red flags, such as if certain freight forwarders and shippers who are involved in a proposed transfer have been implicated in previous illicit transfers (Schroeder, 2008, p. 131). Identifying all the parties involved is a critical element in maintaining a secure chain of custody from the exporter to the foreign end user. Indeed, the risk of diversion increases if there is a ‘[l]ack of transparency on involved parties’ (DDTC, 2013, p. 6).
- **‘requiring additional documentation, certificates, assurances’:** Proper documentation (such as contracts or agreements, end-user certificates, and various assurances) and a thorough review of that documentation by trained licensing officers required at the licensing stage as part of the authorization application process makes diversion more difficult—■ see Section 3 on national control systems. Ensuring that those responsible for relevant documentation are accountable to central authorities is also key.

NOTE: ‘Effective systems of end-user control contribute to the prevention of undesirable diversion or re-export of military equipment and technology. End-user certificates and their authentication at the licensing stage should play a central role in counter-diversion policies’ (EU, 2015b).

- **‘not authorizing the export’** if a risk of diversion is detected—▶ see Section 9.5 for a discussion of this point.

Other possible steps include:

- registering arms exporters, brokers, and other parties to the transfer—▶ see Sections 4 and 8;
- licensing or authorizing transfers and carrying out the various checks on individual transfer requests as part of a national control system—▶ see Sections 3–8;
- including conditions or provisos in licences and other documentation to cover:
 - storage (some exporting states conduct physical inspections of the proposed recipient’s facilities before weapons are shipped to ensure that the recipient is capable of implementing specific requirements and/or to require weapons to be stored in a particular way³);
 - use;
 - re-transfer (some states restrict—or at least require notification of—the re-transfer of their exported weapons); and
 - disposal requirements (given the prominence of surplus weaponry in diversion schemes, provisos that condition the sale of new small arms and light weapons on the destruction of old stocks are also important) (Schroeder, 2008, p. 131).

On the one hand, these and other end-use requirements help to ensure that the end user has a clear understanding of the exporter’s expectations regarding storage, use, re-transfer, and disposal of arms. On the other hand—assuming compliance is monitored—they afford the exporting state a degree of control over

Box 9.1 End-use monitoring programmes

Through its Blue Lantern end-use monitoring programme, the US government has developed a standard list of 16 problem indicators or ‘flags’ that licensing officers look for when evaluating licence requests. The presence of one or more flags often triggers an end-use check by compliance officers, who review the bona fides of the end user or consignee, confirm that the purported end user actually ordered the items, and take other steps to confirm the legitimacy of the order and the applicant.

Similarly, the European Tracking Initiative has developed detailed sets of risk factors, ratings, and checklists as part of its Arms Transfer Profiling Indicator System (ATPIS). Users of the system have access to indicators that assign risk ratings for, inter alia, ports of call, aircraft type, civil aviation registries, document falsification, and brokering location.

Reprinted from: Schroeder (2008, p. 129)

exported items long after the end user receives them. ▣ For examples of end-use monitoring programmes, see Box 9.1.

9.3.2.2 In-transit and point-of-delivery controls

The aim of these types of controls is to monitor and protect arms shipments from the time they leave the warehouse in the exporting state until the intended end user receives them (and confirms receipt). They include:

- stringent physical security requirements (such as ensuring that arms and ammunition are transported in separate vehicles, the use of alarm systems on transport vehicles and container seals, and physical inspection during transit and at the point of delivery);
- scrutiny of arms shipments and documentation by customs agents in all the states involved in the transfer (exporting, transit, and importing states);
- close coordination and information sharing among the governments of transit states; and
- delivery notification by the importing state (Schroeder, 2008, p. 131).

There are several ways to monitor the whereabouts of arms shipments that are en route to the importing state, including physically accompanying the shipment and remote monitoring via satellite. Large shipments should not only be accompanied by armed guards with proper security clearance, but should also be tracked by satellite, given the risk and consequences of diversion (Schroeder, 2008, pp. 131–32—▣ see Box 9.2).

Box 9.2 Satellite tracking of arms shipments

For small, low-risk shipments, remote monitoring via satellite along with rigorous physical security requirements, careful screening of shipping companies, and delivery confirmation are often adequate. Satellite tracking and container security services are available from several commercial suppliers, including Comtech Mobile Data Corporation, which offers portable systems that it claims are compatible with most aircraft.

According to Comtech, it has sold tracking systems to more than a dozen countries, several of which use them to track munitions. Other systems, such as the Powers SeaCure Satellite System, not only claim to monitor the progress of the cargo to its destination, but also automatically alert authorities of hijackings and unauthorized container breaches.

Reprinted from: Schroeder (2008, p. 132)

9.3.2.3 Post-delivery controls

Post-delivery controls are checks carried out by the exporting state to verify compliance with end-use conditions, such as the condition that no re-export should take place without prior notification to the country of origin (Schroeder, 2008, p. 133). Post-delivery end-use monitoring includes organizing regular on-site visits to verify the ongoing use(r) of the arms, conducting physical inventories of exported weapons to ensure they are properly accounted for, and investigating suspected violations of end-use and re-transfer conditions agreed to by the end user.

Such checks allow exporters to detect incidents of diversion and to identify and flag recipients who pose a diversion risk; they also permit exporters to take steps to prevent future diversions, for example by helping to address the root causes of diversion (such as poor stockpile security or inadequate export controls) and subjecting future export requests from past violators to greater scrutiny, or banning them altogether. These checks should also act as a deterrent since recipients of arms transfers are less liable to violate re-transfer and end-use restrictions if they are likely to get caught and the possibility of future arms supplies is jeopardized.

NOTE: ‘Post-delivery end-use monitoring is particularly important in cases of diversion in which high-level government involvement renders pre-shipment and in-transit checks less effective’ (Schroeder, 2008, p. 132).

States parties should ensure that they have established criminal offences under national legislation relating to diversion, and that they have the capacity to sanction violators when cases of diversion are detected during post-delivery checks or at any time during an arms transfer. Penalties imposed by states in these circumstances range from warning letters to fines, debarment, and imprisonment for private entities; they include démarches, extra scrutiny of future requests, provisos in future contracts, and embargoes or sanctions for offending governments (Schroeder, 2008, p. 134).

9.3.3 Preventing and addressing national stockpile diversion

As discussed in Section 9.2.2, diversion from the national stockpile involves the theft of state-held arms and ammunition from facilities (such as armouries and depots), as well as from individual security personnel.

NOTE: All the risk factors associated with diversion from the national stockpile can be attenuated by effective, rule-based stockpile management procedures (Bevan, 2008, p. 51).

An essential means of preventing diversion from state stockpiles is to establish and maintain robust stockpile management procedures for the safe storage of weapons and ammunition, including by:

- establishing and conducting inventory management and accounting procedures;
- controlling access to stockpiles;
- applying physical security measures (such as fencing and locking systems); and
- ensuring the security of stockpiles that are in transport.

Many states have established their own national stockpile management procedures as part of operating procedures within their security forces; one instructive example is a US manual for the physical security of sensitive conventional weapons (USDoD, 2012). In addition, international standards for managing small arms and light weapons have been established, as have international standards governing storage of ammunition and explosives (IATG, n.d.; UNCASA, 2012b). The OSCE, for one, has developed regional standards (OSCE, 2003a; 2008). States parties to the ATT that seek detailed guidance for establishing or improving stockpile management procedures as part of diversion prevention are advised to consult these sources.

The rest of this section explores selected measures that can be taken to address diversion from national stockpiles.

9.3.3.1 Preventing and addressing low-order national stockpile diversion

With respect to intra-security force diversion, accounting and oversight are two fundamental elements of stockpile management that can serve to address low-order diversion. Effective accounting means ensuring that comprehensive records are kept of arms and ammunition issued to security forces; documenting weapons that are unfit for use and ammunition that is expended; and conducting regular audits to check records and reports of issued versus expended stockpiles (Bevan, 2008, p. 52).

The efficacy of these procedures depends on internal oversight, which in turn requires functioning command and control within security force administrations.

Box 9.3 Lot-marking to prevent theft of ammunition

When ammunition is lot-marked, it is assigned a code that specifies to which particular unit within a state's security apparatus it has been issued. Lot-marking can be an effective way to highlight instances of diversion and address theft within security forces, in addition to deterring theft in the first place. Few states, however, lot-mark small arms ammunition in this way.

Source: Bevan (2008, p. 53)

Wherever internal oversight and monitoring of personnel are weak, external monitoring may be able to detect instances of diversion and trace theft back to the security forces that are responsible, particularly if ammunition is involved (Bevan, 2008, p. 53). ■ For more information about measures to prevent ammunition theft, see Box 9.3.

One way to prevent extra-security force diversion—which involves unauthorized access to national stockpiles—is to apply physical security measures to protect stockpiles from theft, sabotage, damage, and tampering. This approach includes restricting access by unauthorized personnel and installing measures to detect, slow down, and counteract intrusion, such as by erecting multiple fences and locked doors to slow down intruders, patrolling the facility to detect intruders, and stationing guards to intervene if intruders are detected.

NOTE: Physical security is only as reliable as the personnel charged with keeping it, which underlines the need for effective oversight and accountability (Bevan, 2008, p. 55).

Diversion may also occur as a consequence of theft of unsecured weapons from the homes or vehicles of security force personnel; safe-storage requirements should thus target deployed weapons as well as those stored at security facilities. If weapons and ammunition cannot be secured in the home, one option is to enforce a strict policy that weapons may not be removed from military or police facilities.

