



Arms Trade Treaty Implementation Toolkit

Module 1

Why Join the Arms Trade Treaty?

Available on: www.un.org/disarmament/ATT

I. Introduction

The landmark Arms Trade Treaty (ATT) – adopted in 2013 by an overwhelming majority in the General Assembly – delivers on the call to establish international norms for the conventional arms trade.

Unregulated and irresponsible arms transfers intensify and prolong conflict, lead to regional instability, facilitate human rights abuses on a massive scale, and hinder social and economic development.

The ATT is designed to stop such transfers and to promote responsibility, transparency and accountability in the global arms trade. It will therefore contribute to reducing the suffering of millions of civilians who are affected by armed conflict and violence.

Moreover, the ATT will create a safer environment for the United Nations and other organizations to carry out humanitarian assistance, peacekeeping, post-conflict peacebuilding, and to attain globally agreed development goals. This is to the benefit of all countries and all people, providing pressing reasons for all States to join this Treaty.

The ATT is largely a normative Treaty that seeks to promote appropriate governmental regulation of the cross-border trade of conventional arms. States Parties to the ATT will need to ensure that they have the necessary administrative, financial and technical resources for the implementation of the Treaty. ATT implementation actions may include adopting adequate legislation, setting up arms export control systems, establishing oversight processes, and improving the management of stockpiles. To this effect, it is envisaged that there will be considerable assistance available, including through the UN, to help States Parties build such capacity.

National conditions vary from country to country. The specifics of how the ATT will be implemented in a country will depend on the country's national institution and legal framework. The ATT does not establish a system of international enforcement, monitoring or verification. So States Parties are themselves in charge of their national implementation efforts.

This toolkit can assist States Parties as well as other States that want to abide by the ATT. The toolkit is a set of modules based on good practices and UN standards and guidelines, from which authorities can choose what applies best to their context.

This first module explains the value of joining the ATT.

II. Ten compelling reasons for any country to join the ATT

1. Strengthening international law

An effective international law regime is dependent on as many States as possible joining key legally binding commitments.

- States have founded the UN “to save succeeding generations from the scourge of war”, “to reaffirm faith in fundamental human rights”, “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”, and “to promote social progress and better standards of life in larger freedom”.
- The ATT was adopted by the UN General Assembly, in which all the UN Member States have an equal voice – illustrating that each one of them also has an equal responsibility to contribute to the strengthening of international law.

2. Understanding that in all regions weapons cross borders and instability can spread

Some government officials maintain that their States do not export weapons, and/or that crisis and conflict are not on their doorstep – thus the ATT is “not really meant” for their country. Although point 1. (above) should already be seen as enough of a rebuttal to that argument, there is more to be said to this: the global arms trade does affect all people of the world.

- Many countries export, at some point, some weaponry – for instance to-be-replaced police rifles, or surplus ammunition. These occasional exports can have a serious negative impact when not based on an export approval decision in conformity with internationally agreed standards.
- Sustained, decade-on-decade peace and stability are rare commodities in the world. In 2015, only 41 countries received either the label ‘stable’, ‘more stable’, ‘sustainable’, or ‘very sustainable’.¹ An area which at present seems calm and safe, may see a sudden outpouring of instability in the future, underlining the necessity of adequate regulation of arms flows closer to home for all its neighbours.
- In short: joining the landmark ATT – which enables a comprehensive regulation of the arms trade benefitting regional stability – should be in the interest of each State on every continent.

¹ Fragile States Index 2015, see: fsi.fundforpeace.org.

3. *Contributing to international security*

Abiding by the ATT contributes to international and regional peace, security and stability.

- The ATT acknowledges that weapons transfers can destabilise a country or region. States Parties are prohibited from exporting conventional arms, ammunition or key parts and components when there is such a risk.² For instance, governments shall not authorize a transfer of items if this would:
 - Violate a UN Security Council arms embargo;
 - Violate relevant international obligations under international agreements to which they are a party;
 - Be used in genocide, grave breaches of the law of war (the Geneva Conventions of 1949), attacks against civilians, or war crimes.
- A rigorous application of the ATT provisions (including export prohibitions,³ export assessment,⁴ regulation of imports,⁵ brokering⁶ and transit / trans-shipment⁷ as well as prevention of diversion of weapons⁸) would contribute to reducing flows of items to:
 - Areas under Security Council arms embargoes;
 - Conflict zones and areas of high tension or volatility;
 - Governments engaging in systematic human rights abuses;
 - Terrorists and transnational crime organizations.
- Reduced conflict and enhanced stability imply fewer humanitarian crises. Such crises often translate in massive displacement of people and refugee flows, with serious consequences for many countries in a region.
- Political stability provides a better environment for social and economic development. It also implies a diminished need for governments to divert scarce resources towards military spending.
- All countries in a region – and beyond – will benefit from increased stability.

² Article 4 requires States Parties to regulate the exports of parts and components where the exports are in a form that provide the capability to assemble the arms covered by the Treaty. For purposes of these guidelines, conventional arms, ammunition and parts and components (as defined in the Article 4) will be henceforth referred to as “items” or “covered items”.

³ Article 6.

⁴ Article 7.

⁵ Article 8.

⁶ Article 10.

⁷ Article 9.

⁸ Article 11.

4. *Enhanced domestic security*

Improved arms regulation reduces the risk that weapons and ammunition will reach the hands of criminal gangs and armed groups. This translates into an improved domestic security situation, less opportunity for armed violence, and more safety for civilians.

- Article 8 (2) stipulates that measures to regulate imports of items should be taken “where necessary”. Depending on the specific circumstances of the importing country, regulation of imports may be needed to ensure better control and accounting of weapons coming into any territory under the importing country’s jurisdiction.
- In addition, the importing State Party will have to ensure that it has in place mechanisms to prevent imported items from being diverted to uses that would contravene the stipulations of the Treaty’s Article 6 (prohibitions) and/or Article 7 (export and export assessment). A State Party must ensure that imported items do not end up in the hands of individuals or entities engaging in organized crime, terrorism, serious violations of international humanitarian or human rights law, and gender-based violence.
- Although Article 11 on “diversion” makes explicit reference only to the conventional arms covered under Article 2 (scope), this does not prevent States Parties from adopting measures aimed at preventing diversion of ammunition and key parts and components.

5. *Stronger institutions*

Investment in capacity-building for the effective regulation and control of conventional arms should be a priority for national legislative bodies – even in countries facing severe human and financial constraints and seized with pressing social and economic development challenges.

- A State’s participation in the ATT would give government officials a compelling argument in efforts to mobilise national support for investing in arms regulation and control, as required for compliance with the legal obligations imposed by the ATT.
- Such capacity-building may entail:
 - Establishing effective national controls for the import and export of items, including keeping up-to-date records and national control lists, and developing or improving relevant laws, policies and procedures;
 - Establishing a system for controlling transit and trans-shipment. This could be part of the national control system mentioned above;
 - Regulating arms brokering;
 - Adopting measures to ensure the authenticity of documents (e.g., end-use/user certificates, licences and other documentation) and to prevent their forgery;
 - Setting up or improving systems for data collection and information gathering so as to enable the State Party to respond to queries from other States Parties in a timely manner;
 - Developing weapons marking and record-keeping capacity;
 - Improving the management of stockpiles of conventional arms and ammunition;
 - Developing adequate monitoring and enforcement capacity.

6. Access to international assistance

The ATT envisages different forms of assistance to help States Parties that lack sufficient resources and capacity to effectively implement the provisions of the Treaty.

- The Treaty stipulates that States Parties may seek the following:⁹
 - Legal or legislative assistance;
 - Institutional capacity-building;
 - Technical, material or financial assistance.

- Assistance can be sought or requested via:
 - The voluntary trust fund to be set up pursuant to Article 16 (3) of the Treaty;
 - The United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR);¹⁰
 - Other mechanisms within the UN;
 - International, regional, subregional or national organizations;
 - Non-governmental organizations;
 - Bilateral cooperation.

- Article 16 stipulates that States Parties in a position to do so shall provide assistance, upon request. Joining the ATT opens thus an opportunity for States Parties to set up an effective system for conventional arms regulation and control.

- To this end, a State Party requiring assistance should undertake an in-depth analysis of its needs and develop a well-crafted plan that make efficient use of the various assistance mechanisms to support the implementation of the ATT.¹¹

7. Opportunities for international cooperation

International cooperation, including sharing and exchange of information, is essential to prevent illicit or irresponsible transfers of covered items.

- The ATT encourages States Parties to cooperate with one another including through:
 - Exchange of information and consultation on matters of mutual interest;

⁹ Article 16.

¹⁰ UNSCAR was established in June 2013 as a multi-donor mechanism to fund projects aimed at supporting the implementation of the ATT and the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA). See: www.un.org/disarmament/UNSCAR

¹¹ In this regard, use can be made of available tools such as the ATT baseline assessment project (ATT-BAP), or the ATT model law. See: www.armstrade.info/; www.smallarmssurvey.org/fileadmin/docs/E-Co-Publications/SAS-NZ-Gov-Arms-Trade-Treaty-Model-Law.pdf

- Sharing of information regarding illicit activities and actors to prevent and eradicate diversion of arms;
 - Provision of the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to the ATT;
 - Cooperation to prevent arms transfers from becoming subject to corrupt practices;
 - Exchange of experience and information on lessons learnt.
- States Parties to the ATT can, therefore, make use of the international cooperation provisions set forth in the Treaty to:
- Strengthen national laws and systems for the regulation and control of conventional arms and ammunition;
 - Strengthen national capacity to prevent diversion of arms;
 - Carry out investigations, prosecutions and judicial proceeding;
 - Prevent and combat corruption;
 - Gather intelligence and access information and lessons learned obtained by other States.

8. Enhanced transparency and confidence among States

The ATT requires its States Parties to submit to the ATT Secretariat information aimed at enhancing transparency as well as ensuring that States Parties are taking the measures necessary for the implementation of the Treaty.

- Enhancing transparency in the global arms trade is a significant contribution to international and regional peace and security, as it would:
- Reduce misunderstanding, miscalculation and scepticism regarding other countries' intent and capability;
 - Help build trust and confidence among States;
 - Allow States to get accurate, up-to-date information on weapons coming in and out of their jurisdictions;
 - Enhance accountability regarding international arms transfers.
- Required transparency measures:
- Initial report on measures undertaken to implement the ATT, including national laws, national control lists and other regulations and administrative measures;¹²

¹² Article 13 (1) and Article 5 (4).

- Annual report submitted by States Parties on authorized or actual exports and imports of conventional arms;¹³
- Information on measures taken to address the diversion of arms.¹⁴

9. Better environment for social and economic development

Countries facing armed conflict or high levels of armed violence often have to invest significant resources in defence and security, in detriment to social and economic development endeavours.

- Prevent some of the consequences engendered by conflict and widespread armed violence, such as:
 - Reduced levels of foreign investment;
 - Poor implementation of projects;
 - Destruction of infrastructure, market disruption, capital flight and brain drain;
 - Over-burdened health services;
 - Dysfunctional education systems;
 - Illegal exploitation of natural resources;
 - Impunity and disregard for the rule of law.
- Even in the absence of violence, unregulated arms transfers can negatively impact normal economic and social developments by:
 - Sowing seeds of corruption due to the lure of lucrative arms deal;
 - Over-spending in the defence and security sector.
- The high common standards provided in the ATT are expected to contribute significantly to the prevention of conflicts and armed violence, leading thus to more conducive environments for the pursuit of sustainable development goals.

¹³ Article 13 (3).

¹⁴ Article 13 (2).

10. Enhanced credibility in the international community

Participation in the ATT could in itself become a standard against which the credibility and responsibility of both importing and exporting countries would be measured.

- Although the ATT aims neither to facilitate nor to impede international transfers of arms, the fact that a State is a party to the Treaty may be seen as an indicator of the degree of that country's commitment to conduct its affairs in a transparent, responsible and accountable manner.
- Participation in the ATT of a State that is not a regular arms exporter would likely be seen as an indication that the country has taken adequate measures to ensure control over weapons within the territories under its jurisdiction – or to prevent their diversion.
- The export assessment criteria of the ATT are to be applied by the exporting State Party regardless of whether the export is destined for another State Party or any other State. In practice, an importing State being a party to the ATT may in itself become a positive factor in the view of exporting States' authorities conducting export assessments.



Arms Trade Treaty Implementation Toolkit

Module 2 Overview of Obligations

I. Introduction

Any country joining the Arms Trade Treaty (ATT), commits to putting in place effective measures to implement the Treaty.

States will decide which measures they need to carry out their obligations under the ATT. These measures may vary from country to country.

This second module, *Overview of Obligations*, will assist governments by providing an overview of the obligations under the ATT.

In particular, Module 2 will discuss what items are covered by the Treaty. And it will clarify the necessary national implementation actions. Also, this module will address opportunities for cooperation and how to foster transparency and accountability in the regulation of the international trade of conventional arms.

II. Understanding the Treaty's scope

Items covered by the ATT are identified in its Articles 2, 3 and 4.

The scope of the ATT is defined by Article 2. It lists eight categories of weapons that are covered by the ATT¹ as well as the activities of the international trade that are considered to constitute “transfers” under the Treaty.²

Consequently a State Party to the ATT will have to apply, at a minimum, the relevant provisions of the Treaty to the export, import, transit, trans-shipment and brokering transactions or activities involving the conventional arms listed in Article 2 (1).

Articles 3 and 4 of the ATT cover ammunition and parts and components for conventional arms.

International or cross-border movements of conventional arms by or on behalf of a State Party for its own use (e.g. for exercises outside of its borders or peacekeeping missions) are not considered to constitute transfers under the Treaty and, therefore, are not subject to the provisions of the ATT.³

¹ Article 2 (1).

² Article 2 (2).

³ Article 2 (3).

1. National definitions

The ATT requires States Parties to develop a national control list containing national definitions of the eight categories of weapons listed in its Article 2.

- For all the categories listed in Article 2 (1), except for small arms and light weapons (SALW), national definitions shall not cover less than the description used in the UN Register of Conventional Arms (UN Register)⁴ at the time of entry into force of the ATT,⁵ 24 December 2014.
- For SALW (Article 2 (1) (h)), national definitions shall not cover less than the descriptions used in relevant UN instruments, namely the International Tracing Instrument (ITI)⁶ and the Firearms Protocol.⁷

1.1 Seven categories contained in UN Register of Conventional Arms

The UN Register's definitions for its seven categories of weapons constitute minimum definitions for the ATT's first seven categories of weapons - categories a) through g) - in Article 2 (1) [refer to the Annex to this module for definitions]:

- 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.
- All States Parties shall apply the provisions of the ATT to those categories of weapons.
 - Importantly, the ATT encourages States Parties to go beyond this requirement and include the broadest range of conventional arms in their national lists.

1.2 SALW

The Firearms Protocol and the ITI are the two UN instruments that contain definitions of small arms and/or light weapons.⁸

⁴ Available at www.un.org/disarmament/convarms/Register/.

⁵ See Article 5 (3).

⁶ International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons. The definition contained in the ITI is largely based on the definition of firearms contained in the Firearms Protocol.

⁷ Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime. The Protocol defines firearms, a term that is often used interchangeably with small arms. Available at www.unodc.org/unodc/en/firearms-protocol/firearmsprotocol.html.

The mentioned Protocol defines “firearm” as follows:

“Firearm’ shall mean any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899.”

The ITI provides a definition of SALW that is composed of two parts: the first part containing a general definition, which is largely derived from the above-mentioned Firearms Protocol’s definition of firearms; the second part specifying what a “small arm” is and what a “light weapon” is, given the general definition. Both parts should be read together. Thus, for the purposes of the ITI, SALW are:

“...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.”

1.3 Ammunition/Munitions

In addition to the eight categories of conventional arms covered in Article 2, ammunition/munitions are subject to the prohibitions and export assessment provisions that apply to the weapons described in Article 2. Consequently, States Parties are required to regulate the export of ammunition/munitions that can be fired, launched or delivered by any of the conventional arms as defined above under section 1.1 and 1.2.

The ATT does not provide a definition of ammunition. Also, there is no internationally agreed definition of ammunition/munitions for the conventional arms covered under the ATT, except for firearm ammunition. The Firearms Protocol in its Article 3 defines the [firearm] ammunition as follows:

“Ammunition” shall mean the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm,

⁸ There are also several regional and subregional instruments dealing with SALW regulations and control, such as the ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials, the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States, the Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All its Aspects, the SADC Protocol on the Control of Firearms, Ammunition and other Related Materials.

provided that those components are themselves subject to authorization in the respective State Party;"

Furthermore, it indicates that the above definition is for the purposes of that instrument only. A State may adopt this definition or draw from it, when adopting relevant national laws and policies to implement the ATT.

A more general definition of ammunition and munition is provided by the International Ammunition Technical Guidelines (IATG):⁹

"[Ammunition] is a complete device, (e.g. missile, shell, mine, demolition store etc.) charged with explosives, propellants, pyrotechnics or initiating composition for use in connection with offence, or defence, or training, or non-operational purposes, including those parts of weapons systems containing explosives. (c.f. munition).

"[Munition] is a complete device charged with explosives, propellants, pyrotechnics, initiating composition, or nuclear, biological or chemical material for use in military operations, including demolitions."

The definition contained in the IATG reaches beyond the ammunition/munitions contemplated in the ATT, as (i) it may also apply to weapons of mass destruction (e.g., nuclear, biological and chemical) and (ii) it includes weapons, such as mines, which are not covered in the scope of the ATT.