It can be difficult for security forces to guard against violent attack, particularly if the attacks target individuals. However, the same basic principles of physical security that apply *within* stockpile facilities—detect, slow down, and counteract—also apply to broader considerations relating to the location and general protection of stockpile facilities. These principles include ensuring that there are adequate

garrisons of well-equipped forces to slow down potential attacks and reduce the possibility of diversion; that communications channels are in place to warn against potential attack and seek assistance in the event of assault; and that there are forces sufficiently proximate to help to repel attacks should they occur. In this context, it should be noted that the stockpiles of security forces that are deployed far from central control, such as in dangerous border regions, are more susceptible to attacks (Bevan, 2008, p. 56).

9.3.3.2 Preventing and addressing high-order national stockpile diversion

High-order diversion that relies on conspiracy among officials is a systemic problem that involves the plunder of all types of state assets, not just arms. Preventing this type of diversion requires broad structural changes to state administrations and is linked to wider issues, such as good governance and accountability. Effective stockpile management has the potential to help identify corrupt officials and weak points in the national stockpile (Bevan, 2008, p. 59). In this context, accounting procedures are of particular importance; centralized record-keeping, which entails storing records of transactions made by all departments in a single, central authority, is one way to reduce the risk that those departments—or individuals within them—might divert munitions.

While preventing diversion of arms in the wake of military collapse—which leads to a loss of control of arms and ammunition—may seem an insurmountable task, certain measures may be taken before and after the collapse to avoid aggravating the situation. In some countries where armed factions challenged state authority before the military collapsed, the state responded by providing arms to ‘aligned’ civilian factions that were sympathetic to those in power. While such factions may be nominally under state control for a period, the state often loses most or all of that control over the group, let alone the state-provided weapons; ultimately, the group may use the weapons in contravention of the objectives of the state or in direct opposition to it (sometimes contributing to the collapse of the state).

Dealing with the large volumes of arms released by collapsing militaries is critical to ensuring the weapons are not diverted to illicit users. In countries where civilians already have access to materiel from the national stockpile, ‘recovering weapons and ammunition should be a matter of priority’ (Bevan, 2008, p. 61).

9.4 What is the role of transparency in preventing diversion?

Transparency is a crucial element of national, regional, and international efforts to prevent diversion. It is of greatest relevance in relation to states' decisions to authorize arms transfers, the export control regimes states have in place, and situations where diversion—or some other failure of the export control regime—is detected (Schroeder, 2008, p. 136).

9.4.1 Information on authorized arms transfers


By sharing information on arms transfers that states have authorized, states help to draw attention to the possible build-up of weapons in a particular country or region, and thus to prevent excessive accumulations of weaponry. Information sharing also enhances the ability of states and other stakeholders—such as non-governmental and international organizations that are tasked with monitoring arms transfers—to scrutinize arms transfer decisions, detect transfers that have been made to irresponsible recipients, and hold states to account for decisions made in violation of regional and international commitments, including the ATT. Detailed information on authorized transfers helps intelligence and law enforcement agencies to identify the origin and trans-shipment points of diverted weapons more quickly and accurately (Schroeder, 2008, p. 136). ► See Box 3.1 regarding what information and documentation should be included in an application for a transfer authorization.

There are many means by which states can share information on authorized transfers in an effort to enhance transparency, including data submissions to the UN Commodity Trade Statistics Database (UN Comtrade) and the UN Register of Conventional Arms—► see Box 11.2—information exchanges among members of regional or multilateral institutions, ad hoc information sharing between governments, and the unilateral release of national reports (Schroeder, 2008, p. 136). The requirement that states parties to the ATT provide annual reports on their exports and imports under Article 13 also serves as a transparency tool—► see Section 11.2.3).

NOTE: Under Article 13(3) of the ATT, states parties must submit annual reports on exports and imports, an important transparency measure that can contribute to preventing diversion.

9.4.2 Information on export control regimes

By publicly disseminating the laws, policies, procedures, and practices that comprise national export control regimes, states can also help to prevent diversion, albeit less directly. Transparency with respect to national export control regimes—and national control systems more generally—can contribute to the development of multilateral agreements, promote international best practices, and provide useful examples of lessons learnt and effective measures that can inform other states as they design and establish their own control frameworks. For example, OSCE participating states have agreed to exchange information on relevant national legislation and practice on export policy, procedures, and documentation, as well as on control over international brokering in small arms, as a means of promoting awareness of best practice in these areas (OSCE, 2000, s. III(F)(2)).

Transparency can also further ‘intra-governmental and public oversight of national export control systems, which [. . .] are critically important for preventing diversion’ (Schroeder, 2008, p. 137). Moreover, it helps with the identification and rectification of gaps and weaknesses in licensing procedures, end-use monitoring practices, and other controls that are essential for preventing diversion— see Section 9.3.2.

In addition to ensuring that laws, policies, and regulations governing export control regimes are made public, and that notification of any amendments or updates to them is timely, transparency can be enhanced through the submission and publication of national reports on the implementation of multilateral agreements, including the initial report on implementation encouraged under Article 13(2) of the ATT, and supplementary reports thereafter.

9.4.3 Information on diversion and export control violations

Under Article 15(4) of the Treaty, states parties are encouraged to cooperate through the sharing of information ‘regarding illicit activities and actors in order to prevent and eradicate diversion’. In the context of investigations of export control violations, the sharing of information between governments regarding their experiences with and responses to diversions and other export violations helps build the body of information at the disposal of intelligence and law enforcement agencies regarding known arms traffickers and their methods. In turn, this type of communication assists intergovernmental action against transnational trafficking networks.

In addition, ‘the public dissemination of non-sensitive information about diversions and other export control violations facilitates research into the illicit trade and highlights best practices and shortcomings in national export control procedures’ (Schroeder, 2008, p. 137).

While few states regularly report on export control violations, the US State Department compiles an annual report on its Blue Lantern end-use monitoring programme—▶ see Box 9.1. The report provides a detailed statistical overview of ‘unfavourable’ determinations; in these cases, findings are inconsistent with information in the licence application request. Such a determination might arise if, for example, foreign consignees sold defence articles to private entities rather than to the law enforcement agencies authorized under the terms of the relevant licence. The findings are classified by geographical region, commodity category, and type of unfavourable determination, and case studies are included (DDTC, 2013). This type of information could usefully be included in any report on diversion submitted by a state party in accordance with Article 13(2) of the ATT.

9.5 How can the risk of diversion be assessed?

Under Article 11(2) of the ATT, states parties have an obligation to assess the risk of diversion of an export, and to consider not authorizing the export if a risk of diversion is detected. This assessment should be conducted as part of a state’s export assessment in accordance with Article 7 of the ATT—▶ see Section 5 on export controls.

9.5.1 What criteria could be applied to assess the risk of diversion?

The EU Common Position includes a series of criteria to be applied to arms transfer decisions to assess the risk of diversion (EU, 2008—▶ see Box 9.4).

9.5.2 What sources of information are available on diversion risks?

Given the diversity of causes and actors involved in arms diversion, exporting states parties that are in the process of assessing risks should consult a broad range of sources of information and data, including from national, regional, and international entities; public and private organizations; and official and non-governmental sources (EU, 2015b, p. 123).

Box 9.4 Elements to consider when assessing the risk of diversion

Criterion Seven of the EU Common Position 2008/944/CFSP of 8 December 2008 requires EU member states to assess the risk that the technology or items to be exported 'might be diverted to an undesirable end-user' (EU, 2008, art. 2(7)). It then lists six indicators that states must consider when applying this criterion to an export. The *EU User's Guide* elaborates on these indicators, providing detailed guidance to EU member states on their assessment (EU, 2015b). Extracts from the *User's Guide* pertaining to each of the six indicators follow.

(a) The legitimate defence and domestic security interests of the recipient country, including any involvement in United Nations or other peace keeping activity

[A]n assessment should be made of whether the import is an appropriate and proportionate response to the recipient country's need to defend itself, to ensure internal security, or assist in United Nations or other peace-keeping activity. In this regard, consideration could be given to the recipient country's usual military needs and technical capability as reflected by different international sources, such as the UN register on conventional arms, the SIPRI yearbook or the International Institute for Strategic Studies (IISS) Annual Military Balance.

The following questions might be asked:

- Is there a plausible threat to security that the planned import of military technology or equipment could meet?
- Are the armed forces equipped to meet such a threat?
- What will the destination be of the imported equipment after the participation in UN or other peace-keeping activity has been terminated?

(b) The technical capability of the recipient country to use the military technology or equipment

Technical capacity refers to the ability of the recipient country to make effective use of the equipment in question, both in material and human terms. It also refers to the technological level of the recipient country and its operational capacity, and generally to the standard of performance of its equipment. [. . .]

The 'technical capability of a recipient country to use the equipment' can be a key indicator of the 'existence of a risk' of diversion. A proposed export that appears technically or quantitatively beyond what one might normally expect to be deployed by the recipient state may be an indication that a third-country end-user is in fact the intended final destination. This concept applies equally to complete goods and systems, as well as components and spare parts. The export of components and spare parts where there is no evidence that the recipient country operates the completed system in question may be a clear indicator of other intent.

Some questions that might be asked are:

- Is the proposed export high-tech in nature?
- If so, does the recipient have access to, or are they investing in, the appropriate technical backup to support the sale?
- Does the proposed export fit with the defence profile of the recipient state?
- Does the proposed export correspond, quantitatively and qualitatively, with the operational structure and technical capability of the armed forces or police forces of the recipient state? If components or spares are being requested, is the recipient state known to operate the relevant system that incorporates these items?

(c) The capability of the recipient country to apply effective export controls

Recipient states' adherence to international export control norms can be a positive indicator against either deliberate or unintentional diversion. Some questions that might be asked are:

- Is the recipient state a signatory or member of key international export control treaties, arrangements or regimes (e.g. Wassenaar, Arms Trade Treaty)?
- Does the recipient country report to the UN Register of Conventional Arms; if not, why not?
- Has the recipient country aligned itself with the principles of the Common Position or similar regional arrangements?
- Does the recipient country apply effective export and transfer controls encompassing dedicated control legislation and licensing arrangements that conform to international norms?
- Is stockpile management and security of sufficient standard (cf. STANAG, [ISACS and the IATG])? Are there known cases of problems with leaking stockpiles in the country of the end-user?
- How serious is corruption assessed in the recipient country? Are there effective legal instruments and administrative measures in place to prevent and combat corruption?
- Is the recipient state in the proximity of conflict zones or are there ongoing tensions or other factors within the recipient state that might mitigate against the reliable enforcement of their export control provisions?
- Does the country of stated end-use have any history of diversion of arms, including the non-authorised re-export of surplus equipment to countries of concern? [. . .]

(d) The risk of such technology or equipment being re-exported to undesirable destinations, and the record of the recipient country in respecting any re-export provision or consent prior to re-export which the exporting [EU] Member State considers appropriate to impose.

The competent authority should assess the reliability of the specific consignee as well as, where known at the licensing stage, the plausibility and reliability of the routing and commercial setup envisaged for the transaction. Besides the end-user, possible other actors involved in a transaction include: brokers, sub-contractors of brokers, freight forwarders (air, sea, rail, road, barge), financiers, or insurance companies[.] Past involvement of any of these entities in trafficking is an element to be taken into account for risk assessment.

While specific items themselves may not be subject to diversion, they may facilitate diversion by enabling un-authorized re-transfer of weapons held in existing stocks. Specifically when the diversion track record of the recipient state or end-user offers grounds for concern, suppliers could consider measures to reduce this risk.

Questions that might be asked are:

- Is the equipment intended for the government or an individual company?
- Where known or required at the licensing stage, does the routing raise concerns?
- Where known or required at the licensing stage, does the commercial setup raise concerns (possible involvement of brokers, distributors . . .)?
- Has any actor involved in the commercial setup or routing of the transaction been [. . .] convicted for arms trafficking or violations of arms export legislation?

If the importer is the government:

- Is the government/the specific government branch reliable in this respect?
- Has the government/the specific government branch honoured previous end-user certificates or other provisions regarding authorisation of re-export?

- Is there any reason to suspect the government/the specific government branch is not reliable?
If the importer is a company:
 - Is the company known?
 - Is the company authorised by the government in the recipient state?
 - Has the company previously been involved in undesirable transactions? Has the company been convicted for arms trafficking?
- (e) **The risk of such technology or equipment being diverted to terrorist organisations or to individual terrorists (anti-terrorist equipment would need particularly careful consideration in this context)**

In assessing the potential risk in the recipient state, the competent authority might ask the following questions:

- Does the recipient state have a record of past or present terrorist activities?
- Are there any known or suspected links to terrorist organisations (or even individual terrorists) or any reason to suspect that entities within the recipient state participate in the financing of terrorism?
- Is there any other reason to suspect that the equipment might be re-exported or diverted to terrorist organisations? [. . .]

(f) The risk of reverse engineering or unintended technology transfer

When the Member States are deciding on an export licence application, account must be taken of the capabilities of the recipient, whether State or private, to analyse and to divert the technology contained in the military equipment being acquired. [. . .]

In this context, and particularly for equipment which uses sensitive technology, the following factors must be considered:

- The sensitivity and the level of protection of the technologies contained in the system, as regards the estimated level of expert knowledge of the recipient, and the evident desire of that recipient to acquire some of those technologies;
- The ease with which those technologies could be analysed and diverted, either to develop similar equipment, or to improve other systems using the technology acquired;
- The quantities to be exported: the purchase of a number of sub systems or items of equipment which appears to be under (or over) estimated is an indicator of a move to acquire technologies;
- The past behaviour of the recipient, when that recipient has previously acquired systems which it has been able to examine to obtain information about the technologies used in those systems. [. . .]

In order to determine this compatibility, Member States could consider the following questions:

- Does the recipient country have the military infrastructure to be able to make effective use of the equipment?
- Is the technological level of the equipment requested proportionate to the needs expressed by the recipient country and to its operational capacity?
- Is similar equipment already in service well maintained?
- Are enough skilled personnel available to be able to use and maintain the equipment?

Source: EU (2015b, pp. 126–33)

At the national level, the exporting state's relevant authority should connect with government agencies in the importing and/or transit states that play a role in minimizing illicit trade and diversion, including in the areas of customs, law enforcement, justice, intelligence, and defence. These agencies may already have information on whether any of the parties involved in the proposed export have a record of diversion or other export control violations. For example, the United States publishes lists of individuals and entities that have been convicted of violating or conspiracy to violate national arms export legislation and that are prohibited from participating directly or indirectly in the export of defence articles and defence services (DDTC, n.d.a). The exporting state's embassies and diplomatic missions in countries that are involved in the transfer may also have relevant information (EU, 2015b, p. 123).

At the regional level, the EU has established a system for member states to notify each other of denials and exchange other information on licensing decisions (EU, 2012b, art. 11(2); 2015b, pp. 153, 155). With respect to preventing diversion, participating states of the Wassenaar Arrangement are also committed to sharing best practices and information on high-risk end users (EU, 2015b, p. 124; WA, 2000). In addition, in an effort to improve law enforcement cooperation, OSCE participating states have agreed to share information on authorized manufacturers and arms brokers; seizures of illicitly trafficked small arms; information on individuals or corporations convicted for violations of national export control regulations; and information on their enforcement experiences and the measures that they have found effective in combating illicit trafficking in small arms (OSCE, 2000, s. III(E)(6)).

At the international level, UN sanctions committees document details about violations—and violators—of UN Security Council arms embargoes in expert panel reports. In the context of Resolution 1540 of 2004, which aims to prevent the proliferation of weapons of mass destruction, a dedicated information-sharing mechanism allows states and relevant international, regional, and subregional organizations to share relevant experience, lessons learnt, and effective practices in preventing proliferation (1540 Committee, n.d.). To facilitate information exchange and investigative cooperation between law enforcement agencies with respect to illicit firearms trafficking, as well as crime guns, INTERPOL has established the online Illicit Arms Records and Tracing Management System (iARMS). It includes a separate module on statistics and reports that allows INTERPOL member countries

to analyse national data on firearm-related crime and tracing, and to generate tailored reports (INTERPOL, 2014). Meanwhile, independent research organizations, private companies, and non-governmental organizations publish reports and provide online information, databases, and indexes relevant for assessing the risk of diversion. The organization Conflict Armament Research, for instance, hosts an online database called ‘iTrace’, which highlights information on transfers of diverted conventional weapons and ammunition, based on in-conflict field investigations (CAR, n.d.).

9.6 What mitigation measures can be taken?

To prevent the diversion of conventional arms transfers, Article 11(2) of the ATT stipulates that exporting states parties should consider establishing mitigation measures, such as confidence-building measures or jointly developed and agreed programmes with importing states. Article 11(3) instructs all states involved in a transfer to cooperate and exchange information in order to mitigate the risk of diversion.

Certain types of risk that may be identified during an assessment may be so high—or ‘overriding’—that it is not possible to envisage steps that could be taken to reduce or ‘mitigate’ them. Such may be the case if there are substantial risks relating to forged or misleading documentation; a lack of credibility of the end user or end use; or manifestly inadequate controls within the recipient state. In response, states parties should deny the application for an export licence (Greene and Kirkham, 2009, p. 33).

In other cases, the imposition of some of the measures discussed and explored in Section 9.3, including restrictions on transfer licences, the building of relevant capacities, or the enhancement of controls, may be sufficient to reduce the identified risks substantially. States parties can:

- reduce the risks of diversion in transit by imposing restrictions on some of the parties involved, such as shipping agents or brokers; imposing restrictions on transportation routes and trans-shipment arrangements; and monitoring the shipment by physically accompanying it or remote monitoring it via satellite—
 ▶ see Section 9.3.2.2 for other in-transit controls;
- reduce risks of diversion once the shipment has arrived in the recipient country by requiring delivery verification from the importing state;

- reduce risks of diversion by the end user by enhancing regulatory and control systems within the importing state, establishing and enforcing end-user and end-use undertakings, and instituting post-delivery controls—▶ see Section 9.3.2.3;
- reduce risks of diversion due to inadequate national controls in the importing state, or inadequate stockpile security by the end user, by providing capacity building assistance, as is called for under Article 16(1) of the Treaty; and
- reduce risks that might be posed by arms that are rendered surplus by the transfer through undertakings by the end user to ensure destruction or other responsible disposal of those weapons (Greene and Kirkham, 2009, p. 34).

Some of the risk-reduction measures mentioned above are likely to cause a significant delay in authorizing the transfer. For example, any improvements in an importing state's national control system or assistance with stockpile management would take time to develop and implement, although there would be lasting benefits. However, if risks relate mainly to transit routes or parties involved, risk reduction measures might be implemented simply by changing the route or the shipper (Greene and Kirkham, 2009, p. 34).

Further resources

Diversion prevention

'Arsenals Adrift: Arms and Ammunition Diversion' (Small Arms Survey)

ATT Implementation Toolkit (UNODA)

'Best Practice Guide on National Procedures for Stockpile Management and Security' (in the OSCE Handbook of Best Practices on Small Arms and Light Weapons)

'Best Practice Guide on Physical Security of Stockpiles of Conventional Ammunition' (in the OSCE Handbook of Best Practices on Conventional Ammunition)

'Deadly Deception: Arms Transfer Diversion' (Small Arms Survey)

End-user Certificates: Improving Standards to Prevent Diversion (SIPRI)

ISACS:

Border Controls and Law Enforcement Cooperation

Destruction: Weapons

Marking and Recordkeeping

National Regulation of Civilian Access to Small Arms and Light Weapons

Stockpile Management: Weapons

Tracing Illicit Small Arms and Light Weapons

Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives (US Department of Defense)

Preventing Diversion of Small Arms and Light Weapons: Issues and Priorities for Strengthened Controls (Biting the Bullet)

Preventing Diversion of Small Arms and Light Weapons: Strengthening Border Management under the UN Programme of Action (Biting the Bullet)

Preventing Diversion: The Importance of Stockpile Management (Peace Research Institute Oslo)

Information on diversion risks

IARMS: Illicit Arms Records and Tracing Management System (INTERPOL)

iTrace (Conflict Armaments Research)

Reports of UN Security Council Sanctions Committees

Acknowledgements

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Principal sources

This chapter draws substantially from Bevan (2008); EU (2015b); and Schroeder (2008).