1.4 Parts and components

Under Article 4 of the ATT, States Parties must regulate the export of parts and components that can provide the capability to assemble the conventional arms included in the scope of the ATT.

The ATT does not provide a definition of parts and components. However, Article 3 of the Firearms Protocol does:

"Parts and components' shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm."

2. ATT compared to other relevant global instruments¹⁰

The following global instruments – adopted under the auspices of the UN – address the trade in conventional arms:

⁹ For the International Ammunition Technical Guidelines (IATG), see www.un.org/disarmament/convarms/ammunition.







¹⁰ There are also regional, sub-regional and other inter-governmental instruments (e.g. the Nairobi Protocol, the ECOWAS Convention, the Wassenaar Arrangement) that deal with arms export regulations.

- a. UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects¹¹ (PoA);
- b. ITI;
- c. Firearms Protocol;
- d. UN Register.¹²

Some ATT States Parties have adopted regional, sub-regional and other governmental instruments that regulate arms exports. These States are encouraged to consult these instruments and to identify areas where their ATT commitments would overlap with their commitments under other relevant non-UN instruments in order to find synergies for an effective implementation of the ATT.

Figure 1 and 2 provide an overview of possible overlaps between the ATT and these other international instruments.

Figure 1 – Export of conventional arms and related items









	Battle tanks	→	ATT, UN Register
	Armoured combat vehicles	→	ATT, UN Register
	Large-calibre artillery systems	→	ATT, UN Register
	Combat aircraft	→	ATT, UN Register
	Attack helicopters	→	ATT, UN Register
	Warships	→	ATT, UN Register
	Missiles and missile launchers	→	ATT, UN Register
	Small arms and light weapons	→	ATT, UN Register, PoA, ITI, FP*
	Related ammunition/munitions	→	FP*
	Related parts and components	→	FP*

* FP covers firearms, their ammunition and parts and components

¹¹ The PoA was adopted by Member States of the UN by consensus in 2001 and all States are politically committed to implementing the measures recommended in it. Available at www.poa-iss.org/poa/poahtml.aspx.

¹² www.un.org/disarmament/convarms/Register/.

Figure 2 – Import, transit and transshipment, and brokering of conventional arms and related items

	Battle tanks	→	ATT, UN Register
	Armoured combat vehicles	→	ATT, UN Register
	Large-calibre artillery systems	→	ATT, UN Register
	Combat aircraft	→	ATT, UN Register
	Attack helicopters	→	ATT, UN Register
	Warships	→	ATT, UN Register
	Missiles and missile launchers	→	ATT, UN Register, PoA*
	Small arms and light weapons	→	ATT, UN Register, PoA, ITI, FP

* FP covers firearms, their ammunition and parts and components

III. National implementation of ATT requirements

1. Requirements related to arms exports

1.1 Establish and maintain a national export control system

The ATT requires States Parties to establish and maintain a national export control system that ensures effective compliance with the export provisions of the ATT, including application of the export assessment provisions of the ATT and enforcement of relevant export prohibitions and national laws and policies.¹³

- States Parties must have in place laws, regulations and administrative procedures to control and regulate the export of conventional arms under the scope of the ATT, as well as related ammunition,¹⁴ parts and components.¹⁵
- These laws, regulations and procedures shall enable the State Party to exercise effective control over conventional arms, ammunition and parts and components leaving a State's jurisdiction.

The national legislation should clearly state:

¹³ Article 5 (2).

¹⁴ Article 3.

¹⁵ Article 4.

- a) Which weapons and items are subject to export control (national control list);
- b) Which government ministries, departments and agencies are responsible for controlling conventional arms exports (national authorities);
- c) The criteria for granting or refusing export authorizations (regulatory procedures);
- d) The legal and/or administrative actions that must be applied in case of export offences (enforcement measures and mechanisms, prosecution and punishment).

1.1.1. National control list

Article 5 (2) of the ATT requires States Parties to establish and maintain a national control list.

- This list shall contain definitions of the conventional arms, ammunition and munitions, and parts and components the transfer of which are to be regulated.
- The national control list may be a single list covering all items subject to export control, or a collection of lists each covering different categories/types of items subject to export control.
- States Parties, pursuant to their national laws, must provide their national control lists to the ATT Secretariat, which shall make them available to other States Parties.
- States Parties are also encouraged to make their control lists publicly available.

1.1.2. National authorities

States Parties have to designate competent national authorities to ensure the effective and transparent national control and regulation over the export of items covered under the ATT.¹⁶

- The designated authority could be a new entity established for this purpose or an already established entity.
- The designated authority shall administer the regulatory regime and implement controls through an arms export authorization process.¹⁷

Box 1 – Designating national authorities

Although specific approaches differ from country to country, most governments designate one state agency as the main entity responsible for examining export authorization application and granting (or refusing) the related authorizations.¹⁸ It is common for such an agency to consult with other

¹⁶ Article 5 (5).

¹⁷ C.f. Article 5 (5).

¹⁸ For the purposes of these guidelines, an export authorization will be often referred to as an “export licence”. However, some countries use other terminology, e.g. “export permit”.

government ministries or departments before a decision is taken on an authorization application. In some cases, the authorization authority is subject to an oversight mechanism (e.g. by the legislative body or parliament).

Tasks to be undertaken by the authorization agency may include:

- a. Receive and review export applications;
- b. Issue export authorizations;
- c. Ensure that all documentation and approvals for the export of items are detailed and issued prior to the export;¹⁹
- d. Keep records of export authorizations for a minimum of ten years;²⁰
- e. Make available appropriate information about an authorization to the importing State and transit or transshipment State, if applicable and subject to its national laws, policies and practices;²¹
- f. Coordinate with other ministries and department involved in the export authorization process;
- g. Report to the oversight body, where applicable and in accordance with national laws.

In many countries national laws require that the export of certain weapons of strategic importance be approved at a level higher than national authority, such as high-level officials, the cabinet or Council of Ministers or, in some cases, the legislative body.

1.1.3. Regulatory procedures on conventional arms exports

The export of conventional arms, related ammunition/munition, parts and components (or “covered items”) shall be subject, on a case-by-case basis, to prior written authorization (“export authorization”) by the competent authorities of the exporting State.

a. Transfer prohibition²²

Export authorizations of items shall not be granted if the export would contravene any of the criteria outlined in Article 6 of the ATT.

¹⁹ Article 7 (5).

²⁰ Article 12 (1).

²¹ Article 7 (6).

²² Article 6.

Box 2 – Prohibitions of transfers (Article 6)

A transfer of items should be denied if:

- a) It would violate the State Party's obligations under measures adopted by the UN Security Council acting under Chapter VII of the Charter, in particular arms embargoes;
- b) It would violate a State Party's relevant international obligations under international agreements;
- c) A State Party has knowledge at the time of authorization that the arms or items would be used in the commission of:
 - Genocide;
 - Crime against humanity;
 - Grave breaches of the Geneva Conventions of 1949;
 - Attacks directed against civilian objects or civilians protected as such;
 - Other war crimes as defined by international agreements to which it is a Party.

b. Export assessment²³

States Parties are required to conduct an assessment of risks associated with the export of items covered under the ATT.

➤ The assessment by the exporting State Party should be done in a coherent, objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State. The criteria for the export assessment are outlined in Article 7 of the ATT.

➤ If an export is not prohibited under Article 6 of the ATT, the national authorities of the exporting State Party shall assess the potential that an export of covered items:

- Would contribute to or undermine peace and security;²⁴

In making this assessment, the national authorities may identify positive and negative factors affecting decisions regarding export of covered items. If those authorities determine that an export is likely to contribute to peace and security (a positive outcome), then they should add this finding to the list of factors favouring the authorisation of the exports. On the other hand, if the national authorities find that an export is likely to undermine peace and security (a negative outcome), then they should assess this risk and add it to the list of factors justifying the adoption/negotiation of mitigating measures or a denial of such export.

- Could be used to commit or facilitate a serious violation of international humanitarian or international human rights law;
- Could be used to commit offenses under international conventions or protocols relating to terrorism or international organized crime to which the exporting State is a party.²⁵

➤ The exporting State has to take into account the risk of the items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.²⁶

²³ Article 7.

²⁴ Article 7.

²⁵ Article 7 (1).

²⁶ Article 7.4.

Box 3 – Criteria for export assessment

Article 7 (1): If the export is not prohibited under Article 6, each exporting State Party, prior to authorisation 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;
 - (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.

Article 7 (4): The exporting State Party, in making this assessment, shall take into account the risk of the covered items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

c. Mitigation measures²⁷

If there is a risk of the weapons and items being used to undermine peace and security or to commit or facilitate a serious violation of international humanitarian or human rights law or offenses under international conventions or protocols relating to terrorism or international organized crime, exporting States Parties shall consider whether there are mitigation measures that could be undertaken such as:

- Confidence-building measures;
- Jointly developed and agreed programmes by the exporting and importing States.

d. Export denials

- If the exporting State – after having conducted the export assessment as well as considered mitigation measures – determines that there is an overriding risk of any of the negative consequences in Article 7 (1), the export shall not be authorised.
- Consequently, the national authorities involved in the export authorisation process must consider if the probable negative consequences of arms exports would outweigh the positive aspects of the exports (provided the export is not the one that is already prohibited under Article 6).

²⁷ Article 7 (2).

e. Assessing the risk of diversion²⁸

During the export assessment, the exporting States Parties shall also assess:

- The risk that some or all of the weapons could be diverted before reaching the authorized end-user;
- The risk that some or all of the weapons could be diverted after reaching the authorised end-user, including through:
 - A subsequent transfer by the authorized end-user in a way that would violate the provisions of the ATT, contravene the exporting State's national export policies or would otherwise constitute a diversion;
 - Leakages due to pilfering and other occurrences generally associated with inadequate and insecure stockpile management or corruption;
 - Stockpiles captured by armed non-state actors.

f. Reassessment of authorizations²⁹

- The exporting State Party is encouraged to reassess an authorization of a specific transfer of conventional arms or items that has already been granted, should new relevant information comes to light.
- If possible and appropriate, such a reassessment should be undertaken after consultations with the importing State.

1.1.4. Enforcement measures

- Mechanisms to ensure compliance with laws, regulations and administrative procedures related to conventional arms exports shall be in place at national level.³⁰
- Each State Party will decide on the extent of its national enforcement measures as the ATT does not provide any guidance.

1.2 Maintain national records of export authorizations and actual exports

- The exporting State Party shall keep records of all export authorizations issued or of the actual exports of conventional arms under Article 2 (1).³¹

²⁸ Article 11 (2).

²⁹ Article 7 (7).

³⁰ Article 14.

³¹ Article 12 (1).

- It is up to the State Party to decide its preference: records of authorizations or of actual exports or both. The records should be kept by the competent national authorities.
- The ATT does not require States Parties to keep records of authorizations or actual exports of ammunition or parts and components, but States Parties can keep such records if they so choose.
- Records shall be maintained for a minimum of ten years.³²

Box 4 – Record-keeping of exports

States are encouraged to include in their records:³³

1. Quantity; 2. Value; 3. Model/type/serial number; 4. Authorized conventional arms to be transferred; 5. Conventional arms actually transferred; 6. Details of importing State(s), transit and trans-shipment State(s); 7. End-users.

1.3 Role of importing State in export authorization process

The importing State shall ensure that appropriate and relevant information is provided, upon request, to assist the exporting State in conducting its national export assessment.³⁴ Such documents may include:

- a. End-use or end-user documentation;³⁵
- b. Import authorization;
- c. Documents that indicate that the importing State has an adequate system and the capacity to control the imported weapons.

1.4 Export-related requirements under the ATT compared with those under other relevant UN instruments

In addition to the ATT, there are other international instruments that have provisions or recommend measures regarding the control of export, import and transit/trans-shipment of conventional weapons, such as the PoA and the Firearms Protocol. Some States may have already taken implementation measures under these instruments. In order to avoid duplication of efforts, the following table lists the different requirements related to export of conventional weapons contained in the three instruments.

³² Article 12 (4)

³³ Article 12 (3).

³⁴ Article 8 (1).

³⁵ *ibidem*

Table 1 – Overview of export-related requirements of UN instruments

ATT	Firearms Protocol	PoA
Export controls		
<ul style="list-style-type: none"> -Establish and maintain a national control system, including a national control list. See Art. 5 (2). -Establish and maintain national control systems to regulate export of ammunition / munitions and parts and components. See Art. 3 and 4. 	<ul style="list-style-type: none"> -Each State Party shall establish or maintain an effective system of export licensing or authorization. See Art. 10 (1). 	<ul style="list-style-type: none"> -Put in place adequate laws, regulations, and administrative procedures to exercise effective control over export. See Para. II.2 and II.12. -Establish an effective system of export licensing or authorization. See Para. II.11.
Export prohibitions		
<ul style="list-style-type: none"> -Exports shall be prohibited if they violate Security Council and UN Charter obligations, violate obligations under international agreements the exporting State is party to; or be used in the commission of genocide, crime against humanity, grave breaches of the Geneva Conventions, attacks directed against civilians, or other war crimes. See Art. 6. 	<ul style="list-style-type: none"> - <i>No provisions that explicitly prohibit the export of firearms -</i> 	<ul style="list-style-type: none"> - States must take appropriate measures including all legal or administrative means, against any activity that violates a Security Council arms embargo in accordance with the UN Charter. See Para. II.15.
Export assessment		
<ul style="list-style-type: none"> -Assess the potential that weapons would contribute to or undermine peace and security; could be used to violate international humanitarian and human rights law, international conventions, or protocols relating to terrorism or transnational organized crime. See Art. 7 (1). 	<ul style="list-style-type: none"> - <i>No provisions that require States Parties to undertake an export assessment -</i> 	<ul style="list-style-type: none"> -Assess export applications according to strict national regulations and procedures that are consistent with international law and that take into account the risk of diversion. See Para. II.11.
Documentation		
<ul style="list-style-type: none"> - Ensure all authorizations for export are detailed and issued prior to export. See Art. 7 (5). 	<ul style="list-style-type: none"> -Verify that importing States have issued import licences and authorizations; and written notice that transit States do not object. See Art. 10 (2). - Documentation must include: place and date of issuance, date of expiration, country of export, country of import, final recipient, description and quantity of the items, and transit countries (if relevant). See Art. 10 (3). - Ensure (with available means) that the authenticity of documents can be verified or validated. See Art. 10 (5). 	<ul style="list-style-type: none"> - Ensure the use of authenticated end-user certificates and effective legal and enforcement measures. See Para. II.12.

2 *Requirements related to arms import*

2.1 *Regulate imports*

- In general, States Parties must put in place laws, regulations and administrative procedures to regulate the import of conventional arms under the scope of the ATT. This is consistent with Article 8 (2) and with Article 5 (4), by which States Parties are expected to have in order to have an effective and transparent national control system regulating the transfer of conventional of covered items.
- The national legislation, regulations or administrative procedures should clearly state:
 - Which items are subject to import control (national control list);
 - Which government ministries or departments are responsible for regulating conventional arms imports (national authorities);
 - The criteria for granting or refusing import authorizations (regulatory procedures), if applicable;
 - The legal and/or administrative actions that would be applied in case of import offences (enforcement measures and mechanisms, prosecution and punishment).

2.1.1. *National control list*

The national control list is an essential tool for regulating imports of conventional arms. States Parties are free to establish a single national control list for both export and import control.

2.1.2. *National authorities*

- States Parties have to designate competent national authorities to ensure the effective and transparent national regulation over the import of conventional weapons covered under the ATT.³⁶
- In case the State Party opts for an import control system – meaning that every import of conventional weapons listed in the national control list is subject to an import authorization – the designated authorities shall administer the regulatory regime and implement controls through an arms import authorization process.

³⁶ Article 5 (5).

2.1.3. Regulatory procedures

- The regulatory procedures to control imports of conventional arms establish the criteria for granting or refusing the import of conventional weapons included in the national control list.
- In case the importing State Party regulates the imports through a licensing system, the regulatory procedures should detail how and under what circumstances import authorizations can be obtained.

2.1.4. Enforcement measures

- States Parties must put in place measures and mechanisms to ensure compliance with laws, regulations and administrative procedures related to transit and trans-shipment of conventional arms.³⁷
- Each State Party will decide on the specific enforcement measures to be adopted, as the ATT does not provide further details on this matter.

2.2 Maintain records of imports

The importing State is encouraged to maintain records of conventional arms covered by the ATT that are transferred to its territory as the final destination.³⁸

Box 5 – Record-keeping of imports

The records should include:³⁹

1. Quantity; 2. Value; 3. Model/type/serial number; 4. Authorized international transfers of conventional arms covered under the scope of the ATT; 5. Conventional arms actually transferred; 6. Details of exporting State(s), transit and trans-shipment State(s); 7. End-users.

³⁷ Article 14.

³⁸ Article 12 (2).

³⁹ Article 12 (3).

2.3 Import-related requirements under the ATT compared with those under other UN instruments

There are other international instruments that have requirements or recommend measures related to import control of conventional weapons, such as the PoA as well as the Firearms Protocol. While they are different in scope, it is important to be aware of the possible overlaps, complementarity or synergies between these three instruments.