SECTION 10

Record-keeping



10.1 Introduction

Record-keeping involves the collection and maintenance of data and information pertaining to arms to facilitate their identification and their legal status and location at any given stage. Article 12 of the ATT requires states parties to keep records of transfers of conventional arms that fall within its scope.

10.2 What records should be kept under the ATT?

10.2.1 What types of transfers should be recorded?

10.2.1.1 Export


Article 12(1) of the ATT obligates each state party to keep national records of any export authorizations (licences, permits, or other forms of permission to export) that are issued or granted *or* of actual exports that occur from its jurisdiction, subject to necessary limitations that may exist under national laws or regulations. The ATT requires states parties to keep records of either authorizations or actual exports, but not both; in practice, however, some states keep both types of records.

10.2.1.2 Import

Article 12(2) of the ATT encourages each state party to keep records that are ‘transferred to its territory as the final destination’. This refers to arms that are imported permanently into all sovereign territory. States parties should ensure that records of imported arms are kept as part of the duty in Article 8 of the Treaty to regulate conventional arms importations.

NOTE: Although Article 12(2) encourages, but does not require, states parties to keep records of imports, they will need to do so if they are to fulfil their obligation under Article 13 to report annually on arms imports.

10.2.1.3 Transit and trans-shipment

Article 12(2) of the ATT encourages each state party to keep records of conventional arms that are authorized to transit or be trans-shipped in territory under its jurisdiction. If a state party regulates the transit or trans-shipment of arms through a process of licensing or authorization, it should keep records of all associated information and documentation. If a state party is aware that arms are transiting or being trans-shipped through its territory other than through a licensing process —  for

instance, through a notification process, as described in Section 7.4.2—it should also keep records of all available information pertaining to the transfer.

10.2.1.4 Brokering

The ATT does not expressly require states parties to keep records of brokers or brokering activities. However, states parties that establish brokering regulations in accordance with Article 10 of the ATT should consider extending their national record-keeping regulations to cover brokering. For instance, the competent authority should keep records of all registered brokers as well as all licences or authorizations issued for brokering activities. In addition, registered brokers should be required to keep detailed records of their activities, which they must present to competent national authorities upon request. They may also be requested to submit regular activity reports to national authorities, such as every six months.

10.2.2 With respect to which items should transfers be recorded?

The ATT requires states parties to keep records of exports of conventional arms only, not of ammunition/munitions or parts and components. Similarly, the Treaty encourages them to keep records of imports, transit, and trans-shipment of conventional arms, but not of ammunition/munitions or parts and components. At the same time, Article 5(3) encourages states parties to apply the provisions of the ATT, including record-keeping, to the broadest range of conventional arms; moreover, Articles 3 and 4 require states to establish and maintain a national control system to regulate the export of ammunition/munitions and of parts and components, respectively. ► A summary of record-keeping requirements under the Treaty is provided in Table 10.1.

Table 10.1 Summary of record-keeping obligations under the ATT*

	Export	Import	Transit and trans-shipment	Brokering
Conventional arms	Mandatory	Encouraged	Encouraged	Not required
Ammunition/munitions	Not required	Not required	Not required	Not required
Parts and components	Not required	Not required	Not required	Not required

Note: * Although record-keeping may not be required for all types of transfer activities, it is recommended as part of a comprehensive national control system.

In line with the object and purpose of the Treaty, states parties could usefully consider extending their national record-keeping regulations to cover all conventional military equipment, ammunition/munitions, and parts and components that are subject to national transfer controls.

10.2.3 What information should be recorded?

Article 12(3) of the Treaty encourages states parties to keep records of the following information:

1. **quantity:** the number of arms or items transferred or the number of relevant licences or authorizations issued (depending on whether the state is recording authorizations or actual transfers); the quantity may also refer to the weight of the item if, for instance, a state requires an export licence for the export of certain elements or chemicals that are used in the manufacture of controlled items;
2. **value:** the financial value or monetary worth of the arms or items transferred or the licences issued;

NOTE: A distinction may be made between the *authorized value* (the total monetary value of the arms or items that are the subject of the export authorization) and the *shipped value* (the monetary value of the arms or items that are the subject of the authorization and that have actually been shipped or delivered, as a proportion of the authorized value).


3. **model/type:** the particular version or category of arms, ammunition, or other items that are transferred. The nomenclature used to describe the model or type is generally determined by the manufacturer of the item; thus, for example, the 'AH-64A Apache' is a model of attack helicopter manufactured by the US company Boeing;

NOTE: The Treaty does not specify whether states parties should record each item using a broad categorization (such as 'attack helicopter'), a specific make or model (such as 'AH-64A Apache'), or both. Records that do include both will not only facilitate reporting under Article 13(3) of the ATT (and to the UN Register of Conventional Arms), but also improve transparency and information sharing, thereby contributing to the broader objectives of the Treaty.

4. authorized international transfers of conventional arms covered under Article 2(1);

5. **conventional arms actually transferred;** and
6. **details of:**
 - a. exporting states;
 - b. importing states;
 - c. transit and trans-shipment states; and
 - d. end users.

States parties are encouraged to include this information ‘as appropriate’ because not all the suggested types of information will be relevant to all transactions.

Many states keep records of additional information as part of their national control systems, and good practice guides such as ISACS recommend the inclusion of additional information.  Box 10.1 presents a checklist of the types of information that states parties could consider keeping on exported and imported arms.

Box 10.1 Checklist of information on arms transfers to be recorded

By covering the elements listed in Article 12(3) of the ATT as well as additional types of information, this checklist can serve to assist states parties in keeping comprehensive records. The following particulars could be recorded:

- a description of the items, including:
 - quantity;
 - value;
 - model/type; and
 - technical data;
- the date of export or the period of time over which the transaction is to take or took place (start and end dates for transfers that take place over a period of time);
- exporting states;
- importing states;
- transit and trans-shipment states, if applicable;
- the export authorization number (as designated by the exporting state);
- the import authorization number (as designated by the importing state);
- transit authorization numbers (as designated by the transit states, if applicable);
- the entity in receipt of the export (including details such as the government agency, wholesaler, or retailer);
- the end user: name, address, and other available contact information (such as telephone number and electronic mail address);
- the end-user certificate number or identification (as issued by the recipient state);
- the end use of the item;
- brokers (if applicable);
- transport agents and/or forwarding agencies; and
- import marking (for imported small arms and light weapons).

Sources: UK (2008, s. 29); UNCASA (2012d, clauses 6.2.1.2, 6.2.1.3); UNGA (2013a, art. 12(3)); US (n.d.b, part 123.26)

NOTE: At a minimum, states parties will need to keep records of the information required to submit annual reports on exports and imports of conventional arms—► see Section 11 on reporting.

10.3 What are the options for storing records?

The ATT does not specify how records on transfers should be stored, and so states parties may choose any reliable method of storage, including manual or electronic filing, or both.

NOTE: Whatever storage system is adopted, records should be backed up separately in order to prevent loss of data in the event of theft, fire, sabotage, or technical failure.

Some of the advantages of electronic record-keeping include:

- enhanced practicability, especially in terms of capturing information, generating reports, and meeting reporting requirements;
- greater completeness, accuracy, and timeliness of information;
- higher efficiency with respect to keeping financial records, partly since less physical storage space is required; and

Box 10.2 Specialized record-keeping software for arms transfers

The South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), in collaboration with the UN Development Programme, has developed software that facilitates the production of a standard annual report template for arms exports; while the format is designed for South-eastern Europe, it could be adapted to other countries. The software—the Annual Arms Export Report Generator (AAERG)—provides guidance to the responsible desk officers in national ministries and facilitates data entry, calculations, and information transfer in arms export reports (SEESAC, 2014).

The main functions of the software are to enable relevant ministries to:

- maintain a database of all granted licences;
- generate national reports as well as reports for the UN and other organizations easily and accurately;
- conduct customized data searches; and
- use the Weapons Categorization Tool integrated in the AAERG (SEESAC, n.d.).

The software is the property of SEESAC and the UN Development Programme and can be made available as an assistance tool to ATT states parties (SEESAC, 2014; n.d.)

- better security through easier back-ups of records and the possibility of safe storage to guard against fire or theft.

The main methods for storing records electronically are:

- simple, static databases based on Microsoft Word, Excel, or some other widely available software;
- accounting applications typically based on a bar-coding approach; and
- specialized software tailored to national arms record-keeping regulations—
▶ see Box 10.2).

10.4 How long must records be kept?

States parties are required to keep records of transfers for at least ten years under Article 12(4) of the Treaty. However, through various international and regional instruments on small arms and light weapons, states have committed to keep records for longer than ten years—▶ see Table 10.2. Given the durable nature of arms and the fact that electronic record-keeping allows records to be stored for extended periods of time, or even indefinitely, without posing a significant technical or administrative challenge, states parties should consider keeping records permanently.

10.5 Who is responsible for keeping records?

In practice, records of arms transfers are usually maintained by the state—specifically the agency or competent authority that is responsible for issuing licences or authorizations—as well as by companies and individuals engaged in arms transfers, including manufacturers, wholesalers, retailers, brokers, and transport agents.

10.5.1 The state

States parties should consider keeping records of transfers in a centralized database administered by one of the competent national authorities that is responsible for administering the national control system established in accordance with Article 5(5) of the Treaty. Alternatively, records may be stored in a decentralized manner, by different agencies of the state; in this model, one agency may be responsible for issuing export licences, while another may be responsible for issuing import

permits. In such cases, the competent national authorities should have ready access to the records.

In addition to keeping records of transfers, states should consider keeping records of entities engaged in the arms trade, including information on the cancellation and suspension of any licences and authorizations.

Table 10.2 Minimum duration for record-keeping in selected arms-related instruments

Scope	Legal nature	Instrument	Duration of record-keeping on transfers
International	Legally binding	ATT	‘for a minimum of ten years’ (UNGA, 2013a, art. 12(4)) for exports
		Firearms Protocol	‘not less than ten years’ (UNGA, 2001a, art. 7)
	Not legally binding	International Tracing Instrument	‘indefinitely’ (to the extent possible) or: ‘(a) Manufacturing records for at least 30 years; and (b) All other records, including records of import and export, for at least 20 years’ (UNGA, 2005a, para. 12)
		UN Programme of Action	‘for as long as possible’ (UNGA, 2001b, para. II.9)
Regional	Legally binding	CIFTA*	‘for a reasonable time’ (OAS, 1997, art. 11)
		ECOWAS Convention	‘permanently’ (ECOWAS, 2006, art. 9)
		EU Council Directive on control of the acquisition and possession of weapons	‘for not less than 20 years’ (EU, 1991, art. 4(4)), although records for international transfers are not specifically mentioned
		Kinshasa Convention	minimum of 30 years (ECCAS, 2010, art. 20)
		Nairobi Protocol*	‘for not less than ten years’ (Nairobi Protocol, 2004, art. 7(d))
	Not legally binding	OSCE Document on Small Arms and Light Weapons	‘as long as possible’ (OSCE, 2000, s. II(C)(1))

Notes: * CIFTA is the 1997 Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials. The **Nairobi Protocol** is the 2004 Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa.

10.5.2 Companies and individuals engaged in transfers

Companies and individuals engaged in international arms transfers should be required to keep records of their transactions as a condition of the licence or authorization. The relevant legislation should clearly indicate the type of information to be kept by companies and the minimum period of time records should be kept.

Such a requirement to keep records of transfers should form part of each relevant company's internal compliance programme,¹ which is a system put in place by entities involved in arms transfers to ensure their activities are conducted in accordance with national export control legislation. The aim is to ensure that traceable records of the entities' activities are maintained so that queries the competent national authorities may have about any transactions under a licence may be readily answered and so that an adequate audit trail exists (UKBIS, 2010, p. 11). Accordingly, entities should be required to keep records that are comprehensive, accurate, and readily available to the authorities. ► Box 10.3 includes a series of

Box 10.3 Questions and guidelines for record-keeping and the traceability of exports and transfers

How do you maintain records of the exportation limitations passed to you from the supplier of the products? Undertakings should include one or more of the following:

- Electronic file or email folder.
- Folders based on projects.
- Folders based on suppliers.
- In separate folders for limitations.
- On an order system.

How do you relate export limitations to subsequent transfers or exports? Possible answers should include one or more of the following:

- Electronic file or email folder containing import and subsequent movement information.
- As part of a business management system.
- Folders based on projects or suppliers where all relevant information is kept together.
- A filing system similar to the folder system.

How are the records made available to the competent authorities?

- It should be possible to make records available electronically.
- Some may require a visit to the sites if access to secure intranets is necessary but some may be able to be transferred for remote checks.
- Records can also be available in hard copy and some of these could be scanned, for example for remote checks.

Reprinted from: SEESAC and UNDP (2011, p. 54)

questions and guidelines that could be used to assess companies' internal compliance programmes with respect to record-keeping.

States parties should ensure they have access and the right to examine company records and other documents. They should also consider establishing criminal offences for the following acts:

- wilful failure to keep records in the manner required by the state (or at all); and
- falsification of records.

In addition, the state should require companies that go out of business to forward their records to the state within a certain period of time (for example, within 30 days of going out of business).

Further resources

ATT Implementation Toolkit (UNODA)

'Best Practice Guide on Marking, Record-keeping and Traceability of Small Arms and Light Weapons' (OSCE)

Compliance Guidelines: How to Develop an Effective Export Management and Compliance Program and Manual (US Department of Commerce)

Export Control Organisation: Compliance Code of Practice (UK Department for Business, Innovation and Skills)

Internal Compliance Programmes (SEESAC and UN Development Programme)

ISACS:

Marking and Recordkeeping

National Controls over the International Transfer of Small Arms and Light Weapons

Acknowledgements

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SECTION 11

Reporting



11.1 Introduction

Reporting is an important means of promoting cooperation, transparency, and responsible action by states parties, as well as confidence among them. Article 13 of the ATT foresees the submission of three different types of reports:

1. **implementation reports:** each state party submits one within a year of acceding to the ATT and may update the report from time to time;
2. **reports on measures to address diversion:** in these ad hoc reports, states describe measures taken to address diversion; and
3. **annual reports on exports and imports:** states document authorized or actual exports and imports of conventional arms in these reports.

NOTE: Reporting offers an opportunity for states parties to request and offer international assistance to implement the Treaty.

► The details of these reporting requirements are explored in Section 11.2 and a summary is provided in Table 11.1.

11.2 What must states parties report on under the ATT?

11.2.1 Implementation reports

11.2.1.1 When must initial reports on implementation be submitted?

Each state party is required to submit an initial report on its implementation of the Treaty to the ATT Secretariat no later than 12 months after it becomes a party to the Treaty. Thus, states that became parties to the Treaty before the ATT's entry into force on 24 December 2014 were due to submit their initial implementation report on or before **23 December 2015** (Imohe, 2015, p. 2). Other states must submit their implementation report within 12 months of the date on which they became parties to the Treaty. This means that if a state became a party to the Treaty on 1 January 2015, its initial report was due on or before 31 December 2015.

Article 13(1) of the Treaty also requires that states parties report to the ATT Secretariat on 'any new measures undertaken in order to implement this Treaty, when appropriate'. This means that after it has submitted its initial implementation report, a state party that adopts additional measures that relate to implementation of the Treaty—such as amendments to its brokering legislation or updates

of its national control list—must report on these measures to the ATT Secretariat. No timeframe for reporting such measures is stipulated; it is up to states parties to report on them as and when they are taken.

11.2.1.2 What information must be included?

A state party's initial report should include information on all measures the state has taken to implement the provisions of the Treaty, including national laws, national control lists, and other regulations and administrative measures that already exist or have been established by the state to implement its obligations under the Treaty. The Treaty provides these measures as examples, rather than as an exhaustive list.

Other measures on which states parties should report include:

- the creation of one or more competent national authorities in accordance with Article 5(5);
- national points of contact appointed in accordance with Article 5(6);
- details of the national control system established to implement the Treaty, including the procedures for assessing exports under Article 7 (particularly measures taken to mitigate any risks identified as part of an export assessment under Article 7(2));
- measures taken to regulate the import of arms under Article 8(2);
- measures taken to regulate the transit or trans-shipment of arms under Article 9;
- measures taken to regulate brokering under Article 10;
- measures put in place to prevent the diversion of arms; and
- measures put in place to ensure enforcement of the Treaty.

NOTE: Article 5(6) requires states parties to designate one or more national points of contact to exchange information on matters related to Treaty implementation and to notify the ATT Secretariat. States parties could use their initial report to notify the Secretariat of the identity of their national point(s) of contact. They also need to notify the Secretariat if and when the national points of contact change.

Although the Treaty requires states parties to submit supplementary reports on their implementation of the Treaty 'when appropriate' (when new measures

are adopted, as mentioned in Section 11.2.1.1), the initial implementation report may be a one-off report. Accordingly, it is important that the initial report on implementation be as detailed and comprehensive as possible.

11.2.2 Report on measures to address diversion

11.2.2.1 When must reports on diversion be submitted?

The Treaty does not stipulate when states parties should report on measures they have taken to address diversion; it is up to states parties to report such measures as and when they occur.

11.2.2.2 What information must be included?

Under Article 13(2), states parties are encouraged to provide information on effective measures they have taken to address diversion of arms transfers.¹ The Treaty does not specify what such measures might be and it is up to states parties to identify them. ► Section 9 includes examples of the types of measures states could take to prevent and address different types of diversion. States parties could consider reporting on their implementation of these and other measures.

The aim of the reporting requirement is not for states to prove they are fulfilling their obligations to prevent and address diversion, but rather to share lessons learnt with other states on what actions have been successful so that other states may consider adopting similar measures. States parties should be guided by this principle when reporting on diversion measures they have taken.

NOTE: States parties are encouraged to submit reports on measures taken to address the diversion of conventional arms only, not ammunition/munitions or parts and components. However, they may also choose to include information on measures taken to address the diversion of these items.

Box 11.1 Authorized vs. actual transfers

Authorized transfers refer to arms export and import transactions that have been approved—such as when the relevant authority grants a licence or permit to export or import arms—but the arms have not necessarily been physically transferred at the time of reporting. This also covers situations where a licence or authorization covers multiple deliveries of arms over several years. In contrast, **actual transfers** refer to the physical movement or delivery of arms that have taken place during the reporting period.

11.2.3 Annual report

11.2.3.1 When must annual reports be submitted and what period must they cover?

States parties must submit annual reports on their exports and imports to the ATT Secretariat on or before **31 May** for the previous calendar year. This means that a report submitted on 31 May 2016 should cover the period from 1 January to 31 December 2015.