Table 2 – Overview of import-related requirements of UN instruments

ATT	Firearms Protocol	PoA
Import controls		
-The importing State shall take measures to regulate, where necessary, imports under its jurisdiction, such as through import systems. See Art. 8 (2).	-Each State Party shall establish or maintain an effective system of import licensing or authorization. See Art. 10 (1).	-Put in place adequate laws, regulations, and administrative procedures to exercise effective control over import. See Para. II.2. -Establish an effective system of import licensing or authorization. See Para. II.11.
Documentation		
-The importing State shall ensure that relevant information – such as end-use or end-user documentation – is provided, upon request, pursuant to its national law, to assist the exporting State Party. See Art. 8 (1). -The importing State may request information from the exporting State regarding export authorizations. See Art. 8 (3).	-The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment. See Art. 10 (4).	- <i>The PoA only refers to the fact that import licensing or authorization is required. See Para II.11).</i>

3 Requirements related to transit/trans-shipment States

3.1 Regulate transit or trans-shipment

Both transit and trans-shipment constitute a “transfer” under Article 2 (2) of the ATT. Therefore, States Parties are required to comply with all the prohibitions on transfers of items under Article 6 as well as to take appropriate measures to enforce the implementation of the Treaty.

In addition, States Parties shall take measures to regulate transit or trans-shipment under their jurisdiction, where necessary and feasible.⁴⁰

- In order to regulate transit and trans-shipment of conventional arms, States Parties will have to put in place laws, regulations and administrative procedures in a manner that is consistent with international law.
- The national legislation should state:
 - What constitutes transit or trans-shipment (national definition);
 - Which government ministries or departments are responsible for regulating transit and transshipment of conventional arms (national authorities);
 - The criteria for granting or refusing transit/trans-shipment authorizations (regulatory procedures), if applicable;

The criteria shall include the prohibitions under Article 6 of the ATT.

- The legal and/or administrative actions that would be applied in case of offences (enforcement measures and mechanisms, prosecution and punishment).

3.1.1. National authorities

- Where necessary and feasible, States Parties will have to designate national authorities regulating conventional arms transit and trans-shipment.⁴¹
- It is up to each State Party to decide on how to establish its national authorities.

3.1.2. Regulatory procedures

- Each State Party has discretion to regulate transit and trans-shipment of items beyond its obligation under Article 6. The State Party can establish how it wishes to regulate those activities. There are three main approaches to regulate transit/trans-shipment:
 - Licensing system: Under this system, an exporter needs to apply and obtain a transit/trans-shipment authorization from the national authority in the transit/trans-shipment State prior to the transit of weapons through territory under the jurisdiction of this State.
 - Prior notification: Notification procedures that require the national authority in the transit/trans-shipment State to be provided in advance with information and documentation on the movement of weapons transiting/trans-shipping through territory under its jurisdiction.

⁴⁰ Article 9.

⁴¹ Article 5 (5).

- Transit/trans-shipment control only by customs authorities: This requires a notification to customs authorities about arms shipments at the point of entry, upon which technical and documentary checks could be conducted.

3.1.3. Enforcement measures

- States Parties must put in place measures and mechanisms to ensure compliance with laws, regulations and administrative procedures related to transit and trans-shipment of conventional arms.⁴²
- Each State Party will decide which specific enforcement measures to adopt, as the ATT does not provide guidance on this matter.

3.2 Maintain records

- Transit or trans-shipment States Parties are encouraged to maintain accurate records of conventional arms that are authorised to transit or be trans-shipped in territory under their jurisdiction.
- These records should be kept for a minimum of ten years.⁴³

Box 6 – Record-keeping of transits and trans-shipments

The records should include:⁴⁴

- a. Quantity;
- b. Value;
- c. Model / type / serial number;
- d. Authorized international transfers of conventional arms covered under the scope of the ATT;
- e. Conventional arms actually transferred;
- f. Details of exporting State(s), importing State(s), and other transit and trans-shipment State(s) if applicable;
- g. End-user.

⁴² Article 14.

⁴³ Article 12 (4).

⁴⁴ Article 12 (3).

3.3 Transit/trans-shipment-related requirements under the ATT compared with those under other UN instruments

There are other international instruments that have requirements or recommend measures related to transit/trans-shipment of conventional weapons, such as the PoA as well as the Firearms Protocol. While they are different in scope, it is important to be aware of the possible overlaps, complementarity or synergies between these three instruments.

Table 6 – Overview of transit/trans-shipment-related requirements of UN instruments

ATT	Firearms Protocol	PoA
Transit / transshipment controls		
<ul style="list-style-type: none"> — Shall not authorise - any transit /trans-shipment - of covered - items in violation of - Article 6. — Take appropriate - measures to enforce - national measures - taken to implement - the ATT. See Art. 14. - Take appropriate measures to regulate, where necessary and feasible, the transit or trans- shipment through its territory. See Art. 9. 	<ul style="list-style-type: none"> - Establish or - maintain effective - measures on - international transit - of firearms, their parts - and components and - ammunition. See Art. - 10 (1). 	<ul style="list-style-type: none"> — Put in place - adequate laws, - regulations, and - administrative - procedures to exercise - effective control over - transit of small arms - and light weapons. See - Para. II.2. — Establish or - maintain measures on - international transit of - small arms and light - weapons with a view - to combating its illicit - trade. See Para. II.11.
Documentation		
<ul style="list-style-type: none"> - No reference to documentation in the context of regulating the transit/ trans-shipment of conventional arms- 	<ul style="list-style-type: none"> - The information in the import licence must be provided to the transit States in advance. See Art. 10(3). 	<ul style="list-style-type: none"> — Put in place adequate laws, regulations, and administrative procedures to ensure effective control over transit of small arms and light weapons, including the use of authenticated end-user certificates and effective legal and enforcement measures. See Para. II.12.

4 Requirements related to brokering

4.1 Regulate brokering

States Parties shall take measures to regulate arms brokering taking place under their jurisdiction.⁴⁵ States have discretion to determine how to design such regulation provided that it complies with their obligation on prohibitions of transfers under Article 6 of the ATT.

➤ The national legislation, regulation or administrative procedures regarding brokering could include:

- What constitutes brokering (national definition);
- Which government ministries or departments are responsible for regulating conventional arms brokering (national authorities);
- The criteria for granting or refusing brokering authorizations (regulatory procedures), if applicable;

The criteria shall include the prohibitions under Article 6 of the ATT.

- The legal and/or administrative actions that would be applied in case of offences (enforcement measures and mechanisms, prosecution and punishment).

4.1.1. National definition

Since the ATT does not define the term brokering, and given the multitude of activities that could be associated with brokering, it is important that the national legislation delineates what constitutes brokering and what does not. According to the report of the UN Group of Governmental Experts on Brokering in SALW⁴⁶ (GGE report) and the International Small Arms Control Standards (ISACS), brokering means:⁴⁷

GGE report

“8. A broker in SALW can be described as a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of SALW in return for some form of benefit, whether financial or otherwise”.

⁴⁵ See Article 10.

⁴⁶ A/62/163 of 30 August 2007.

⁴⁷ Available at www.smallarmsstandards.org.

ISACS 01.20

Broker: "A person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction [...] in return for some form of benefit, whether financial or otherwise"

Brokering: "Activities carried out by a broker in the context of arranging or facilitating an international transfer of small arms or light weapons."

Note 1. Brokering activities include, but are not limited to:

- *serving as a finder of business opportunities to one or more parties;*
- *putting relevant parties in contact;*
- *assisting parties in proposing, arranging or facilitating agreements or possible contracts between them;*
- *assisting parties in obtaining the necessary documentation;*
- *assisting parties in arranging the necessary payments".*

Note 2. Some activities closely associated with brokering in small arms and light weapons, that do not necessarily in themselves constitute brokering activities, might be undertaken by brokers as part of the process of putting a deal together to gain benefit. These activities may include, for example, acting as dealers or agents in small arms and light weapons, providing technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services.

Note 3. Brokering activities can take place in the broker's country of nationality, residence or registration; they can also take place in another country. The small arms and light weapons do not necessarily pass through the territory of the country where the brokering activity takes place, nor does the broker necessarily take ownership of the small arms and light weapons".

4.1.2. National authorities

States Parties shall designate national authorities to regulate brokering in conventional arms.⁴⁸ Brokering constitutes a "transfer" under Article 2 (2) of the ATT.

- Ideally, the competent national authorities to regulate brokering of conventional arms should be clearly identified in the national legislation and should be part of the national import/export control systems.
- Although it is the prerogative of each State Party to decide which authorities should be entrusted with the responsibility of regulating brokering, it would be consistent with ATT implementation requirements and obligations, to consider placing that responsibility with the same authorities entrusted with the regulation of exports.

⁴⁸ Article 5 (5).

4.1.3. Regulatory procedures

- It is up to States Parties to decide how to regulate brokering in conventional arms taking place under its jurisdiction, provided that the State Party complies with its obligations under Article 6 of the ATT (prohibitions on transfers). Measures could include registration of brokers and issuing written authorizations before engaging in brokering transactions.

4.1.4. Enforcement measures

- Mechanisms that ensure compliance with laws, regulations and administrative procedures related to brokering of conventional arms shall be in place at the national level.⁴⁹
- States will which enforcement measures to adopt, as the ATT does not provide further details.

4.2 Brokering-related requirements under the ATT compared with those under other UN instruments

There are other international instruments that have requirements related to brokering of conventional weapons, such as the PoA as well as the Firearms Protocol. While they are different in scope, it is important to be aware of the possible overlaps, complementarity or synergies among these three instruments.

Table 4 – Overview of brokering-related requirements of UN instruments

ATT	Firearms Protocol	PoA
Brokering controls		
-Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place within its jurisdiction, such as registration or brokering authorizations. See Art. 10.	-Consider regulating brokers by establishing a system that requires: registration of brokers operating within State Party's territory; licensing or authorization of brokering; and/or disclosure of names and locations of brokers on import and export licences and authorizations. See Art. 15.	-Develop adequate legislation and administrative procedures on regulating the activities of those who engage in brokering of small arms and light weapons, including: registration, licensing or authorization of brokering transactions, and appropriate penalties for illicit brokering activities performed within the

⁴⁹ Article 14.

		State's jurisdiction and control. See Para. II.14.
--	--	--

5 Requirements related to the prevention of diversion of conventional arms

5.1 Legal basis

States Parties involved in the transfer of conventional arms shall take measures to prevent their diversion.⁵⁰

- The responsibility to take measures to prevent diversion needs to be shared among all those involved in transfers, including exporting, importing and transit/trans-shipment States.
- To that effect, States parties shall cooperate and exchange information in order to mitigate the risk of diversion of the transfer of conventional arms.⁵¹
- It is up to each State Party to define in its national legislation and/or procedures the modalities of such information exchange, including the scope and extent of information to be exchanged as well as the entity responsible for information exchange. Moreover, States Parties may consider adopting bilateral, multilateral or regional agreements to establish information exchange mechanisms to this end.
- Exporting, importing and transit/trans-shipment States should undertake measures to prevent diversion at their respective stages of a transfer.

5.2 Sharing of information

States Parties are encouraged to share relevant information with one another on effective measures to address diversion. This information could include:⁵²

- a. Illicit activities, including corruption;
- b. International trafficking routes;
- c. Illicit brokers;
- d. Sources of illicit supply;
- e. Methods of concealment;

⁵⁰ Article 11 (1).

⁵¹ Article 11 (3).

⁵² Article 11 (5).

- f. Common points of dispatch;
- g. Destinations used by organized groups engaged in diversion;
- h. Weapons marking practices.

5.3 Role of exporting States in preventing diversion

The exporting State shall seek to prevent the diversion of conventional arms through its national control system by:

- a. Assessing the risk of diversion of the export;
- b. Considering the establishment of mitigation measures or jointly developed or agreed programmes with the importing State.

The exporting State may also, when appropriate:

- a. Examine parties involved in the export;
- b. Require additional documentation, certificates, assurances;
- c. Not authorise the export (this should be used if it considers that mitigation measures are insufficient);
- d. Take other measures deemed appropriate by the exporting State Party.

5.4 Measures to be taken if diversion is detected

- If a diversion is detected, appropriate action shall be taken by the State Party to address such diversion.
- It is up to each State Party to determine which measures to take, provided that they are in accordance with international law.

The ATT provides some examples of possible measures, such as:⁵³

- a. Alerting potentially affected States Parties;
- b. Examining diverted shipments of conventional arms;
- c. Taking follow-up measures through investigation and law enforcement.

⁵³ Article 11 (4).

IV. Promote cooperation, transparency and accountability

1. Promote cooperation

The international conventional arms trade is a highly globalized activity. Implementing the ATT effectively requires close and extensive international cooperation. States Parties are encouraged to facilitate international cooperation, to consult on matters of mutual interest and to share information.⁵⁴

Such cooperation could take place in the areas of:

- a. Preventing and eradicating diversion of conventional arms, including information on illicit activities and actors;⁵⁵
- b. Investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to the ATT;⁵⁶
- c. Preventing that the transfer of conventional arms become subject to corrupt practices;
- d. Exchanging experience and information on lessons learnt.

2. Promote transparency and accountability

- States Parties are required to submit two types of reports on the implementation of the ATT to the Secretariat.
- In addition, they are encouraged to provide information or reports on measures taken to prevent diversion.
- These reports shall be submitted to the Secretariat, which is in turn entrusted with making them available and with distributing them to States Parties.

Mandatory reports:

- a. **Initial report** on measures undertaken in order to implement the ATT. This report must be submitted by a State Party within a year of the entry-into-force for this State Party.⁵⁷ This initial report should contain a national control list.

Annual report for the preceding year on authorized or actual exports and imports must be submitted by 31 May every year.⁵⁸

⁵⁴ Article 15.

⁵⁵ Article 15 (4).

⁵⁶ Article 15 (5).

⁵⁷ Article 13 (1).

⁵⁸ Article 13 (3).

Annex: Descriptions of the seven categories of the UN Register of Conventional Arms

Updated in 2013 as per recommendations contained in the final report of the 2013 Group of Governmental Experts on the continuing operation and further development of the UN Register of Conventional Arms (A/68/140), and endorsed by General Assembly resolution (A/RES/68/43).

Categories of equipment and their definitions⁵⁹

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.

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.

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.

IV. Combat aircraft

(a) Manned 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;

⁵⁹ Available at www.un-register.org/Background/Index.aspx.

(b) Unmanned 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.

The term “combat aircraft” does not include primary trainer aircraft, unless designed, equipped or modified as described above.

V. Attack helicopters

(a) Manned 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;

(b) Unmanned 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.

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.

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. For the purpose of the Register, 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).



Arms Trade Treaty Implementation Toolkit

Module 3 Reporting Requirements

I. Introduction

Any country joining the Arms Trade Treaty (ATT) commits to putting in place effective measures to implement the Treaty.

States will decide which measures are best to fulfil their obligations under the ATT. These measures may vary from country to country.

After reviewing the obligations under the ATT in module 2 of this toolkit, this third module, *Reporting requirements*, aims to assist States in understanding the reporting obligations under this Treaty.

Module 3 will discuss the preparation of both the initial report and the annual report as well as the submission of information on effective measures taken to address the diversion of covered weapons.

II. Reporting under the ATT

Openness regarding imports and exports of conventional arms fosters confidence and trust among States. Sharing national reports also enables States Parties – and other relevant stakeholders, if the reports are made available to the public – to assess the level of each State Party’s compliance with ATT obligations, as well as the status of implementation of the Treaty.

1. Types of reports

The ATT requires States Parties to provide two types of reports¹:

- An initial report on measures taken to implement the Treaty;
- Annual reports on transfers.

In addition, the ATT encourages States Parties to report to other States Parties, through the ATT Secretariat, information on measures taken that prove to be effective in addressing the diversion of transferred conventional arms covered by the Treaty.²

¹ See comparable table on ATT reports and information on measures taken to address diversion in Annex A to this module.

² Article 13 (2).

1.1 *Initial report*

Within one year of the Treaty's entry into force for a particular State, this State Party must submit to the ATT Secretariat an initial report containing information on the measures it has undertaken to implement the ATT.³

- This report shall, at a minimum, include information on national laws, national control lists and other regulations and administrative measures.⁴
- The ATT does not prevent States Parties to include information on other measures that they consider to be effective ATT implementation practices or that could provide useful lessons learned to other States Parties.
- In order to use this report as a threshold of worldwide status of ATT implementation, it should provide succinct and clear information on key measures undertaken by the State Party in compliance with the Treaty.

1.1.1 *Information on national laws, regulations and administrative measures could include:*

- Measures taken to ensure that the State Party's laws, regulations and administrative procedures comply with the requirements of the ATT with regard to the control of arms export, import, and brokering;
- Any measures taken to ensure the proper regulation of transit and trans-shipment activities;
- Other relevant enforcement measures and/or post-transfer controls;
- Name, title, document number, date of adoption, date of entry into force and other relevant information regarding the above-mentioned laws, regulations or procedures as well as a summary of the documents when feasible and pertinent;
- Additionally, information on measures aimed at improving record-keeping, weapons marking and stockpile management as well as information on guidelines, best practices, lessons learned and relevant administrative instructions.

1.1.2 *National control list*

- The national control lists need to include national descriptions of all items (weapons, ammunition and munitions, parts and components) that are subject to transfer controls under the ATT;⁵
- National definitions of the first seven categories of the scope of the ATT shall be at a minimum the descriptions used in the UN Register of Conventional Arms (UN Register) as of 24 December 2014;⁶

³ Article 13 (1).