11.2.3.2 What information must be included?

States parties must report on their authorized exports and imports or their actual exports and imports—▶ see Box 11.1.

11.2.3.3 What items must be reported on?

States parties are only required to submit annual reports on the export and import of conventional arms, not on ammunition/munitions or parts and components. However, they may also choose to include information on exports and imports of such materiel to enhance transparency.

11.2.3.4 What is the relationship between the ATT and the UN Register of Conventional Arms?

Article 13(3) of the ATT specifies that states parties' annual reports may contain the same information that states submit under relevant United Nations frameworks, including the UN Register of Conventional Arms—▶ see Box 11.2.

The seven categories of the UN Register are the same as the seven categories of conventional arms listed in Article 2(1)(a)–(g) of the ATT—▶ see Section 4.2. Article 5(3) of the Treaty stipulates that:

National definitions of any of the categories covered under Article 2 (1) (a)–(g) shall not cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of this Treaty.

As discussed in Section 4, the definitions of the arms and items that are included in each state party's national control list should, at a minimum, be consistent with the descriptions of the seven categories used in the UN Register (although the national definitions may be broader).

Box 11.2 The UN Register of Conventional Arms

The General Assembly established the UN Register of Conventional Arms in 1991 to discourage the excessive and destabilizing accumulation of arms by making the quantity and type of arms transferred by states more transparent. The idea was that states should report on their arms transfers to the UN and that the information would be made public. Such transparency is expected to contribute to confidence-building among states by reducing the risk of misperceptions and miscalculations about the intention of states that might arise without a high degree of transparency.

UN member states are asked to submit annual reports on their imports and exports of the following seven categories of conventional arms (UNGA, 1991b, para. 9; annexe, para. 2(a)):

- I. Battle tanks
- II. Armoured combat vehicles
- III. Large-calibre artillery systems
- IV. Combat aircraft
- V. Attack helicopters
- VI. Warships
- VII. Missiles and missile launchers

They are also invited to provide ‘background information’ regarding their military holdings, procurement through national production, and relevant policies (UNGA, 1991b, annexe, para. 3(a)). Since 2006, UN member states have also been invited to include ‘transfers of small arms and light weapons, using definitions and reporting measures they deem appropriate’ as part of their additional background information (UNGA, 2005b, para. 3).

States have agreed to work on expanding the UN Register’s scope through a dedicated Group of Governmental Experts, which convenes every three years and reports to the General Assembly, which may then implement the group’s recommendations in a resolution (UNODA, n.d.b).

The UNODA website features a standardized reporting format, which many states use to report to the UN Register. The reporting format invites states to provide the following information on exports and imports of the seven categories of conventional arms:

- the category of military equipment (categories I–VII);
- the final importer (if reporting on exports) or exporter (if reporting on imports) state;
- the number of items;
- the state of origin (if not the reporting state);
- intermediate location(s) (if any); and
- remarks, including a description of the items and comments on transfers.

States are invited to report the same information on imports and exports of small arms and light weapons to the UN Register in a separate reporting form.

Accordingly, states parties may follow the suggestion in Article 13(3) of the Treaty and provide the ‘same information’ that they submit to the UN Register to the ATT Secretariat as their annual report.

11.2.3.5 What type of information can be excluded?

States parties may exclude commercially sensitive or national security information from their annual reports. Commercially sensitive information comprises any information that has economic value or that could cause economic harm if it were to become known; national security information comprises information that relates to or affects a state’s national security interests. Each state party has a certain margin of discretion to determine whether any information on its exports and imports of conventional arms falls into one of these categories, and whether it wishes to keep such information confidential.

This exception should be read in the context of the Treaty as a whole, however, in line with the object and purpose of the Treaty, which include ‘promoting cooperation, transparency and responsible action [...] thereby building confidence among States Parties’. States parties must act in good faith when applying the exception.

Table 11.1 Summary of reporting commitments under the ATT

Type of report	When?	What?	Nature
Initial report on implementation	Within one year after entry into force of the Treaty for the reporting state party	Measures taken to implement the Treaty	Mandatory
Supplementary reports on implementation	Ad hoc: as and when new measures to implement the Treaty are adopted	Measures taken to implement the Treaty	Mandatory
Reports on diversion	Ad hoc: as and when measures to address diversion have proved successful	Measures taken to address diversion	Encouraged
Annual report on transfers	By 31 May every year	Authorized or actual exports and imports of conventional arms (excluding commercially sensitive and national security information)	Mandatory

11.3 What is the appropriate format for reports?

Templates for each of the reports were considered at the first session of the Conference of States Parties in August 2015. Although the draft templates were not formally adopted by the CSP, states parties may choose to use them to submit their initial and annual reports. Draft templates may be accessed online via the ATT Secretariat (n.d.).

The use of the templates is voluntary and states parties are not required to use the templates for reporting. They may instead develop their own format for reporting.

No template is available for the ad hoc, supplementary reports states parties are required to submit on new measures to implement the treaty taken after the submission of their initial implementation report. States parties may design their own format for reporting on this, although they may be guided by the initial report template.

11.4 How are reports submitted to the ATT Secretariat?

An electronic copy (Word or PDF file) of a state party's report may be sent to the following email address: info@thearmstradetreaty.org.

11.5 Will reports be publicly available?

When they submit their initial and annual reports to the ATT Secretariat, states parties may decide whether they want their reports to be made available to the general public or only to states parties. If a state party elects the latter option, its report will be uploaded on a restricted part of the ATT website that is accessible only to states parties. If a state party indicates it wants its report to be made available to all, the report will be uploaded on a restricted part of the ATT website as well as in the public domain.

Further resources

Assessing the United Nations Register of Conventional Arms (UNODA)

ATT Baseline Assessment Project: examples of state practice with respect to ATT implementation

ATT Implementation Toolkit (UNODA)

Implementing the Arms Trade Treaty: Building on Available Guidelines and Assistance Activities (SIPRI); provides an overview of relevant good practice documents and guidelines for ATT implementation

UN member states' reports on UN Programme of Action implementation

UN Register:

UNODA background information

UN Register background information

UN Register online reporting tool

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END MATTER

List of abbreviations

Endnotes

Bibliography



List of abbreviations

AAERG	Annual Arms Export Report Generator
ATT	Arms Trade Treaty
CSP	Conference of States Parties
DVC	Delivery verification certificate
ECOWAS	Economic Community of West African States
EEZ	Exclusive economic zone
EU	European Union
EUC	End-use(r) certificate
GBV	Gender-based violence
GGE	Group of Governmental Experts
IATG	International Ammunition Technical Guidelines
IHL	International humanitarian law
IIC	International import certificate
ISACS	International Small Arms Control Standards
ITI	International Tracing Instrument
MANPADS	Man-portable air defence system
ML	Munitions List
OEWG	Open-ended working group
OSCE	Organization for Security and Co-operation in Europe
PrepCom	Preparatory committee
SEESAC	South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons
SIPRI	Stockholm International Peace Research Institute
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNODA	United Nations Office for Disarmament Affairs
WCO	World Customs Organization

Endnotes

Section 2

- 1 A further six states submitted their views after the publication of the Secretary-General's report.
- 2 After the official vote, the delegations of Angola (which had abstained) and Cape Verde (which had not voted) informed the secretariat of the negotiating conference that they had intended to vote in favour of the resolution (UNGA, 2013b, p. 13). Accordingly, 156 states voted in favour of the resolution, 3 voted against it, and 22 abstained from voting.
- 3 The 67 states were: Albania, Antigua and Barbuda, Argentina, Australia, Austria, the Bahamas, Belgium, Belize, Benin, Brazil, Burkina Faso, Burundi, Chile, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, the Czech Republic, Denmark, Djibouti, the Dominican Republic, Estonia, Finland, France, Germany, Greece, Grenada, Guyana, Hungary, Iceland, Ireland, Italy, Jamaica, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Mali, Malta, Mauritania, Mexico, Montenegro, Mozambique, the Netherlands, New Zealand, Norway, Palau, Panama, Portugal, Romania, St. Lucia, St. Vincent and the Grenadines, Senegal, the Seychelles, Slovenia, South Korea, Spain, Suriname, Sweden, Switzerland, Tanzania, Togo, Trinidad and Tobago, Tuvalu, the United Kingdom, and Uruguay.

Section 3

- 1 One of the ATT's preambular principles refers to the 'responsibility of all States, in accordance with their respective international obligations, to effectively regulate the international trade in conventional arms [...] as well as the primary responsibility of all States in establishing and implementing their respective national control systems'.
- 2 The Treaty requires each state party to designate 'competent national authorities' (UNGA, 2013a, art. 5(5)). Accordingly, this plural term is used throughout this Guide, although it is acknowledged that a state party may establish a single authority—see Section 3.3.2.
- 3 The UN Register of Conventional Arms, the 2001 Firearms Protocol, the 2001 UN Programme of Action on Small Arms, and the 2005 International Tracing Instrument already foresee the establishment of national contact points to act as liaisons on matters of implementation concerning those instruments (UNODA, n.d.b; UNGA, 2001a, art. 12(2); 2001b, art. II(6); 2005a, para. 25).

Section 4

- 1 The Firearms Protocol, another relevant UN instrument, contains a definition of 'firearm', but not of 'small arms and light weapons' (UNGA, 2001a, art. 3(a)).
- 2 This phrase means that simply disassembling a weapon and sending it in three different packages containing its constituent parts and components would fall within Article 4. However, the ATT does not ordinarily prohibit the transfer (under Article 6) or regulate the export (under Article 7) of everyday items such as batteries or standard circuit boards that are often part of a weapons system.

- 3 The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is a multilateral export control regime with 41 participating states.
- 4 See, for example, Singapore (2013).

Section 5

- 1 For examples of non-mandatory arms embargoes, see Security Council Resolutions 181 and 569 on South Africa (UNSC, 1963; 1985); Resolution 853 on Nagorno-Karabakh, Azerbaijan (UNSC, 1993); Resolution 1076 on Afghanistan (UNSC, 1996); Resolution 1227 on Eritrea and Ethiopia (UNSC, 1999); and Resolution 1295 on Angola (UNSC, 2000).
- 2 As of 1 June 2016, five states had ratified or accepted the Convention: Cameroon, the Central African Republic, Chad, Gabon, and the Republic of the Congo. In accordance with Article 36(1), the Convention enters into force 30 days after the sixth ratification (ECCAS, 2010; UNTC, n.d.c).
- 3 See the commentary on Article 6(2) by Andrew Clapham in Casey-Maslen et al. (2016).
- 4 The Convention against Transnational Organized Crime defines a 'serious crime' as 'conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty' (UNGA, 2000, art. 2(b)). It defines an 'organized criminal group' as 'a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit' (art. 2(a)).
- 5 Common Article 3 defines acts constituting serious violations as: '(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples' (Geneva Conventions, 1949, common art. 3(1)).
- 6 See ICRC (1987).
- 7 The term 'precautions in attack' refers to the obligation to attempt to spare the civilian population, civilians, and civilian objects during the conduct of hostilities, as enshrined in Article 57 of Protocol I to the Geneva Conventions (Protocol I, 1977).
- 8 The provision refers to 'activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law' (UNGA, 1997, art. 19(2)).
- 9 See UNGA (2000, art. 3(2)).
- 10 The ATT makes reference to 'gender-based violence' and 'violence against women and children', terms that clearly overlap.

Section 6

- 1 An international import certificate (IIC) is a document issued by the government of the importing state, confirming that the government is aware of, and does not object to, the proposed import of the weapons. IICs are usually required when weapons are being exported to a non-state entity, such as a commercial enterprise. Privately issued EUCs are signed and stamped by the commercial entity that purchases the arms, and any re-transfer restrictions contained in the IIC apply to the commercial importer, not the government of the importing state (Parker, 2009, p. 64; 2014, p. 91).

- 2 The Firearms Protocol, for instance, requires import licensing for firearms, their parts and components, and ammunition (UNGA, 2001a, art. 10).

Section 7

- 1 Many aspects discussed in this Section are drawn from the author's book on controlling the Flemish international arms trade; see Nijs (2015).
- 2 The 1973 International Convention on the Simplification and Harmonization of Customs Procedures, known as the Kyoto Convention, entered into force in 1974. A protocol amending the convention was adopted in June 1999 and entered into force on 3 February 2006. The protocol revises and updates the convention and has come to be referred to as the 'Revised Kyoto Convention' although it is a protocol to that convention, not a convention itself.
- 3 In Belgium, import, export, transit, and trans-shipment of conventional weapons fall within regional competence; this section discusses regulations of Belgium's Flemish Region.
- 4 Temporary storage is the only accepted intermediary operation that can qualify as 'transit'.
- 5 Specifically, concerning air transport, see the guidance on transit and trans-shipment in the handbook of the International Air Transport Association (IATA, n.d., s. 3.5.7).
- 6 An in-depth examination of the concept of jurisdiction is beyond the scope of this chapter. In principle, states parties' regulations should apply to their whole territory, including their territorial waters and airspace.
- 7 While Article 6 of the Treaty requires states parties not to authorize any transit or trans-shipment that violates the included prohibitions, arms embargoes usually instruct states parties more generally to avert such transfers. Other international obligations involving transit or trans-shipment requirements similarly tend to require states to take action to avert or stop such transfers. In that sense, the exclusive regulation of trans-shipment without the application of any measures concerning other forms of transit might fall short of states parties' obligations.
- 8 These instruments include the UN Firearms Protocol (UNGA, 2001a); the UN Programme of Action (UNGA, 2001b); the ECOWAS Convention (ECOWAS, 2006); the Southern African Development Community's Protocol on the Control of Firearms, Ammunition and Other Related Materials (SADC, 2001); the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (OAS, 1997); and the OSCE Document on Small Arms and Light Weapons (OSCE, 2000). For a comprehensive overview, see AI and IANSA (2012) and Bauer and Bromley (2015).
- 9 For more general information, see the WCO's *Strategic Trade Control Enforcement (STCE) Implementation Guide* (WCO, n.d.).
- 10 Territorial seas do not include the internal waters of a state, such as rivers. Note that an even more restrictive regime, transit passage, applies to straits that are used for international navigation between one part of the high seas or an exclusive economic zone (EEZ) and another part of the high seas or an EEZ, even if such straits are within the territorial sea; see UNCLOS (UN, 1982, arts. 34–45). The right of innocent passage does not have an aerial counterpart; there is no such thing as a right of innocent passage through territorial airspace. For a discussion of airspace transit controls, see Omanovic (2013).
- 11 In the elaboration of exceptions to the concept of 'innocent', Article 6 must be read alongside UNCLOS references to international law.

- 12 Further, UNCLOS gives states parties broad discretion to determine that passage is not innocent, under the general exception relating to foreign ships engaging in 'any other activity not having a direct bearing on passage' (UN, 1982, art. 19(2)(l)).
- 13 UN Security Council Resolution 2174 (2014) and earlier resolutions concerning Libya contain provisions that are similar to the one included in Resolution 2216 (2015) on Yemen (UNSC, 2014a; 2015).

Section 8

- 1 For example, the Firearms Protocol encourages states parties to consider requiring registration, licensing, or authorization of brokers engaged in brokering activities involving firearms, their parts and components, and ammunition (UNGA, 2001a, art. 15(1)).

Section 9

- 1 The source of this typology is Bevan (2008).
- 2 Although the UN Programme of Action covers only small arms and light weapons, its measures and control principles are also relevant to larger conventional arms.
- 3 In the United States, for example, sales contracts for US Stinger and Javelin missiles include physical security requirements that are not applied to other exported small arms or light weapons, such as a requirement for importing governments to conduct monthly physical inventories of all their Stinger stockpiles, employ a full-time guard force (or a combination of a guard force and an intrusion detection system), and notify the US government before assembling the missiles for training or lot testing, and if they are lost or stolen (USDOD, 2003).

Section 10

- 1 Synonyms for internal compliance programme include internal compliance system, export control programme, export management and compliance programme, and export management system.

Section 11

- 1 Article 13(2) encourages states parties to report on measures taken 'that have been proven effective in addressing the diversion of transferred conventional arms', while Article 11(6) encourages them to report on measures taken 'in addressing the diversion of transferred conventional arms', regardless of whether they were effective.

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ANNEXE

The Arms Trade Treaty



Preamble

The States Parties to this Treaty,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling Article 26 of the Charter of the United Nations which seeks to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources,

Underlining the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts,

Recognizing the legitimate political, security, economic and commercial interests of States in the international trade in conventional arms,

Reaffirming the sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system,

Acknowledging that peace and security, development and human rights are pillars of the United Nations system and foundations for collective security and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

Recalling the United Nations Disarmament Commission Guidelines for international arms transfers in the context of General Assembly resolution 46/36H of 6 December 1991,

Noting the contribution made by the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, as well as the 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, and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons,

Recognizing the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms,

Bearing in mind that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence,

Recognizing also the challenges faced by victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion,

Emphasizing that nothing in this Treaty prevents States from maintaining and adopting additional effective measures to further the object and purpose of this Treaty,

Mindful of the legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law,

Mindful also of the role regional organizations can play in assisting States Parties, upon request, in implementing this Treaty,

Recognizing the voluntary and active role that civil society, including non-governmental organizations, and industry, can play in raising awareness of the object and purpose of this Treaty, and in supporting its implementation,

Acknowledging that regulation of the international trade in conventional arms and preventing their diversion should not hamper international cooperation and legitimate trade in materiel, equipment and technology for peaceful purposes,

Emphasizing the desirability of achieving universal adherence to this Treaty,

Determined to act in accordance with the following principles;

Principles

- The inherent right of all States to individual or collective self-defence as recognized in Article 51 of the Charter of the United Nations;
- The settlement of international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered in accordance with Article 2 (3) of the Charter of the United Nations;
- Refraining in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations in accordance with Article 2 (4) of the Charter of the United Nations;
- Non-intervention in matters which are essentially within the domestic jurisdiction of any State in accordance with Article 2 (7) of the Charter of the United Nations;

- Respecting and ensuring respect for international humanitarian law in accordance with, inter alia, the Geneva Conventions of 1949, and respecting and ensuring respect for human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights;
- The responsibility of all States, in accordance with their respective international obligations, to effectively regulate the international trade in conventional arms, and to prevent their diversion, as well as the primary responsibility of all States in establishing and implementing their respective national control systems;
- The respect for the legitimate interests of States to acquire conventional arms to exercise their right to self-defence and for peacekeeping operations; and to produce, export, import and transfer conventional arms;
- Implementing this Treaty in a consistent, objective and non-discriminatory manner,

Have agreed as follows:

Article 1

Object and Purpose

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.

Article 2

Scope

1. This Treaty shall apply to all conventional arms within the following categories:

- (a) Battle tanks;
 - (b) Armoured combat vehicles;
 - (c) Large-calibre artillery systems;
 - (d) Combat aircraft;
 - (e) Attack helicopters;
 - (f) Warships;
 - (g) Missiles and missile launchers; and
 - (h) Small arms and light weapons.
2. For the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as “transfer”.
 3. This Treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party’s ownership.

Article 3

Ammunition/Munitions

Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2 (1), and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such ammunition/munitions.

Article 4

Parts and Components

Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2(1) and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such parts and components.

Article 5

General Implementation

1. Each State Party shall implement this Treaty in a consistent, objective and non-discriminatory manner, bearing in mind the principles referred to in this Treaty.