⁴ Ibidem.

⁵ For more details on the national control list, refer to Module 5 of this toolkit.

⁶ Available at www.un-register.org/Reporting/login.aspx.

- National definitions of SALW must be at a minimum the descriptions used in relevant UN instruments;⁷
- States Parties are encouraged to go beyond the categories listed in Article 2 of the ATT and apply the provisions of the Treaty to the broadest range of conventional arms;
- The information contained in national control lists should be publicly available so weapons manufacturers, traders and brokers can freely access the laws, rules and regulations as well as the procedures they need to comply with when transferring conventional arms covered under Article 2 (1) as well as ammunitions, parts and components.

In their initial report, States could also include information on other measures undertaken to implement the ATT, such as:

- Designation of National Point(s) of Contact and national authorities to regulate arms transfers;
- Measures undertaken to establish or maintain a record-keeping system, and to facilitate international cooperation and assistance.

Box 1 – Similar requirements in other instruments

Synergies can be developed between reporting under the ATT and reporting under other regional or international instruments containing overlaps. In preparing their initial reports, States Parties could refer to other instruments that have similar reporting requirements. Similarly, information provided in the ATT initial report could be useful to officials charged with reporting under other instruments, thus avoiding duplication.

- UN Register of Conventional Arms (UN Register) – States provide information on weapons transfers in seven pre-defined categories.
- Programme of Action on SALW (PoA) – Biennially, States can submit voluntary reports on the measures taken to prevent and combat the illicit trade in SALW. In the online reporting form provided by the UN Office for Disarmament Affairs (UNODA), States are asked to provide information on a range of topics, including legislation and national system concerning transfers of SALW, brokering, stockpile management, capacity-building needs, international cooperation and assistance. All the reports submitted by States are available at the Programme of Action-Implementation Support System (PoA-ISS).
- The International Tracing Instrument (ITI) – States must provide biennial reports on measures to enable the adequate marking and record-keeping of SALW, to foster cooperation in tracing illicit SALW, as well as related capacity-building needs and international cooperation and

⁷ Such as the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (ITI), available at www.poa-iss.org/InternationalTracing/InternationalTracing.aspx; the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (Firearms Protocol), available at www.unodc.org/documents/treaties/UNTOC/Publications/A-RES%2055-255/55r255e.pdf; the Report of the Panel of Governmental Experts on Small Arms (A/52/298), available at www.un.org/depts/ddar/Firstcom/SGreport52/a52298.html.

assistance activities. The ITI reports are submitted as part of the reports on the above-mentioned Programme of Action..

- UN General Assembly resolution entitled “National legislation on transfer of arms, military equipment and dual-use goods and technology” - States are annually called upon to provide information on national legislation on transfer of arms, military equipment and dual-use goods and technology. UNODA maintains online all information submitted by States in the past pursuant to the resolution (<http://www.un.org/disarmament/convarms/NLDU/>).

- Each State Party to the ATT is required to submit its initial report within the first year after entry into force of this Treaty for said State Party.
- After their initial reports, States Parties shall report to the Secretariat on any new ATT implementation measures undertaken when appropriate.⁸ Eventually the conference of States Parties may provide guidance on when such reporting should be deemed appropriate.
- States Parties are also encouraged to use their initial reports to identify areas in which they may need international assistance.
- The use of available tools such as the ATT baseline assessment survey could prove helpful.⁹

Tip: It might not be practical to submit full copies of laws and regulations. Rather, States Parties could include in their reports brief narratives identifying and summarising the key aspects of their laws and regulations. The narratives could also include the title of all relevant documents, reference numbers, website links if available, dates of adoption, dates of entry into force and any other information the State Party deem relevant.

1.2 Annual report

States Parties must submit annually, by 31 May,¹⁰ a report, for the preceding calendar year, on authorized or actual exports and imports of weapons under the scope of the ATT. Reports may exclude commercially sensitive or national security information.

- This report may contain the same information submitted by the State Party to the UN Register¹¹ This would avoid duplication and reduce the reporting burden on ATT States Parties.
- States Parties can provide additional information they deem relevant in their annual reports.
- In addition to reporting, States Parties to the ATT are required to keep national records, pursuant with their laws and regulations, of export authorizations or actual exports and are encouraged to keep national records of conventional arms transferred to its territory or transited / trans-shipped within its territory.¹²

⁸ Article 13 (1).

⁹ Available at www.armstrade.info/.

¹⁰ Article 13 (3).

¹¹ For an overview of reporting themes under relevant UN frameworks, see Annex B of this module.

¹² Article 12 (1) and (2).

- The ATT does not provide details regarding the specific contents or format of national records. It is recommended that the national records (and the annual reports) include at least¹³:
1. Quantity;
 2. Value;
 3. Model/type/serial number;
 4. Details of exporting State(s), importing State(s), or transit and trans-shipment State(s);
 5. End-users.

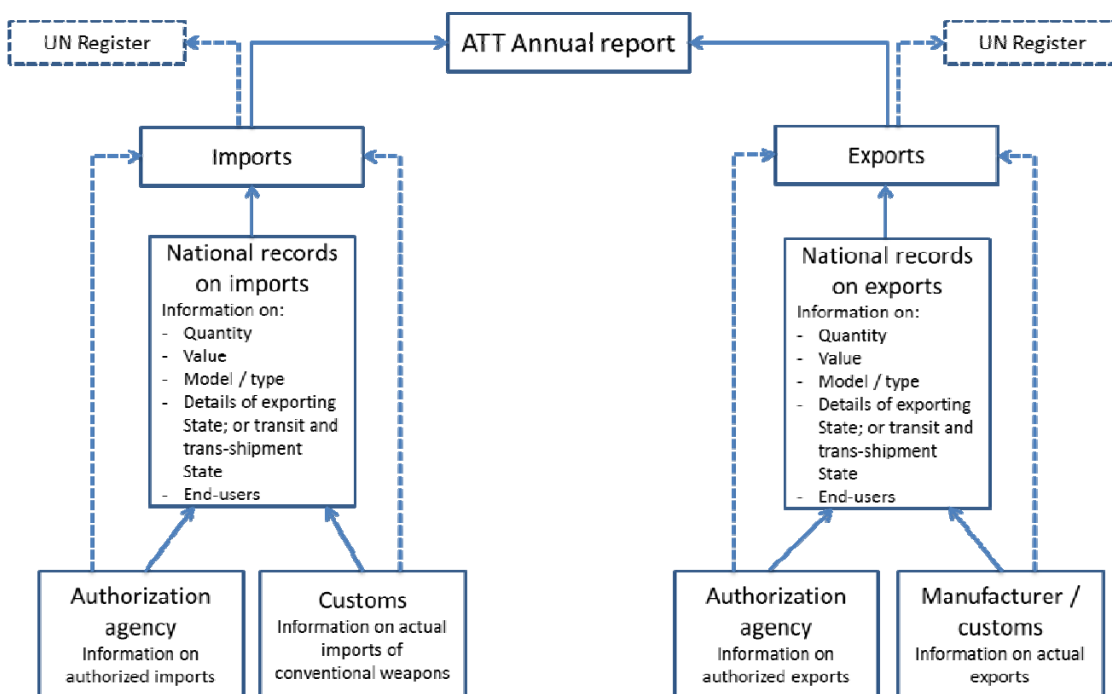
Tip: Rather than treating record-keeping as a separate activity from reporting, States Parties should consider using the national records as a key source of information for the preparation of their annual reports. In other words, States Parties could ideally set up or adapt their record-keeping systems in a manner that feeds directly into the national reports.

Tip: Until a reporting template is eventually developed and agreed, States Parties could find it useful to use the agreed UN Register reporting template as a basis for their annual ATT report. In this case, they are encouraged to use the remarks column of that form to provide additional details such as quantity, value, model/type, details of States involved in the transaction and end-users.

¹³ Article 12 (3).

Box 2 – Sources of information for the annual report

- Collecting and collating information concerning exports and imports would normally require involvement of several entities within a government, such as defence, foreign affairs and trade ministries, authorization agency, customs, manufacturers, etc.
- While the details concerning the processes and methods for collecting information for annual reports differ from country to country, the diagram below shows an example of possible sources of information and their roles.

**2. Information on measures to prevent diversion**

- The ATT aims not only at establishing the highest common international standards for the regulation of the international trade in conventional arms, but also at preventing and eradicating the illicit trade in conventional arms and at preventing their diversion.¹⁴

¹⁴ Article 1.

- The ATT would be ineffective if it only required States to apply high standards to international arms transfers, while failing to require them to take measures to prevent their diversion after leaving the country of export.
- The ATT encourages States Parties to report to other States Parties, through the ATT Secretariat, information on measures taken that have been proven effective in addressing the diversion of transferred conventional arms covered in Article 2 (1).
- Although reporting on prevention of diversion is not mandatory,¹⁵ it is recommended that States Parties make a serious effort to submit such reports.

2.1. Information on measures to prevent diversion (from an exporting State perspective)

- Prevention of diversion would usually require concerted actions on the part of both exporters and importers. Others, such as transit and trans-shipment States, may also need to undertake actions to help prevent diversion.
- From the perspective of exporting States Parties, measures to prevent diversion could include:
 - a. Assessing the risk of diversion prior to authorizing exports;
 - b. Establishing mitigation measures or jointly developed or agreed programmes with importing States aimed at preventing diversion;
 - c. Making a close examination of parties involved in the export;
 - d. Requiring additional documentation or additional certification of documents provided by the importer;
 - e. Requiring the importer's assurances that there is no risk that exported weapons will be diverted;
 - f. Setting conditions to be observed by the importing States if they wish to export the weapons they have imported (re-export);
 - g. Not authorising exports if the authorities of the exporting State Party are not confident that the weapons will reach and remain with the authorized end-user;
 - h. Exchanging information about illicit activities, including corruption practices, international trafficking routes, illicit brokers, falsification or misuse of documentation, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.

2.2. Information on measures to prevent diversion (from an importing State perspective)

- From the importing States' perspective, measures to prevent the diversion could include:

¹⁵ Article 13 (2).

- a. Adopting legislative measures taken to prevent the diversion of weapons, including the criminalization of activities constituting, aiding or abetting diversion;
- b. Establishing or improving weapons stockpile management and security systems, including measures to identify and to dispose of surplus stocks;
- c. Regulating or enhancing regulation and control of brokering activities;
- d. Taking measures to improve border and customs control;
- e. Adopting measures to prevent and combat corrupt practices leading to or facilitating the diversion of weapons, especially in the country's security sector and customs;
- f. Putting into place measures to enhance the capacity of law enforcement officers (e.g. measures to enhance investigative and intelligence gathering capacities, studies undertaken) to identify sources, routes and means of diversion, including entities involved in diversion activities;
- g. Taking measures to improve weapons marking and record-keeping, including provisions for the marking of weapons at the time of import;
- h. Adopting measures to avoid the forgery of documentation, including end-use/user certificates, and to ensure their authenticity and proper use;
- i. Exchanging information on illicit activities, including information on corruption, international trafficking routes, illicit brokers, falsification or misuse of documentation, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion;
- j. Taking measures to facilitate post-delivery verification and controls.

2.3. Information on measures to prevent diversion (from a transit / trans-shipment State perspective)

- From the transit/trans-shipment States' perspective, measures to prevent diversion could include:
 - a. Exchanging information on illicit activities, including corruption practices, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch and destinations used by organized groups engaged in diversion;
 - b. Establishing mechanisms to enable transit / trans-shipment States Parties to acquire timely and reliable information, including any relevant documentation, on shipments transiting through or being trans-shipped within their territories; illicit activities, including corruption.

For methodological reasons, the above actions were broken down into different perspectives (i.e., of the importer, the exporter, or the transit / trans-shipment State). In practice, a State Party may be faced with the need to take measures pertaining to all three perspectives, as it is likely to be an importer, exporter and transit / trans-shipment State at different moments in time or with regard to different transactions.

Annexes

A. Summary of different ATT reports

Type	Initial report	Annual report	Preventing diversion report
Frequency	Once. Thereafter, only when new measures are taken, as appropriate	Annual	As appropriate
Deadline	Within one year of entry-into-force of the Treaty for that State Party	31 May every year	When deemed appropriate
Main contents	National laws, national control list, other regulations and administrative measures, national points of contact	Information on authorized or actual exports and imports of weapons within the scope of the ATT	Measures proven effective in addressing the diversion of transferred conventional arms
Submit to	ATT Secretariat	ATT Secretariat	States Parties (through ATT Secretariat)
Distribution	Report shall be made available, and distributed to the States Parties by the Secretariat.	Report shall be made available, and distributed to the States Parties by the Secretariat.	Report shall be made available, and distributed to the States Parties by the Secretariat.

B. Elements of ATT reporting to be considered by States Parties

	ATT - initial	ATT - annual*	ATT - Measures to Prevent Diversion	UN Register	PoA/ITI**
Implementation and cooperation					
National definitions of conventional arms	x				
National Control List	x				
National Point(s) of Contact	x	x		x	x
Information exchange mechanism	x		x		x
Lessons learned	x		x		
Assistance in investigations, prosecutions and judicial proceedings related to ATT violations	x				x
Provision of international assistance					x
Request for international assistance					x
Regulation of exports					
Regulation of exports of conventional arms	x				
Regulation of exports of ammunition/ munitions	x				
Regulation of exports of parts and components	x				
Laws, regulations, administrative procedures	x				x
Documentation required to authorise an export	x				x
National authorities	x				x
Record-keeping	x				x
Authorized/actual exports					
Transactions details on:					
Importing State		x		x	
Model / type of item (description)		x		x	
Quantity		x		x	
Value		x			
Intermediate location		x		x	
Comments on the transfer		x			
Measures taken to mitigate risk		x			
Confidence-building measures agreed upon		x			
Enforcement measures	x				x
Regulation of imports					

Laws, regulations, administrative procedures	x				x
Documentation required to authorise an import	x				
National authorities	x				x
Record-keeping	x				x
Authorized/actual imports					
Details on:					
Exporting State		x		x	
Model / type of item (description)		x		x	
Quantity		x		x	
Value		x			
Intermediate location		x		x	
End-use or end-user documentation		x			
Comments on the transfer		x			
Stockpile management	x				x
Border & custom control	x				x
Marking of weapons	x				x
Regulate transit/trans-shipment					
Laws, regulations, administrative procedures	x				
Documentation required to authorise transit/trans-shipment	x				
National authorities	x				
Record-keeping	x				
Exporting State		x			
Importing State		x			
Model / type of item (description)		x			
Quantity		x			
Value		x			
Regulation of brokering activities					
Laws, regulations, administrative procedures	x				x
Documentation required to authorise brokering activities	x				
National authorities	x				
Record-keeping	x				x
Enforcement measures	x				x
Prevent diversion of weapons					
Information exchange					
Illicit activities, including corruption			x		
International trafficking routes			x		
Illicit brokers			x		
Sources of illicit supply			x		
Methods of concealment			x		
Common points of dispatch			x		

Destinations used by organized groups engaged in diversion			X		
Investigation and law enforcement measures			X		
Marking, tracing and stockpile management					
Measures to improve stockpile management	X		X		X
Measures to ensure proper marking of weapons	X		X		X
Measures to enhance cooperation in weapons tracing	X		X		X
<p>* ATT annual report may exclude commercially sensitive or national security information.</p> <p>** The information below is based on the PoA reporting template.</p>					



Arms Trade Treaty Implementation Toolkit

Module 4 Information Exchange, International Cooperation and Assistance

Available on: www.un.org/disarmament/ATT

I. Introduction

Any country joining the Arms Trade Treaty (ATT), commits to putting in place adequate measures to implement the Treaty.

States will decide which measures are best to fulfil their obligations under the ATT. These measures may vary from country to country.

After reviewing the reporting requirements under the ATT in module 3 of this toolkit, this fourth module, *Information exchange, international cooperation and assistance*, aims to assist States in setting up mechanisms to exchange information and facilitating international cooperation and assistance to implement the Treaty.

This module will discuss the role of the national points of contact and the conference of States Parties. It will also address international cooperation and assistance to implement the Treaty.

II. Channels to exchange information

States Parties are in charge of their implementation efforts to comply with the obligations under the ATT. States Parties must designate national points of contact to exchange information on ATT implementation matters.¹ The conference of States Parties will also provide them with an opportunity to exchange information and discuss matters related to the Treaty's implementation.² These channels are established by the ATT. In addition, States Parties may engage in direct contact with other States and use any regional mechanisms or arrangements that may be set up to exchange information on ATT-related matters.

1. National point of contact

1.1. What is a national point of contact?

Article 5 (6) stipulates that States Parties must designate one or more national points of contact (NPC) to exchange information on matters related to the implementation of the ATT. The establishment of an international network of NPCs is a common practice in international treaties and agreements (i.e. UN Programme of Action on Small Arms and the International Tracing Instrument). The ATT does not provide a definition for NPC. However, it could be understood as:

¹ Article 5 (6).

² Article 17 (4).

A government unit/ institution designated to perform functions related to the ATT such as liaising with officials from other States, the ATT Secretariat, and relevant sub-regional, regional and international organizations; liaising with other national authorities responsible for arms transfer controls; receiving information requests related to the ATT; sharing ATT-related information and lessons learned; receiving assistance requests; coordinating the provision of ATT assistance to other States.

1.2. Responsibilities of the NPC

The NPC's primary role shall be to share information among States Parties. Information to be exchanged by or through the NPC could include:

- Information on matters of mutual interest regarding the implementation and application of the Treaty;³
- Correspondence with the ATT Secretariat, including on matters related to national reports;
- Pending or approved export authorizations, where appropriate and in coordination with the relevant national authorities on arms transfers controls;
- Facts and advice needed for arrangements to mitigate the risk of diversion of the transfer of conventional arms with all States concerned (importing, transit, trans-shipment and exporting States Parties);
- Assistance requests for the implementation of the ATT;
- Provision of assistance to other States on ATT implementation matters;
- Effective ATT implementation practices and lessons learnt.

1.3. Designation of the NPC

➤ Each State Party to the ATT will designate its NPC in accordance with its national laws. Typically, the NPC tasks would be assigned to the most relevant unit in the ministry of foreign affairs, ministry of trade, ministry of defence, ministry of interior, President's office, or a law enforcement agency. As each State Party is required to have competent national authorities for an effective and transparent national transfer control system,⁴ these authorities would often be seen as best suitable to perform NPC tasks.

➤ It is recommended that the NPC has authority to request relevant information from other public or private entities within the State Party on matters related to the implementation of the ATT.

Tip: Participation of the NPC in national delegations to the ATT conferences of States Parties and their relevant meetings of subsidiary bodies, as well as in relevant regional and international meetings and events related to the ATT, would enable the NPC to build networks and to keep abreast of developments and lessons learnt in the implementation of the Treaty.

³ Article 15 (2).

⁴ Article 5 (5).

1.4. Communicating the designation of the NPC

The Treaty does not specify what NPC-related information should be communicated to the ATT Secretariat.⁵ The following information would be useful:

- a. Name of the designated unit/ institution;
- b. Address;
- c. Contact person;
- d. E-mail address (preferably not a personal e-mail address but an e-mail address accessible by the unit/ institution);
- e. Telephone and fax number.

Any changes in the information related to the NPC must be communicated to the ATT Secretariat forthwith.⁶

1.5. List of NPCs

➤The ATT Secretariat is responsible for maintaining the list of NPCs and for making it available to States Parties.⁷ The conference of States Parties may decide to make the list available to the public.

➤The NPC network can be an important tool for enhancing cooperation and exchanging information among States Parties.

1.6. NPCs in other instruments

➤Several international instruments in the field of conventional arms, including transparency in armaments, request States Parties to designate an NPC, such as:

- Firearms Protocol;
- Programme of Action on Small Arms;
- International Tracing Instrument;
- UN Register of Conventional Arms;
- UN Report on Military Expenditures.

➤States may designate the same NPC for different instruments.

➤States may also choose to designate different NPCs for different instruments and have them cooperate closely (e.g. preparation of reports under the PoA/ITI and ATT).

⁵ Article 5 (6).

⁶ Ibidem.

⁷ Article 18 (3)b.

2. Conference of States Parties⁸

The conference of States Parties (CSP) of the ATT provides an opportunity for States to gather regularly to exchange information and discuss matters of importance.

2.1. Issues to be discussed and decided at CSPs

- a. At its first meeting, its rules of procedure;
- b. Establishment of any subsidiary bodies and the CSP oversight over them;
- c. Establishment of a voluntary trust fund;⁹
- d. Financial rules for the CSPs, the Secretariat and any subsidiary bodies it might establish;
- e. Tasks and budgets of the Secretariat;
- f. Budget for the financial period until the next ordinary session;
- g. Implementation and operation of the ATT, including the promotion of its universality;
- h. Administrative, logistical and financial provisions regarding the implementation of the Treaty;
- i. Issues arising from the interpretation of the ATT;
- j. Amendment to the Treaty six years after its entry into force and henceforth, only every three years;¹⁰
- k. Any other function consistent with the ATT.

2.2. Extraordinary meetings of the conference of States Parties¹¹

Extraordinary meetings of the conference of States Parties could be held:

- When deemed necessary by the CSP;
- Upon written request of any State Party supported by at least two-thirds of the States Parties.

Tip: Participation of arms export/ import control experts in national delegations to the ATT conferences of States Parties and their relevant meetings of subsidiary bodies, as well as in relevant regional and international meetings and events related to the ATT, would enable those experts to build networks and to keep abreast of developments and lessons learned in the implementation of the Treaty.

⁸ Article 17.

⁹ Article 16 (3).

¹⁰ The Treaty entered into force on 24 December 2014 therefore, the conference of States Parties could consider proposed amendments on its meeting in 2020 if any State Party had submitted such proposal to the ATT Secretariat. Henceforth, the conference of States Parties will only consider such proposals every three years.

¹¹ Article 17 (5).

III. International cooperation and assistance to implement the ATT

1. *International cooperation*

Regulating the international conventional arms trade and the effective implementation of the ATT requires extensive cooperation among States Parties. International cooperation under the ATT can take various forms, including:

- a. Exchange of information, experiences and lessons learned on the implementation of the ATT through its network of national points of contacts;
- b. Review of the implementation of the Treaty, including developments in the field of conventional arms at the conference of States Parties;
- c. Collaboration and exchange of information between the exporting and importing States Parties on pending or actual export authorizations where the importing State Party is the final destination of such transfer;¹²
- d. Partnership and exchange of information to prevent diversion;
- e. Mutual assistance in matters such as investigations, prosecutions and judicial proceedings;
- f. Coordination to prevent that arms transfers become subject to corrupt practices;
- g. Dialogue on ATT implementation matters at bilateral or regional level;
- h. Provision of assistance to implement the Treaty, including funding from the voluntary trust fund to be established under Article 16 (3) of the ATT, bilateral agreements or regional, sub-regional and international organizations.

1.1. *Information exchange among State Parties*

➤ Adequate information exchange among countries involved in a transfer, or among all relevant States Parties for instance on lessons learned and good practices, is an essential component for the successful implementation of the ATT.

➤ It also leads to increased transparency and accountability in arms transfers.

➤ There are many ways in which States Parties can engage in information exchange, including for example:

- Direct dialogue between NPCs;
- Communication between the NPC of one State Party and the national transfer control authorities of another;
- Meetings between officials, at bilateral or regional levels, or in the margins of a multilateral meeting;
- Correspondence between the national transfer control authorities of different States Parties;
- Circulation of information through appropriate channels within the framework of existing or new bilateral, regional or multilateral mechanisms for information-sharing and exchange.

¹² Article 8 (3).

1.1.1. Information exchange on the implementation of the ATT

States Parties should share information to effectively support the implementation of the ATT. Information to be exchanged should include:

- a. Matters of mutual interest regarding the application of the ATT;¹³
- b. Data regarding illicit activities and actors to prevent and eradicate diversion of conventional arms under Article 2 (1);¹⁴
- c. Lessons learned on any aspect of the ATT.¹⁵

1.1.2. Cooperation and information exchange to ensure accountability and to prevent diversion

Exporting, importing, transit and trans-shipment States Parties must cooperate and share information, pursuant to their national laws, where appropriate and feasible, to mitigate the risk of diversion of the transfer of covered weapons.¹⁶

Any exporting State Party shall make available appropriate information about an authorization, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to the exporting State's national laws, regulations or policies;¹⁷

States Parties should share information regarding illicit activities and actors to prevent and eradicate diversion of conventional arms.¹⁸

1.1.3. Information exchange through the ATT Secretariat

States Parties are required or encouraged to provide the following information to the Secretariat, which in turn is mandated to communicate it to all States Parties:

- a. National control lists, pursuant to each State Party's national laws (required);¹⁹
- b. NPC (required);²⁰
- c. Initial report on measures taken to implement the ATT (required);²¹
- d. Reports on any new measures undertaken in order to implement the ATT when appropriate (required);²²
- e. Annual report (required);²³
- f. Information on measures that have proven effective in addressing the diversion of conventional arms (encouraged).²⁴

¹³ Article 15 (2).

¹⁴ Article 15 (4).

¹⁵ Article 15 (7).

¹⁶ Article 11 (3).

¹⁷ Article 7 (6).

¹⁸ Ibidem.

¹⁹ Article 5 (4).

²⁰ Article 5 (6).

²¹ Article 13 (1).

²² Ibidem.

²³ Article 13 (3).

²⁴ Article 13 (2).

1.2. Settlement of disputes²⁵

States Parties shall consult and, by mutual consent, cooperate to pursue the settlement of any dispute that may arise between them regarding issues concerning the interpretation or application of the Treaty.

States Parties shall seek a solution by:

- a. Negotiations;
- b. Mediation;
- c. Conciliation;
- d. Judicial settlement;
- e. Arbitration;
- f. Any other peaceful means.

2. International assistance

- States Parties to the ATT shall take appropriate enforcement measures for the effective regulation of international transfers of conventional arms, ammunition and parts and components and for preventing their diversion.²⁶
- Any State Party should ensure that it counts with governmental institutions, an adequate legal framework, financial and technical resources to implement the Treaty.
- To that effect, many States Parties may consider requesting assistance.
- International assistance under the ATT helps all States Parties to implement the Treaty in an effective manner.
- International assistance can be granted through bilateral agreements between States Parties as well as by regional and international organizations.

2.1. Areas of assistance

Each State Party may assess the level, nature and extent of assistance it wants to seek.²⁷ Article 16 (1) indicates examples of areas where assistance could be sought:

- a. Legal or legislative assistance;
- b. Institutional capacity-building;
- c. Technical assistance;
- d. Material assistance;
- e. Financial assistance.

²⁵ Article 19.

²⁶ Article 14.

²⁷ For example, the *Arms Trade Treaty Baseline Assessment Project* has developed a survey that helps countries to identify areas where they need assistance. See www.armstrade.info.

2.1.1. Legal or legislative assistance

➤ Legal or legislative assistance may include revising existing legislation and regulatory frameworks or developing new ones, such as:

- Trade control legislation and regulation, including administrative and criminal penalties;
- Customs laws and firearms regulation and control acts;
- Regulatory procedures, including import and export control policies and administrative procedures;
- Legislation, regulatory procedures aimed at preventing the diversion of conventional arms;
- National control lists.

➤ International assistance programmes to provide legal or legislative assistance could take many forms, including: Workshops, seminars, and training programmes aimed at assisting in the drafting or review of relevant legislation, policies and procedures;

- Round-tables to share information on effective legislation, policies and procedures;
- Development of model legislation by States Parties;
- Technical expertise provided by consultants;
- Sharing of lessons learned and good practices.

2.1.2. Institutional capacity-building

International assistance programmes to enhance institutional capabilities could include the following activities:

- a. Assistance in establishing the national export/import control system;
- b. Support to inter-agency processes and national coordination mechanisms;
- c. Training for officials and personnel such as:
 - National points of contact;
 - Licensing/authorization officials;
 - Law enforcement officials, including customs and border control;
 - Military and security forces officials on weapons and ammunition stockpile management, intelligence gathering, and weapons marking and tracing;
 - Parliamentarians and officials entrusted with oversight responsibilities, where applicable.

2.2. Types of assistance

Assistance can be provided mainly in three forms: technical, material and financial.

2.2.1. Technical assistance

Examples of technical assistance are:

- a. Workshops, seminars, round-tables, training courses;

- b. Development of instruction materials, booklets, documents, software applications;
- c. Sharing of lessons learned and good practices;
- d. Peer-to-peer training, mentoring;
- e. Consultancy services;
- f. Training visits, personnel exchanges;
- g. Building or refurbishing stockpiles and depots.

2.2.2. Material assistance

Equipment needed to implement the ATT could be provided, loaned, leased (including at a preferential rate) or contributed in-kind.

2.2.3. Financial assistance

Sources of financial support could be found in:

- a. Bilateral and multilateral aid;
- b. Funding from the voluntary trust fund to be established under Article 16(3) of the ATT or other trust funds established for similar purposes, including the United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR).²⁸

2.3. Additional considerations

In providing assistance, States Parties could consider the following criteria:

- a. Applying flexibility and accounting for specificity: no one size fits all;
- b. Fostering national ownership;
- c. Safeguarding sustainability;
- d. Ensuring a gender-sensitive approach.

2.3.1. No one-size-fits-all

Assistance provided to implement the ATT should be tailored to specific needs of the recipient State. When designing assistance programmes, the following circumstances could be taken into consideration:

- a. Country size;
- b. Geography (e.g. border length, border accessibility);
- c. Infrastructure, major trading routes;
- d. Historical, cultural, and political contexts;
- e. Socio-economic development;
- f. Constitutional and government frameworks and administrative practices;

²⁸ More information on UNSCAR is available at www.un.org/disarmament/UNSCAR.

- g. Levels of regional cooperation;
- h. Volume and value of arms exports and/or imports;
- i. If the recipient State Party is particularly affected by problems related to the proliferation of illicit conventional arms, including SALW;
- j. If the recipient State Party faces diversion problems;
- k. Available local resources;
- l. Existing relevant programmes, including by regional organizations and by in-country UN partners such as UNDP or UNODC;
- m. Existing assistance programmes provided by other donors in the field of disarmament and non-proliferation;
- n. Existing projects related to the ATT being implemented in the recipient State or in the region.

2.3.2. National ownership

- National ownership is a key factor in ensuring the success of any assistance programme. Recipient States authorities are in the best position to assess their needs, to steer their ATT implementation process and to apply those ATT lessons learned that will help their own implementation efforts.
- In order for international assistance to be effective, recipient States will need to conduct an in-depth assessment to identify the assistance they require in implementing the Treaty.
- Recipient States should also be willing to be involved hands-on throughout the ATT implementation process (at all stages of the assistance project-cycle: assessment of needs, design of the targeted assistance programme, monitoring of the programme implementation, evaluation and follow-up phase of the programme, formulation of lessons learned).
- Recipient States should contribute local human resources and, when possible, material and financial resources to ensure ownership but also sustainability of effective ATT implementation measures.

2.3.3. Sustainability

A truly effective assistance programme is one that has a long-lasting and sustainable impact in the recipient State. Such programme may contain:

- a. Development of guidelines, manuals, instructions and “how-to” guides;
- b. Inclusion of a ‘train-the-trainers’ component, so that the training and knowledge imparted through assistance could be replicated and multiplied within the recipient State;
- c. Adequate training on the use and maintenance of equipment provided (if equipment is provided as part of the assistance programme).

2.3.4. Gender-sensitive approach

States Parties may also incorporate a gender perspective in their international assistance programmes through, for example:

- a. Considering the value of gender-sensitive risk assessments and how these can be undertaken;

- b. Promoting participation of women and women's groups in the recipient State in the decision-making process as well as planning and implementation of the programme;²⁹
- c. Including of women in the recipient State as a beneficiary/target/trainee in the assistance programme;
- d. Addressing the consequences of arms diversion for women;
- e. Including women in train-the-trainers components.

2.4. Requesting assistance

Any State Party may request assistance to implement the ATT. Assistance may be requested through:

- a. The ATT Secretariat;
- b. Other States Parties/ States at bilateral dialogue;
- c. Regional and sub-regional organizations;
- d. International organizations such as the UN;
- e. Non-governmental organizations.

2.5. Elements for an assistance request

The below elements include key information that might be useful in a request for assistance to implement the ATT.

- a. Contact details (The State Party may consider channelling its request through its NPC)
 - Institution:
 - Contact person:
 - Position:
 - Phone and Fax number:
 - E-mail address:
- b. Summary of assistance requested

[Provide a short summary of the assistance request]
- c. Specification of requested assistance
 - Legal or legislative assistance
 - Model legislation
 - Strategic trade control legislation
 - Customs and border control legislation

²⁹ The preamble of the ATT recognizes that civil society can play an active role in raising awareness of the object and purpose of the Treaty, as well as in supporting its implementation.

- Implementing regulations
- National control list

Other, specify:

- Institutional capacity-building
 - Setting up a national control system
 - Supporting inter-agency process
 - Setting up a record-keeping system
 - Development of procedures for information sharing
 - Disarmament, demobilization and reintegration
 - Marking of weapons
 - Weapons tracing
- Training



Arms Trade Treaty Implementation Toolkit

Module 5 Prohibitions on Transfers

Available on: www.un.org/disarmament/ATT

I. Introduction

Any country joining the Arms Trade Treaty (ATT) commits to putting in place effective measures to implement the Treaty.

Each State will decide which measures it needs in order to carry out its obligations under the ATT. These measures may vary from country to country.

This fifth module, *Prohibitions on Transfers*, aims to assist States in adopting standardized criteria to take into account when authorizing arms transfers to ensure compliance with Article 6 of the ATT.

II. What constitutes a transfer?

The activities of the international arms trade (export, import, transit, trans-shipment and brokering) are transfers according to Article 2 (2).¹

III. Prohibitions

- Article 6 establishes the prohibitions on transfers of conventional arms, ammunition and parts and components (items) under the ATT. It specifies what does not constitute an acceptable and responsible arms transfer.
- Obligations under Article 6 apply to all States Parties with jurisdiction over a transfer of items covered by the Treaty.

¹ See modules 6, 7, 8 and 9 for more information concerning these activities.

1. Prohibition of transfers in violation of UN Security Council arms embargoes or a State Party's obligations under measures adopted by the Security Council acting under Chapter VII of the UN Charter

- States Parties shall not authorize any transfer of items covered by the ATT, if such transfer would be in violation of a UN Security Council arms embargo or any other State Party's obligations under measures adopted by the Security Council acting under Chapter VII of the UN Charter.²
- Under these arms embargoes, States are prohibited from transferring arms to the embargoed State or entity. Security Council resolutions further stipulate that States shall take all the necessary measures to implement, apply and enforce the embargo.