2. Each State Party shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty.
3. Each State Party is encouraged to apply the provisions of this Treaty to the broadest range of conventional arms. National definitions of any of the categories covered under Article 2 (1) (a)-(g) shall not cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of this Treaty. For the category covered under Article 2 (1) (h), national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty.
4. Each State Party, pursuant to its national laws, shall provide its national control list to the Secretariat, which shall make it available to other States Parties. States Parties are encouraged to make their control lists publicly available.
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.
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. Each State Party shall notify the Secretariat, established under Article 18, of its national point(s) of contact and keep the information updated.

Article 6

Prohibitions

1. A State Party shall not authorize any transfer of conventional arms, covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.
2. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its 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.

3. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if it 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 directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

Article 7

Export and Export Assessment

1. If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items:
 - (a) would contribute to or undermine peace and security;
 - (b) could be used to:
 - (i) commit or facilitate a serious violation of international humanitarian law;
 - (ii) commit or facilitate a serious violation of international human rights law;
 - (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; or
 - (iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.
2. The 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.
3. 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 authorize the export.

4. The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.
5. Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.
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, subject to its national laws, practices or policies.
7. If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.

Article 8

Import

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.
2. Each importing State Party shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms covered under Article 2 (1). Such measures may include import systems.
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 9

Transit or trans-shipment

Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional

arms covered under Article 2 (1) through its territory in accordance with relevant international law.

Article 10

Brokering

Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2(1). Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.

Article 11

Diversion

1. Each State Party involved in the transfer of conventional arms covered under Article 2(1) shall take measures to prevent their diversion.
2. The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms covered under Article 2 (1) through its national control system, established in accordance with Article 5 (2), 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 by the exporting and importing States. Other prevention measures may include, where appropriate: examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures.
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).
4. If a State Party detects a diversion of transferred conventional arms covered under Article 2 (1), the State Party shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include alerting potentially affected States Parties, examining diverted shipments of such conventional arms covered under Article 2 (1), and taking follow-up measures through investigation and law enforcement.

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. Such information may include information on 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.
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

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).
2. Each State Party is encouraged to maintain records of conventional arms covered under Article 2 (1) that are transferred to its territory as the final destination or that are authorized to transit or trans-ship territory under its jurisdiction.
3. Each State Party is encouraged to include in those records: the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2 (1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s), and end users, as appropriate.
4. Records shall be kept for a minimum of ten years.

Article 13

Reporting

1. 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.

2. States Parties are encouraged to report to other States Parties, through the Secretariat, information on measures taken that have been proven effective in addressing the diversion of transferred conventional arms covered under Article 2 (1).
3. 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. The report submitted to the Secretariat may contain the same information submitted by the State Party to relevant United Nations frameworks, including the United Nations Register of Conventional Arms. Reports may exclude commercially sensitive or national security information.

Article 14

Enforcement

Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.

Article 15

International Cooperation

1. States Parties shall cooperate with each other, consistent with their respective security interests and national laws, to effectively implement this Treaty.
2. States Parties are encouraged to facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of this Treaty pursuant to their respective security interests and national laws.
3. States Parties are encouraged to consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty.
4. States Parties are encouraged to cooperate, pursuant to their national laws, in order to assist national implementation of the provisions of this Treaty, including through sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion of conventional arms covered under Article 2 (1).
5. States Parties shall, where jointly agreed and consistent with their national laws, afford one another the widest measure of assistance in investigations,

prosecutions and judicial proceedings in relation to violations of national measures established pursuant to this Treaty.

6. 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.
7. States Parties are encouraged to exchange experience and information on lessons learned in relation to any aspect of this Treaty.

Article 16

International Assistance

1. 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, demobilization 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. Each State Party may request, offer or receive assistance through, inter alia, the United Nations, international, regional, subregional or national organizations, non-governmental organizations, or on a bilateral basis.
3. A voluntary trust fund shall be established by States Parties to assist requesting States Parties requiring international assistance to implement this Treaty. Each State Party is encouraged to contribute resources to the fund.

Article 17

Conference of States Parties

1. A Conference of States Parties shall be convened by the provisional Secretariat, established under Article 18, no later than one year following the entry into force of this Treaty and thereafter at such other times as may be decided by the Conference of States Parties.
2. The Conference of States Parties shall adopt by consensus its rules of procedure at its first session.
3. The Conference of States Parties shall adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each

ordinary session, it shall adopt a budget for the financial period until the next ordinary session.

4. The Conference of States Parties shall:
 - (a) Review the implementation of this Treaty, including developments in the field of conventional arms;
 - (b) Consider and adopt recommendations regarding the implementation and operation of this Treaty, in particular the promotion of its universality;
 - (c) Consider amendments to this Treaty in accordance with Article 20;
 - (d) Consider issues arising from the interpretation of this Treaty;
 - (e) Consider and decide the tasks and budget of the Secretariat;
 - (f) Consider the establishment of any subsidiary bodies as may be necessary to improve the functioning of this Treaty; and
 - (g) Perform any other function consistent with this Treaty.
5. Extraordinary meetings of the Conference of States Parties shall be held at such other times as may be deemed necessary by the Conference of States Parties, or at the written request of any State Party provided that this request is supported by at least two-thirds of the States Parties.

Article 18

Secretariat

1. This Treaty hereby establishes a Secretariat to assist States Parties in the effective implementation of this Treaty. Pending the first meeting of the Conference of States Parties, a provisional Secretariat will be responsible for the administrative functions covered under this Treaty.
2. The Secretariat shall be adequately staffed. Staff shall have the necessary expertise to ensure that the Secretariat can effectively undertake the responsibilities described in paragraph 3.
3. The Secretariat shall be responsible to States Parties. Within a minimized structure, the Secretariat shall undertake the following responsibilities:
 - (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;

- (c) Facilitate the matching of offers of and requests for assistance for Treaty implementation and promote international cooperation as requested;
- (d) Facilitate the work of the Conference of States Parties, including making arrangements and providing the necessary services for meetings under this Treaty; and
- (e) Perform other duties as decided by the Conferences of States Parties.

Article 19

Dispute Settlement

1. States Parties shall consult and, by mutual consent, cooperate to pursue settlement of any dispute that may arise between them with regard to the interpretation or application of this Treaty including through negotiations, mediation, conciliation, judicial settlement or other peaceful means.
2. States Parties may pursue, by mutual consent, arbitration to settle any dispute between them, regarding issues concerning the interpretation or application of this Treaty.

Article 20

Amendments

1. Six years after the entry into force of this Treaty, any State Party may propose an amendment to this Treaty. Thereafter, proposed amendments may only be considered by the Conference of States Parties every three years.
2. Any proposal to amend this Treaty shall be submitted in writing to the Secretariat, which shall circulate the proposal to all States Parties, not less than 180 days before the next meeting of the Conference of States Parties at which amendments may be considered pursuant to paragraph 1. The amendment shall be considered at the next Conference of States Parties at which amendments may be considered pursuant to paragraph 1 if, no later than 120 days after its circulation by the Secretariat, a majority of States Parties notify the Secretariat that they support consideration of the proposal.
3. The States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a three-quarters

majority vote of the States Parties present and voting at the meeting of the Conference of States Parties. For the purposes of this Article, States Parties present and voting means States Parties present and casting an affirmative or negative vote. The Depositary shall communicate any adopted amendment to all States Parties.

4. An amendment adopted in accordance with paragraph 3 shall enter into force for each State Party that has deposited its instrument of acceptance for that amendment, ninety days following the date of deposit with the Depositary of the instruments of acceptance by a majority of the number of States Parties at the time of the adoption of the amendment. Thereafter, it shall enter into force for any remaining State Party ninety days following the date of deposit of its instrument of acceptance for that amendment.

Article 21

Signature, Ratification, Acceptance, Approval or Accession

1. This Treaty shall be open for signature at the United Nations Headquarters in New York by all States from 3 June 2013 until its entry into force.
2. This Treaty is subject to ratification, acceptance or approval by each signatory State.
3. Following its entry into force, this Treaty shall be open for accession by any State that has not signed the Treaty.
4. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 22

Entry into Force

1. This Treaty shall enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depositary.
2. For any State that deposits its instrument of ratification, acceptance, approval or accession subsequent to the entry into force of this Treaty, this Treaty shall enter into force for that State ninety days following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 23

Provisional Application

Any State may at the time of signature or the deposit of its instrument of ratification, acceptance, approval or accession, declare that it will apply provisionally Article 6 and Article 7 pending the entry into force of this Treaty for that State.

Article 24

Duration and Withdrawal

1. This Treaty shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty. It shall give notification of such withdrawal to the Depositary, which shall notify all other States Parties. The notification of withdrawal may include an explanation of the reasons for its withdrawal. The notice of withdrawal shall take effect ninety days after the receipt of the notification of withdrawal by the Depositary, unless the notification of withdrawal specifies a later date.
3. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Treaty while it was a Party to this Treaty, including any financial obligations that it may have accrued.

Article 25

Reservations

1. At the time of signature, ratification, acceptance, approval or accession, each State may formulate reservations, unless the reservations are incompatible with the object and purpose of this Treaty.
2. A State Party may withdraw its reservation at any time by notification to this effect addressed to the Depositary.

Article 26

Relationship with other international agreements

1. The implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing or future international agreements, to which they are parties, where those obligations are consistent with this Treaty.

2. This Treaty shall not be cited as grounds for voiding defence cooperation agreements concluded between States Parties to this Treaty.

Article 27

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Treaty.

Article 28

Authentic Texts

The original text of this Treaty, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE AT NEW YORK, this second day of April, two thousand and thirteen.

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NOTE: References to text in the Arms Trade Treaty appear in **bold**.

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