Tip: For a current list of Security Council arms embargoes: www.un.org/sc/committees

In addition to arms embargoes, the Security Council, acting under Chapter VII of the UN Charter, has adopted other measures that impose obligations on States. For instance, resolution 1373 establishes that States shall eliminate the supply of weapons to terrorists.³

2. Prohibition of transfers in violation of relevant international obligations under international agreements, in particular those relating to the transfer of, or illicit trafficking in, conventional arms

- States Parties shall not authorize any transfer of items covered under the Treaty if such a transfer would violate relevant international obligations under international agreements, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.
- It is presumed that States Parties are aware of their legal obligations under international agreements. It is important that the officials responsible for the authorization of transfers of items covered under the ATT be well aware of which of those international obligations are relevant for the purposes of applying Article 6 (2).
- A list of examples of multilateral and regional agreements is attached as an annex to this module.

² Article 6 (1).

³ S/RES/1373 (2001).

3. *Prohibition of transfers if the State Party has knowledge at the time of authorization of the transfer that the covered items would be used to commit genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949 or other war crimes*

- Where a State Party has knowledge, at the time of the authorization, that the items subject to a transfer authorization would be used to commit 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, the State Party must prohibit such transfer.
- If it authorizes the transfer, the State Party would not only be in non-compliance with the ATT, but it could also be responsible under the law of state responsibility for aiding or assisting in the international wrongful act.

Article 16 of the Articles on Responsibility of States for international wrongful acts provides:

“A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and (b) The act would be internationally wrongful if committed by that State”.⁴

IV. Factors to be examined by States Parties before authorizing or denying a transfer of conventional arms, ammunition and parts and components to ensure compliance with the provisions of Article 6

- Most States have laws, regulations and procedures relating to the exercise of State control or regulation of international arms transfers. These laws, regulations and procedures may need to be revised in order to ensure full compliance with Article 6 of the ATT. The following is a list of suggested assessment factors that States Parties could utilise to ensure that they do not authorize a transfer (export, import, transit/trans-shipment and brokering activities) that is not in compliance with Article 6.

1. *Factors to consider in assessing if a transfer would violate Article 6 (1)*

- a. Whether the recipient is subject to a Security Council arms embargo;

⁴ The International Court of Justice in the *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* affirmed that Article 16 of the Articles on State Responsibility reflects a customary rule. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 217, para. 420.

b. Whether the transfer violates Security Council resolution 1373 on threats to international peace and security caused by terrorist acts;⁵

c. The recipient's past and current record regarding respect for the Security Council arms embargoes;

d. The recipient's capacity to ensure that the items transferred will not be diverted in violation of a Security Council arms embargo;

e. The recipient State's intentions as expressed in its formal commitments;

f. Whether the recipient State has failed to investigate or collaborate in the investigations of violations to Security Council arms embargoes;

g. In addition to the above, exporting States Parties may take into consideration whether the recipient State has adopted legislation making the violation of arms embargoes established by the Security Council a criminal offence.

2. Factors to consider in assessing a transfer would violate Article 6 (2)

a. Whether the transfer violates obligations under the UN Charter;

b. Whether the transfer is in breach of the authorizing State Party's relevant international human rights obligations;

c. Whether the transfer is in breach of the authorizing State Party's international humanitarian law obligations;

d. Whether the transfer is in compliance with the authorizing State Party's obligations under relevant international agreements, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.

3. Factors to consider in assessing if a transfer would violate Article 6 (3)

a. Whether the items would be used to commit genocide;

b. Whether the items would be used to commit crimes against humanity;

c. Whether the items would be used to commit grave breaches of the Geneva Conventions of 1949;⁶

d. Whether the items would be used to commit attacks directed against civilian objects;

e. Whether the items would be used to commit attacks against civilians protected as such;

⁵ unscr.com/en/resolutions/1373.

⁶ <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>.

f. Whether the items would be used to commit other war crimes as defined by international agreements to which the authorizing State is a Party.

V. Sources of information to be considered by States Parties when authorizing transfers

Each State Party is in charge of its own implementation efforts to ensure compliance with its obligations under the ATT. The competent authorities within the State Party may consider consulting the following sources of information:

- The current list of Security Council arms embargoes in force;⁷
- Implementation assistance notices issued by the Security Council Committees;⁸
- Relevant documents from UN human rights bodies and international tribunals;^{9,10}
- Intelligence and other information available to the State Party through bilateral or regional information exchange mechanisms;
- Information exchanged with other States Parties to the ATT;
- Documents from regional and special courts and tribunals;
- Other credible sources, such as regional human rights organizations and civil society organizations.

⁷ www.un.org/sc/committees.

⁸ www.un.org/sc/committees.

⁹ E.g. www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx.

¹⁰ E.g. www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx

Annex

Non-exhaustive list of relevant multilateral and regional instruments

- United Nations instruments
 - United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW)
 - United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA)
 - United Nations Convention against Transnational Organized Crime (TOC) – Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (Firearms Protocol)
- International agreements
 - Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC)
 - Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC)
 - Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Treaty)
 - Convention on Cluster Munitions (CCM)
 - The Hague Code of Conduct against the Proliferation of Ballistic Missiles (HCOG) (International Code of Conduct against the Proliferation of Ballistic Missiles) (ICOC)
 - Missile Technology Control Regime (MTCR)
 - Treaty on Non-Proliferation of Nuclear Weapons (NPT)
 - Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies
- Regional agreements
 - Andean Plan to Prevent, Fight and Eradicate Illicit Trafficking in Small Arms in All its Aspects
 - Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition, Parts and Components that Can be Used for Their Manufacture, Repair or Assembly (Kinshasa Convention)
 - Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials
 - European Union (EU) Common Position 2003/468/CFSP on the Control of Arms Brokering
 - European Union (EU) Common Position 2008/944/CFSP Defining Common Rules Governing the Control of Exports of Military Technology and Equipment
 - Inter-American Convention Against Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials (CIFTA Convention)
 - Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa and Bordering States
 - Organization for Security and Cooperation in Europe (OSCE) Document on Small Arms and Light Weapons
 - South African Development Community (SADC) Protocol on the Control of Firearms, Ammunition and Other Related Materials



Arms Trade Treaty Implementation Toolkit

Module 6 Export

Available on: www.un.org/disarmament/ATT

I. Introduction

Any country joining the Arms Trade Treaty (ATT) commits to putting in place effective measures to implement the Treaty.

Each State will decide which measures it needs in order to carry out its obligations under the ATT. These measures may vary from country to country.

This sixth module, *Export of conventional weapons, ammunitions, parts and components*, provides States with practical information to consider when establishing and maintaining a national export control system. In particular, this module will discuss how to conduct an export assessment.

II. National export control system

➤ A national export control system comprises the institutional arrangements and mechanisms, laws, regulations, policies, procedures and processes through which government exercises control over the export of certain products, technology and services. Normally, the national control system regulates, assesses, monitors, authorizes and/or denies the export of those goods, technology or services from territory under the jurisdiction of the State in question.

➤ Under the ATT, States Parties shall establish and maintain a national control system to implement the provisions of the Treaty.¹

➤ States Parties shall authorize or prohibit the export of conventional arms, ammunition/munitions, parts and components pursuant to the export assessment conducted by their national control system.²

➤ Through a national export control system, States Parties can effectively:

- Comply with their obligations under the ATT;
- Control the conditions under which items are exported from territory under the jurisdiction of the authorizing State Party to another country (regardless if the importing country is a State Party to the ATT);
- Prevent the export of items under certain conditions and circumstances;
- Reduce the risk that the exported items will be diverted to unauthorized users;
- Keep track of transfers originating from territories under their jurisdictions.

¹ Article 5 (2).

² Article 7.

1. Elements of a national export control system under the ATT

1.1. National legislation and national control lists

➤ The national legislation should clearly state:

- a. Which items are subject to export control (national control list);
- b. Which government ministries, departments and agencies are responsible for regulating and controlling exports of items (national authorities);
- c. Processes for granting or refusing export authorizations (regulatory procedures);
- d. The legal and/or administrative actions that would be applied in case of export offences (e.g., enforcement measures, mechanisms, prosecution and punishment).

➤ States Parties are required to maintain and establish a national control list.³ At a minimum, the national control list shall contain national definitions of the eight categories of weapons listed in Article 2(1). The list could also include ammunition/munitions⁴ as well as parts and components that are subject to export control.⁵

➤ In addition, States Parties may wish to control parts and equipment such as transport helicopters, tanker aircraft, trucks, assault boats, electronics, optical equipment, radar, and many others.

➤ A national control list may be a single list covering all items subject to export controls or a collection of lists, each covering different categories/types of items subject to export control.

➤ A national control list should be updated on a regular basis to ensure that it covers technical developments and emerging technologies that should be subject to export control.

➤ States Parties shall provide their national control lists to the ATT Secretariat, which shall make them available to other States Parties.⁶

➤ States Parties are encouraged to make their control lists publicly available. In particular those involved in the manufacture, export or import of arms or ammunition or in the arms trade, including authorized brokers, should be able to access the list(s).

➤ States Parties may choose to apply a “catch-all” provision⁷ on items that are not, in principle, subject to mandatory export authorization.

³ Article 5 (2).

⁴ Article 3.

⁵ Article 4.

⁶ Article 5 (4).

⁷ Many peripheral items that are not listed on the national control lists may still enhance the weapons' effectiveness, or contribute to weapons development/enhancement/production programmes. It may be difficult or impractical to attempt to include all those items in the list. Instead, a “catch-all” provision requires government's authorization to export unlisted items when there is a reason to believe that the item may be intended for undesirable end use and/or end-user.

1.2. National authorities

- States Parties have to designate competent national authorities to ensure the effective and transparent national control and regulation over the export of items covered under the ATT.⁸
- The requirement to establish an export control system applies to all States Parties, including those that are mainly importers and only occasionally process a transfer of items from its territory to that of another State. Typically, States with little or no arms exports may not need an elaborate system.
- It is a national prerogative to decide which government entities are involved in the licensing and authorization process. Considerations regarding which entities need to be involved include the amount of trade, the existence of a domestic defence industry, and the strategic importance of the items.
- In some countries, certain government ministries, such as the ministry of foreign affairs, carry out political assessments and/or provide guidance to be considered in the assessments undertaken by the national export control authorities at the administrative level.
- The designated national authorities should be able to consider strategic, military and foreign-policy implications, including human rights considerations, of the proposed exports. Again, such considerations should be guided by directives or guidelines emanating from high governmental levels.
- The designated national authorities should administer the regulatory regime and implement controls through an export authorization process.
- In some countries, the national authority is subject to an oversight mechanism (e.g. by the legislative body).
- Tasks to be undertaken by the authorization agency may include:
 - a. Granting permission/licence to engage in international arms trade;
 - b. Receiving and reviewing export applications;
 - c. Ensuring compliance with the national laws and the country's obligations under international law, including Article 6 of the ATT;
 - d. Conducting the export assessment required under Article 7 of the ATT;
 - e. Issuing or denying export authorizations and, in the case of the latter, ensuring full compliance through inter-agency cooperation;
 - f. Ensuring that all documentation and approvals for the export of conventional arms and items are detailed and issued prior to the authorization
 - g. Keeping records of export licences/authorizations;
 - h. Making available appropriate information about an authorization, upon request, to the importing State and to transit or trans-shipment States, if applicable and subject to its national laws, policies and practices;
 - i. Coordinating with other ministries and departments involved in the export authorization process;
 - j. Reporting to the oversight body, where applicable and in accordance with national laws;

⁸ Article 5 (5).

- k. Conducting awareness-raising programmes and outreach to industry, including providing information to familiarize industry with the relevant laws and procedures;
- l. Assessing the internal compliance systems/programs of exporting companies.

1.3. Regulatory procedures for conventional arms exports

1.3.1. Sequencing procedures

➤ The national export control system should indicate the sequencing procedures to be followed in exporting any conventional weapons or related items included in the national control list.

➤ Typically, the sequencing procedures will entail:

Pre-requisite – Permission from the Government for the exporter and other actors involved in the transfer to engage in international arms trade (in States where such permission is required).

Step 1 - Exporter obtains from the importer an import authorization, if applicable or feasible, end-use/user documentation and other relevant documents. The exporting State verifies the authenticity of relevant documents. The broker involved in the transfer, if any, obtains brokering authorization.

Step 2 - Exporter applies for export authorization.

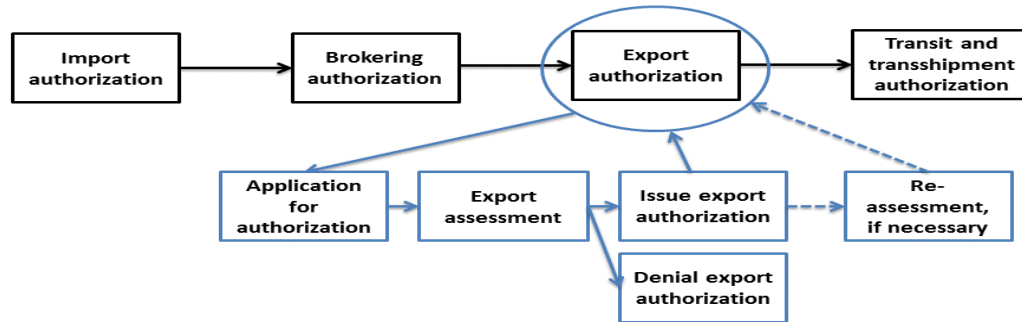
Step 3 - Export assessment is conducted by national export control authorities.

Step 4 - Export authorization is granted/ denied by national authorization agency.

Step 4 bis. – If an exporting State Party becomes aware of new relevant information, export authorization is re-assessed after consultations, if appropriate, with the importing State.

Step 5 - Transit/trans-shipment authorization is obtained from transit/trans-shipment State.

Figure 1 - Sequencing procedure



Operating licence (only if required by national law)

- States Parties, according to their national laws, may establish an export licensing system whereby only the holders of a valid operating licence can apply for an export authorization.
- In such cases, the operating licence is a pre-requisite for applying for an export authorization. Normally, an authorization would be required for each separate transaction.

Application for an operating licence (only if an operating licence is required by national laws)

- Applicants for operating licences should be required to meet the criteria set forth by national regulations.
- An application for an operating licence should be refused if:

- a. The applicant fails to meet the licensing criteria established by national regulations.
- b. There is evidence of past involvement by the applicant in illicit trade of weapons.
- c. Information submitted in support of the application is false, inaccurate or incomplete.
- d. The applicant has been refused an operating licence in another State on grounds that would also apply in the State considering the application.
- e. The applicant has a criminal record.

Expiration of the operating licence (only if an operating licence is required by national laws)

- Where export licences are issued, the validity of licences should be limited in time. These documents should have an expiration date after which they are no longer valid. The expiration date

should be clearly marked on operating licences. The national authority could distribute the information on expiration dates to other authorities involved in export control, especially customs.

Obtaining and verifying necessary documents

➤ When applying for an export authorization, the exporter should be required to submit relevant documents to accompany its application. The national authority of the exporting State Party should review and verify the authenticity of the documents submitted as well as the truthfulness and accuracy of information contained therein. Examples of relevant documents include:

- a. Import authorization;
- b. End-use/user documentation;
- c. Brokering authorization.

Step 1 - Import authorization

➤ If applicable, the exporter may obtain an import authorization from the importing State prior to applying for an export authorization. However, not all countries issue import authorizations.

End-use/user documents

➤ The national export control authorities may require the submission of end-use/user documentation.

➤ End-use/user documents can have different names depending on the country or whether the end-user is a governmental entity or private entity (e.g., end-user certificates, end-use statements).

➤ An end-use/user certification process may require the submission of an end-user certificate, end-use/user statement or assurance or other documents that provide relevant information about the end-use/user.

➤ The exporting State may turn to other sources in order to obtain additional information that would corroborate the veracity or reliability of documents provided by the importer and of the end-user and importer themselves.

➤ There is no internationally agreed standard format for end-use/user documents, including end-user certificates.⁹ These documents most frequently contain:¹⁰

- a. Date of issuance;
- b. Contract number;
- c. Details of the exporter (name, address);

⁹ Some regional or other organizations, such as the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA), the Organization for Security and Co-operation in Europe (OSCE) and the European Union (EU) have produced best practice guidelines that elaborate on the types of information and assurance that should be contained in end-user certificates.

¹⁰ Also, exporting States often have specific legal requirements for contents or may provide templates to be utilized or completed by the importers.

- d. Details of the end-user (name, address);
- e. Details of the consignees, brokers or other parties involved in the transfer, if applicable (name, address);
- f. Country of final destination;
- g. Description of the goods;
- h. Quantity;
- i. Value;
- j. Stated end-use of the goods;
- k. Non re-export clause;
- l. Full name of person authorized to sign end-user certificate, signature of said person;
- m. Seal of company or Government. It should be noted that the shift towards electronic applications may bring about new forms of authentication other than watermarks and embossed stamps or seals. However, such traditional methods continue to serve their purpose where electronic systems are not in place or where hard copies are required in addition to electronic applications.¹¹

Authentication of end-use/user documents

- Authentication of end-use/user documents is a legal formality by which the authorities of importing States certify the authenticity of signatures affixed to the documents, the capacity in which the signatories are acting and, if applicable, the authenticity of the seal or stamp affixed to the document.
- Upon request, importing States should assist exporting States in end-use/user verification processes, including in authenticating and determining the validity and reliability of end-user documents. This assistance could be provided through embassies or consular agents, if possible and appropriate. For example, the delivery of end-use/user documents could be carried out through diplomatic channels.
- In their end-use/user verification processes, the national export control authorities can use a variety of sources of information, including checks against open source information such as telephone and business directories, internet sources, national contact points and any other sources available to the relevant authorities in the exporting States.¹²

¹¹ Some electronic applications systems still require the submission of an original, hard-copy EUC.

¹² For more on end-use and end-user control systems:

www.un.org/disarmament/HomePage/ODAPublications/OccasionalPapers/PDF/OP21.pdf

Step 2 - Applying for export authorizations

➤ Export authorizations shall be required for all transfers of conventional arms, ammunition/munitions and parts and components, regardless of whether the importer is a State or a non-State entity. Therefore, export authorizations are required for:

- a. State-to-State transfers;¹³
- b. State-to-private transfers;¹⁴
- c. Private-to-State transfers;
- d. Commercial sales (private-to-private).

Contents of applications for export authorizations

➤ Each State decides on the format and content of the application form for authorizations regarding exports of conventional arms and related items that are included on the national control list. The application form could request the following information:

- a. Name and contact details of the applicant for the authorization;
- b. Applicant's operating licence number, if applicable;
- c. Detailed descriptions (type, model name, model number, quantity, etc.) of items for export;
- d. Details of the transfer (value, date of transfer, etc.);
- e. Countries/ports of transit and/or trans-shipment, if applicable and known at the time of application;
- f. Names and contact details of brokers, intermediaries, importer, consignees or any other parties involved in the transfer;
- g. Details of the transport route, including the means of transport to be used for each segment, if known at the time of application;
- h. Country of import;
- i. Intended use of the items being exported;
- j. Name and contact details of the authorized end-user.

➤ A duly filled application form should be accompanied by any other required documents (import authorization, end-use/user documentation, etc.) and should be submitted to the national authorization agency via prescribed methods determined by the national law.

¹³ In this particular context, the term "State" refers to government entities, such as armed forces and law enforcement institutions.

¹⁴ In this context, the term "private" refers to any non-State entity, including, but not limited to, private individuals and organizations.

Step 3 - Undertaking the export assessment

➤ Upon receipt of duly filled applications for export authorization and all other required documents, the authorization authorities should assess the applications, taking into account the following principles:

a. *Non-discrimination*

Export assessments shall be carried out in a non-discriminatory manner.

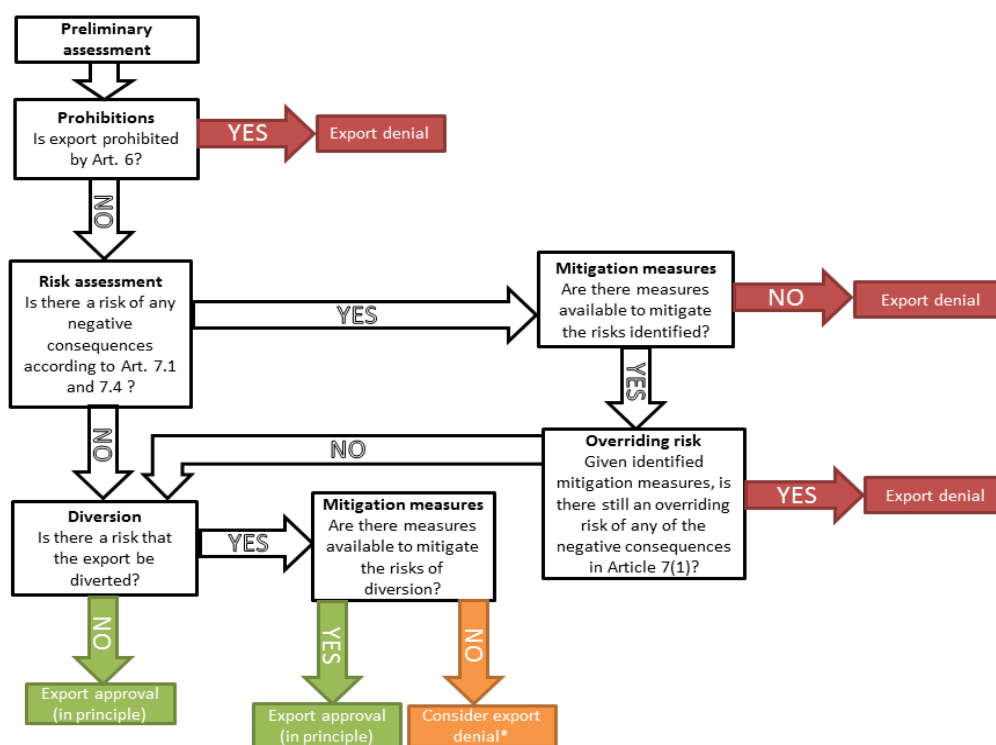
b. *Objectivity*

Each State Party shall implement the ATT in an objective manner. In order to ensure objectivity, export assessments be made on the basis of a set of clear and pre-defined criteria in accordance with national legislation and policies.

c. *Transparency*

Procedures for export authorization should be well defined in relevant laws or regulations, and be applicable to all export authorization processes, unless otherwise stipulated by laws or regulations. In order to ensure maximum transparency, general information on assessment procedures should be publicly available and the results of particular export assessments should be accessible to the parties concerned.

Figure 2 - Conducting an export assessment¹⁵



*Any exporting State is encouraged to consider export denial in compliance with the object and purpose of the Arms Trade Treaty.

¹⁵ This diagram aims to reflect the order of the relevant articles of the ATT, hence it begins with an assessment of the prohibitions (Article 6), followed by the assessment of the risks listed in Article 7, which is in turn followed by an assessment of the risk of diversion (Article 11). In practice, national authorities may not necessarily follow this sequence and may choose to cover all the steps in a single assessment.

a. Preliminary assessment

- The authorization agency should pre-screen applications to determine if :
 - All necessary documentation (e.g. end-use/user documentation, import authorization if applicable) is duly completed;
 - Eligibility conditions concerning the exporter/manufacturer are met (e.g., does the exporter have an operating licence? Is the exporter otherwise qualified to apply for an export authorization? Is the exporter/manufacturer not barred due to a prior violation or some other reason?).

b. Assessment on prohibitions of transfers¹⁶

- The authorization agency has to assess whether the proposed export is not prohibited under Article 6 of the ATT.

- To that end, the authorization authorities shall assess:

- If the proposed export would violate the State's obligations under measures adopted by the Security Council acting under Chapter VII of the UN Charter, in particular arms embargoes;
- If the proposed export would violate the State's relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms;
- If the State has any knowledge that the arms or items to be exported 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.

- If it is found that the export would lead to any of the violations mentioned above, the exporting State shall deny the export authorization.

- States may also establish additional criteria in their national laws to prohibit export authorizations of conventional arms, ammunition, parts and components.

- In carrying out the assessment, the authorization agency should seek information and inputs from other relevant government entities as well as other sources, including open sources.

c. Risk assessment

- If it is found that the export would not violate the prohibitions set forth in Article 6 of the ATT, then, the exporting State Party shall assess if the export would carry any of the risks listed under Article 7 of the Treaty.

To that end, the exporting State shall assess:

¹⁶ For a detailed analysis on Article 6 (Prohibitions) of the ATT, see module 5.

➤The potential that the conventional weapons or items would contribute to or undermine peace and security.¹⁷ It is noted that the use of “would” in Article 7 (1) (a) sets a higher threshold for certainty than that of Article 7 (1) (b), which, instead, uses the word “could”.

In making this assessment, the national authorities should identify and weigh the positive and negative consequences stemming from the export of items covered by Articles 2(1), 3 and 4. If those authorities determine that an export is likely to contribute to peace and security (a positive outcome), they should add this finding to the list of factors favouring the authorization of the export.

If the national authorities find that an export is likely to undermine peace and security (a negative outcome), they should add this risk to the list of factors that point towards the need for consideration of mitigating measures or a denial of the export.

➤The risk that the conventional weapons or items could be used to commit or facilitate a serious violation of international humanitarian law.¹⁸

What is a serious violation of international humanitarian law?¹⁹

A serious violation of international humanitarian law is a war crime. Such a violation can take place in international or non-international armed conflicts.

A violation is serious, if it endangers protected persons (e.g. civilians, prisoners of war, the wounded and sick) or objects (e.g. civilian objects or infrastructure) or if it breaches important values.

The majority of war crimes involve death, injury, destruction or unlawful taking of property. Acts can amount to war crimes because they breach important universal values, even without physically endangering persons or objects directly. These include, for example, abusing dead bodies and recruiting children who are under 15 years of age into the armed forces.

Serious violations of international humanitarian law are:

- **Grave breaches as specified under the four Geneva Conventions of 1949;²⁰**
- **Grave breaches as specified under Additional Protocol I of 1977;²¹**
- **War crimes as specified under Article 8 of the Rome Statute of the International Criminal Court;**
- **Other war crimes in international and non-international armed conflicts in customary international humanitarian law.**

¹⁷ Article 7 (1) (a).

¹⁸ Article 7 (1) (b) (i).

¹⁹ International Committee of the Red Cross (ICRC), Explanatory Note What are “serious violations of international humanitarian law”?, available at www.icrc.org/eng/assets/files/2012/att-what-are-serious-violations-of-ihl-icrc.pdf.

²⁰ Articles 50, 51, 130, 147 of Conventions I, II, III and IV respectively.

²¹ Articles 11 and 85.

Suggested indicators to assess the risk that the export of covered items could be used in the commission of a serious violation of international humanitarian law^{22, 23}

- Whether the importer or end-user has committed serious violations of international humanitarian law;
- Whether or not the importer or end-user has aided or abetted serious violations of international humanitarian law;
- Whether or not the importing State²⁴ has taken all feasible measures to prevent violations of international humanitarian law or cause them to cease, including by punishing those responsible;
- Whether or not the importing State has made a formal commitment to apply rules of international humanitarian law and taken appropriate measures for their implementation;
- Whether or not the importing State has in place the legal, judicial and administrative measures necessary for the repression of serious violations of international humanitarian law;
- Whether or not the importing State disseminates international humanitarian law, in particular to the armed forces and other arms bearers, and has integrated international humanitarian law into its military doctrine, manuals and instructions;
- Whether or not the importing State has taken steps to prevent the recruitment of children into the armed forces or armed groups and their participation in hostilities;
- Whether or not the importing State has established accountable authority structures with the capacity and will to ensure respect for international humanitarian law;
- Whether or not the arms and military equipment requested are commensurate with the end-use and/or the operational requirements and capacities of the stated end-user;
- Whether or not the importing State maintains strict and effective control over its arms and military equipment and their further transfers.

➤The risk that the conventional weapons or items could be used to commit or facilitate a serious violation of international human rights law²⁵

What is a serious violation of international human rights law?

While all human rights violations are unacceptable, the ATT addresses only “serious” violations of international human rights law. The standard adopted in Article 7 (1) (b) (ii) indicates that only violations of great concern to the international community should prevent the exporting State from authorizing a transfer of covered items. This standard underlines the human rights consequences of arms transfers.

²² International Committee of the Red Cross (ICRC), Arms transfer decisions: Applying international humanitarian law criteria – A practical guide (2007), in particular pages 5-15. Available at www.icrc.org/eng/resources/documents/publication/p0916.htm

²³ The proposed indicators listed herein are to be understood as a non-exhaustive list of suggestions. Except for the indicators that correspond to the criteria or factors stipulated in the ATT, particularly in Articles 6 and 7, it is up to each State Party to decide which indicators would be most appropriate for use in its export assessments.

²⁴ Transfers to non-State entities that are not under the control or jurisdiction of a State must also be subject to the prohibitions and risk assessments provided in Articles 6 and 7 of the ATT.

²⁵ Article 7 (1) (b) (ii).

This standard should incorporate the **due diligence standard in human rights law**.

The due diligence standard requires that exporting States engage in an effective inquiry in order to make a reasoned determination as to whether the proposed export carries a substantial risk of facilitating serious violations.

While human rights can be violated with or without weapons, transfers of arms to human rights violators can facilitate or exacerbate violations.

While there is no internationally agreed definition of what constitutes a serious violation of international human rights law, States Parties may wish to consider the following factors in determining what constitutes a serious violation:

- The nature of the right violated;
- The magnitude of the violation;
- The type of victim (vulnerability);
- The impact of the violation.²⁶

Violations of human rights are also serious when they are persistent, systematic and/or widespread.

Examples of serious violations of international human rights law include, but are not limited to: systematic murder, rape, forced displacement, attacks against civilian populations, excessive use of force, ill-treatment by military and security forces, disappearances, torture, gender-based violence, and extra-judicial killings.

Suggested indicators to assess the risk that the export of covered items could be used in the commission of a serious violation of international human rights law

- Whether or not the recipient State is a party to international and regional human rights instruments;
- Whether or not the importer or end-user has aided or abetted a serious violation of international human rights law;
- Whether or not the recipient State has adopted national legislation and regulation to implement international and regional human rights instruments;
- Whether or not the recipient State has legislation and effective procedures for the investigation of human rights abuses and violations, including those committed by the State or its agents;
- Whether or not the recipient State has accountable structures with the authority, capacity and the will to ensure respect for international human rights law;

²⁶ "What constitutes 'a serious violations of human rights law'?" Geneva Academy, Academy Briefing No. 6. www.geneva-academy.ch/docs/publications/Briefings%20and%20In%20breifs/Briefing%206%20What%20is%20a%20serious%20violation%20of%20human%20rights%20law_Academy%20Briefing%20No%206.pdf

- Whether or not the recipient State has a competent, independent, impartial and functioning judiciary with the capacity and will to prosecute serious human rights violations;
- Whether or not the recipient State disseminates international human rights law, in particular to the security and police forces and other arms bearers, and has integrated international human rights law into its training, manuals and instructions;
- Whether or not the recipient State has independent monitoring bodies and national institutions for the promotion of international human rights law;
- Whether there is a record of impunity for human rights violators in the recipient State;
- Whether or not the recipient State has mechanisms for monitoring and investigating alleged serious violations of international human rights law;
- Whether or not there is evidence that the type of arms described in the export authorization application or a similar type is or has been used for serious violations of international human rights law in the recipient State;
- Whether or not the arms and military equipment requested are commensurate with the operational requirements and capacities of the stated end-user;
- Whether or not the conduct of the stated end-user in respecting international human rights law has been subject of substantial concern by UN human rights monitoring bodies, regional human rights monitoring bodies, national human rights commissions;
- Whether or not the recipient State maintains strict and effective control over its arms and military equipment and their further transfers.

➤The risk that the conventional weapons or items could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party.²⁷

International conventions or protocols relating to terrorism

- Convention on Offences and Certain Other Acts Committed On Board Aircraft of 1963;
- Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 and its Protocol thereto of 2010;²⁸
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971 and its Protocol thereto of 1988;²⁹
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons of 1973;³⁰
- International Convention against the Taking of Hostages of 1979;³¹
- Convention on the Physical Protection of Nuclear Material of 1980 and its amendments;³²
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 and its Protocol thereto of 2005 and its Protocol thereto of 1988, and its Protocol to the

²⁷ Article 7 (1) (b) (iii).

²⁸ www.icao.int/secretariat/legal/Docs/beijing_protocol_multi.pdf.

²⁹ www.icao.int/secretariat/legal/Lists/Current%20lists%20of%20parties/AllItems.aspx.

³⁰ www.unodc.org/tldb/en/1973_Convention_Internationally%20Protected%20Persons.html.

³¹ www.unodc.org/tldb/en/1979_Convention_Hostage%20Taking.html.

³² www.iaea.org/publications/documents/conventions/convention-physical-protection-nuclear-material.

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 2005;³³

- Convention on the Marking of Plastic Explosives for the Purpose of Detection of 1991;³⁴
- International Convention for the Suppression of Terrorist Bombings of 1997;³⁵
- International Convention for the Suppression of the Financing of Terrorism of 1999;³⁶
- International Convention for the Suppression of Acts of Nuclear Terrorism of 2005;³⁷
- Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation of 2010.³⁸

Suggested indicators to assess the risk that the export of covered items could be used to commit or facilitate terrorist acts

- Whether or not the recipient State is a party to international conventions and protocols relating to terrorism;
 - Whether or not the recipient State has adopted national legislation and regulations to implement international conventions and protocols relating to terrorism;
 - Whether or not the recipient State has legislation and effective procedures for investigating offences under international conventions and protocols relating to terrorism;
 - Whether or not accountable the recipient State has structures with the authority, capacity and the will to ensure respect for international conventions and protocols relating to terrorism;
 - Whether or not the recipient State has a competent, independent, impartial and functioning judiciary with the capacity and the will to prosecute offences under international conventions and protocols relating to terrorism;
 - Whether or not the importer, end-user or recipient State finances or sponsors terrorist groups;
 - Whether or not the importer or end-user has aided or abetted violations of international conventions and protocols relating to terrorism;
 - Whether or not the recipient State has a record of prosecuting or extraditing offenders that are brought into its custody;
 - Whether or not the recipient State has assisted other States in connection with criminal proceedings brought under any international convention or protocol relating to terrorism;
 - Whether or not the recipient State has a record of impunity for perpetrators of terrorist acts;
 - Whether or not the recipient State exercises strict and effective control over its arms, ammunition and parts and components within its jurisdiction.
- The risk that the conventional weapons or items could be used to 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 Party³⁹

³³ www.imo.org/en/About/Conventions/ListOfConventions/Pages/SUA-Treaties.aspx.

³⁴ www.unrol.org/doc.aspx?d=2822.

³⁵ www.unodc.org/documents/treaties/Special/1997%20International%20Convention%20for%20the%20Suppression%20of%20Terrorist.pdf.

³⁶ www.unodc.org/documents/treaties/Special/1999%20International%20Convention%20for%20the%20Suppression%20of%20the%20Financing%20of%20Terrorism.pdf.

³⁷ www-ns.iaea.org/security/nuclear_terrorism_convention.asp.

³⁸ www.icao.int/secretariat/legal/Docs/beijing_convention_multi.pdf.

³⁹ Article 7 (1) (b) (iv).

Offences under international conventions or protocols relating to transnational organized crime

Organized crime is a threat to peace and human security. It violates human rights and undermines the political, socio-economic, civil and cultural development of States.

Offences under the UN Convention against Transnational Organized Crime (UNTOC)

States parties to the Convention shall establish the criminal offences of:

- participating in an organized crime group;
- money laundering;
- corruption;
- obstruction of justice.

Under the three supplementary Protocols of UNTOC – on **Trafficking in Persons, Smuggling of Migrants and Trafficking of Firearms** – States Parties to the Protocols have to criminalize:

- trafficking in persons;
- attempts to commit a human trafficking offence;
- participation as an accomplice in a human trafficking offence;
- organizing or directing others to commit human trafficking;
- smuggling of migrants;
- enabling a person to remain in a country illegally;
- aggravating circumstances that endanger lives or safety, or entail inhuman or degrading treatment of migrants;
- illicit manufacturing of and trafficking in firearms.

Suggested indicators to assess the risk that the export of covered items could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime

-Whether or not the recipient State is a party to international conventions and protocols relating to transnational organized crime;

-Whether or not the recipient State has legislation and effective procedures to investigate offences under international conventions and protocols relating to transnational organized crime;

-Whether or not the recipient State has accountable structures with the authority, capacity and the will to ensure respect for international conventions and protocols relating to transnational organized crime;

-Whether or not the recipient State finances or sponsors transnational organized criminal groups;

-Whether or not the recipient State has a record of prosecuting or extraditing offenders that are brought into its custody;

-Whether or not the recipient State has assisted other States in connection with criminal proceedings brought under any international convention or protocol relating to transnational organized crime;

- Whether or not there is a record of impunity for participants in organized criminal activities, human traffickers, smugglers of migrants, money-launderers, corrupt officials, firearms traffickers in the recipient State;
- Whether or not there is evidence that the type of arms described in the export authorization application or a similar type is or has been frequently used for organized crime in the recipient State;
- Whether or not the arms and military equipment requested are commensurate with the end-use or operational requirements and capacities of the stated end-user;
- Whether or not the recipient State exercises strict and effective control over arms, ammunition and parts and components within its jurisdiction.

Sources of information

- Exporting States may consult a variety of information sources, as they deem relevant, in order to conduct export assessments. Sources could include:
 - a. The current list of Security Council arms embargoes in force;
 - b. Implementation assistance notices issued by the Security Council Committees;
 - c. Documentation from UN human rights bodies and international tribunals;
 - d. Intelligence and other information available to the State Party through bilateral or regional information exchanges mechanisms;
 - e. Information exchanged with other States Parties to the ATT;
 - f. Documentation from other international and regional human rights monitoring bodies;
 - g. Reports from credible national human rights institutions, international and national NGOs and the media.

Role of importing States in the export assessment

- An importing States shall provide appropriate and relevant information, upon request, to the exporting State in accordance with the importing State's national laws. Such information could include:
 - a. Declaration of intended use of the transferred weapons;
 - b. Official undertaking/assurance/guarantee not to re-export in a manner that would run counter to the provisions of the ATT or not to use for unintended purposes;
 - c. Information on the country's import system, its measures to enhance weapons control, storage, and prevent diversion.

Mitigation measures⁴⁰

- If it is determined that the proposed export carries any of the risks listed in Article 7 (1) (a) or 7 (1) (b), the exporting State shall consider whether there are measures that could be undertaken to mitigate the risks identified. Such mitigation measures could include:

⁴⁰ Article 7 (3).

- Confidence-building measures;
- Jointly developed and agreed programmes by the exporting and importing States.

Confidence-building measures

Confidence-building measures (CBMs) enhance the reliability of importing States regarding the observance of relevant international law and the exercise of control over transferred weapons or items, so as to prevent unauthorized use or diversion. While there are many possible forms of CBMs, examples could include:

- Undertaking by the importing State not to re-export or re-transfer in a manner that would run counter to the provisions of the ATT;
- Declaration by the importing State of intended use of the transferred weapons or items, accompanied by the undertaking/assurance/guarantee not to use them for other purposes;
- Provision of information on weapons or items stolen, lost or otherwise unaccounted for;
- Disclosure by the importing State of its records regarding observation of relevant international human rights law, international humanitarian law, international conventions or protocols relating to terrorism and to transnational organized crime;
- Enhancement of transparency on military matters.

Jointly developed and agreed programme

In addition to CBMs, exporting and importing States could agree on jointly developed programmes to mitigate the risks of negative consequences of the weapons export, such as:

- Post-delivery monitoring/cooperation programmes;
- Joint programmes to enhance the implementation by importing State of, and compliance with, relevant international human rights law, international humanitarian law, international conventions or protocols relating to terrorism and to transnational organized crime.
- Joint programmes to enhance the capacity of importing States to control weapons and prevent their diversion.

Overriding risk⁴¹

➤After conducting the assessment, the exporting State shall decide whether or not to grant an export authorization. The exporting State shall also consider whether there are measures to mitigate any of the risks listed in Article 7 (a) and (b).

➤If, after conducting the assessment and considering mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences identified by the export assessment, the exporting State Party shall deny the export authorization.

⁴¹ Article 7 (3).

What is an overriding risk?

- During the ATT negotiations there was no agreement as to the precise meaning of the concept of “overriding risk” or how to apply it in practice.⁴²
- The word “overriding” presupposes that the risks are to be weighed against something.
- One possible interpretation of Article 7 (3) is that the exporting State, after conducting its assessment and considering mitigation measures, should weigh the risk of negative consequences against expected positive consequences of the export. In this interpretation, if the risk of negative consequences outweighs the likelihood of positive consequences, the exporting State should not authorize the export.
- The ATT does provide guidance as to what constitute positive consequences of an export: the transfer contributing to peace and security.⁴³ It is up to each authorizing State to weigh whether a transfer is more likely to contribute to peace and security than to engender negative consequences.
- Another interpretation could be that the exporting State should determine whether the risk of negative consequences outweighs the likelihood that those consequences would not occur.
- Regardless of the interpretation given to the “overriding risk” standard, when conducting assessments and deciding on whether or not to authorize exports, State Parties are expected to act in a manner that is fully consistent with the provisions of the ATT.

- The determination of an overriding risk should be the product of a balanced consideration of all the relevant facts, based on an objectively informed conclusion reached through the systematic application of criteria set by the ATT and using reliable and credible sources of information.

Risk of diversion

See module 10.

Gender-based violence

The exporting State Party, in making the export assessment, shall take into account the risk of the conventional weapons or items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against children.⁴⁴

⁴² For comparative purposes, see the “risk” standard (e.g. article 2.5 (b), article 2.7) and “clear risk” standard (e.g. [article 2.2 \(a\)](#), [article 2.2 \(c\)](#), [article 2.4](#)) in European Union Council Common Position 2008/944/CFSP of 8 December 2008, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008E0944&from=EN>.

⁴³ Article 7 (1)(a).

⁴⁴ Article 7 (4).

Serious acts of gender-based violence and serious acts of violence against women and children

Acts of gender-based violence or serious acts of violence against women and children constitute serious violations of international humanitarian law or serious violations of international human rights law. They may also be offences under international conventions or protocols relating to terrorism or transnational organized crime to which the exporting State is a party.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) establishes the norms and standards to prevent and eliminate all forms of discrimination against women, protect and promote women's human rights and ensure gender equality.⁴⁵

Gender-based violence impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions. It is violence that is disproportionately directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.⁴⁶

The **Convention on the Rights of the Child (CRC)** provides the legal standards to protect children from all forms of violence and to prevent violence against children.⁴⁷

A child is every human being under the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

The CRC has three optional protocols.

Suggested indicators to assess the risk of conventional weapons or items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children

-Whether or not the recipient State implements its obligations under the Security Council resolutions 1325 and 1820;

-Whether or not the recipient State has legislation and effective procedures in place to investigate serious acts of gender-based violence and serious acts of violence against women and children committed by the State or its agents;

⁴⁵ www.un.org/womenwatch/daw/cedaw/.

⁴⁶ Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 (1992), www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#top.

⁴⁷ <http://www.unicef.org/crc/>.

- Whether or not accountable authority structures exist with the capacity and will to ensure respect for international human rights law pertaining to women rights and children rights;
- Whether or not the recipient State disseminates international human rights law regarding women rights and children rights, in particular within armed forces and law enforcement, and has integrated international human rights law on women's rights and children's rights into its training, manuals and instructions;
- Whether or not there is a record of impunity for offenders who committed serious acts of gender-based violence and/or serious acts of violence against women and children in the recipient State;
- Whether or not there are patterns of gender-based violence in the recipient State;
- Whether or not there is evidence that the type of arms described in the export authorization application or a similar type has been used repeatedly in the commission of serious acts of violence against women or serious acts of gender-based violence, or the commission of serious acts of violence against children, in particular recruitment of child soldiers, in the recipient State.

Step 4 - Denial of export authorization/issuance of export authorization

Denial of authorization

Conditions for denial

The export shall be denied when:

- a. The application relates to an export that should be prohibited in accordance with Article 6;
- b. The export would undermine peace and security;
- c. The items could be lead to the negative consequences contained in Article 7;

The export should also be denied when the application contains wrong information or forged supplementing documents.

Notification of denial of authorization

- Denial of authorization should be communicated in written form to the applicant.
- In order to ensure procedural transparency, the notification should include information about the reason for denial.
- Sharing information on denial of authorization is of particular use in preventing the diversion of items to illicit markets. This would be consistent with the ATT provisions on the prevention of diversion (Article (11)).

Issuance of export authorizations

- If the proposed export is not prohibited under Article 6 and the export assessment does not have a negative outcome, the authorization agency can issue the export authorization.

Information to be contained in the authorization

- Export authorizations should be detailed and specific.⁴⁸ These documents could include the following information:
- a. Record identifier / export authorization number;
 - b. Date of issuance;
 - c. Name and seal of national authority issuing the authorization;
 - d. Signature, printed name and position of the designated official of the authority issuing the authorization (some of these elements may not apply in the case of electronic applications, which may require different elements);
 - e. Name and contact details of the recipient of the authorization;
 - f. Detailed descriptions (type, model name, model number, quantity, etc.) of items authorized for export;
 - g. Date of expiration of authorization;
 - h. Countries/ports of transit and/or trans-shipment, if applicable;
 - i. Names and contact details of brokers, intermediaries, consignees or any other parties involved in the transfer;
 - j. Details of the transport route, including the means of transport to be used for each segment;
 - k. Country of import;
 - l. Intended use of the items being exported;
 - m. Name and contact details of the authorized end-user.

Notification of export authorizations

- Notification of export authorizations should be provided to the exporting company or individual and relevant national authorities involved in export control.
- A State Party's annual national report shall contain information on actual exports or on authorized export. If a State chooses the latter, export authorizations shall be communicated to the ATT Secretariat through the annual report, which will be shared with other States Parties to the ATT.

Step 5 - Reassessment of authorization

- If after the export authorization is issued, the exporting State becomes aware of new relevant circumstances, it is encouraged to reassess the authorization. When appropriate, this reassessment should be conducted after consultations with the importing State.⁴⁹

⁴⁸ Article 7 (5).

⁴⁹ Article 7 (7).

Reasons for reassessment

- States are encouraged to reassess the authorizations if:
 - a. they become aware of new relevant information that might require a review of the previous assessment, particularly with regard to the risks addressed in Articles 6 and 7 of the ATT;
 - b. information in the application was found to be forged, incorrect or obsolete;
 - c. new circumstances have arisen with respect to the end-user, importing State, the transit and trans-shipment States;
 - d. there is a change in the transit route or transportation arrangement;
 - e. confidence-building measures, joint programmes and other mitigation measures agreed between exporting and importing States have not been implemented or respected.

Procedures for reassessment

- The reassessment may follow the same comprehensive procedures for the initial export assessment, or may focus on the new relevant information that emerged and its implications;
- Procedures for reassessment should be established by law.

Result of reassessment

- Reassessment may result in:
 - a. Authorization/re-authorization under the same conditions;
 - b. Authorization under modified conditions;
 - c. Temporary freeze/suspension of authorization;
 - d. Revocation of authorization.

1.3 Export of items

- Once the necessary authorizations have been obtained, the exporter can proceed with the export.
- States are encouraged to exchange information among relevant governmental departments and agencies, on:
 - a. Issuance of export authorization;
 - b. Departure of the items from its territory/custom;
 - c. A change in the transfer route, date or transportation arrangement.

1.3.1. Record keeping of exported weapons

- Each State Party shall maintain national records of its export authorizations or its actual exports of the conventional arms covered in Article 2 (1).⁵⁰ The records should be as detailed, accurate and comprehensive as possible and preferably entered in a pre-determined format/template.
- Records shall be kept for a minimum of ten years.⁵¹
- States are encouraged to require manufacturers – through legislation – to maintain records of actual exports and report periodically to the Government on actual exports.
- The ATT does not require States Parties to keep records of their exports of ammunition or part and components. Each State Party is free to adopt national record-keeping requirements that would also cover these items.

Contents of records listed in the ATT

- States Parties are encouraged to include in their records:⁵²
 - a. Quantity;
 - b. Value;
 - c. Model/type/serial number;
 - d. Export/import/transit authorization number/date;
 - e. Details of exporting State(s);
 - f. Details of importing State(s);
 - g. Details of transit and trans-shipment State(s);
 - h. Information about end-users.

Additional contents that could be included

- a. Unique authorization identifier (e.g., licence number);
- b. Issuing agency;
- c. Issue date and expiry date;
- d. Name and contact details of recipient;
- e. Year of manufacture;
- f. Information on import and/or export marking if available;

⁵⁰ Article 12 (1).

⁵¹ Article 12 (4).

⁵² Article 12 (3).

- g. Copy or scanned copy of authorization documents, end-use/user documentation and other relevant documents;
- h. Information on broker/intermediary (if applicable);
- i. Conditions on export/import (if applicable) (e.g. prohibition on re-transfer);
- j. Other information, such as intended use.

Maintenance of records

- The choice of methods for record keeping is a national prerogative. A good record-keeping system should be up-to-date, easily searchable, and accessible only to authorized officials.
- Traditional paper-based record-keeping systems are in principle as useful as electronic systems.

Use, application and sharing of records

- Good record keeping is a critical measure for an effective and transparent system for regulating the transfer of conventional arms and items covered under Article 3 and 4, in line with Article 5(5). The records could be used to:
 - a. Inform export assessments and export authorization;
 - b. Provide information needed for investigations of cases of breaches of export control laws and regulations;
 - c. Prepare reports required by the ATT, the UN Register on Conventional Arms, and relevant regional commitments;
 - d. Prepare reports to oversight bodies, such as parliament, if required by relevant national laws and regulations;
 - e. Share with importing State, transit/ trans-shipment States and other States Parties, in accordance with national laws.

1.4. Enforcement measures

- States Parties shall put in place mechanisms to enforce laws and regulations related to export controls.⁵³ Enforcement mechanisms may entail:
 - Identifying competent enforcement agencies and bestowing them with powers to enforce export control legislation;
 - Establishing penalties;
 - Inter-departmental cooperation by customs officials, police forces, judiciary;
 - Compliance with export control laws by industry.

⁵³ Article 14.

1.4.1. Establishment of penalties

➤ Penalties should be established to dissuade and punish violations of national export control laws and regulations. Such penalties could include:

- Fines;
- Administrative sanctions (suspension or revocation of licences and/or authorizations; barring violators from applying for licences or authorizations for certain lengths of time; placing additional burdens or imposing restrictive conditions for subsequent application of licences or authorizations);
- Imprisonment.

1.4.2. Inter-agency cooperation to enforce national export control laws and regulations

➤ Effective enforcement of laws and regulations requires the involvement of multiple government agencies or services. While different States provide different duties for agencies/services, typically the following could be involved:

- Authorization agency;
- Other national authorities involved in licensing /authorization process;
- Customs and border control;
- Police and other relevant law enforcement agencies;
- Intelligence agencies;
- Judiciary.

➤ Close inter-agency cooperation is essential to ensure the effective enforcement of national export controls.

Customs and border control

Custom and border police play an important role in enforcing laws and regulations on arms transfers. At the border checkpoint, customs officials should determine that:

- a. The shipment of weapons, ammunition and/or parts and components is accompanied by all required authorizations and documentation, such as export/import/transit authorizations;
- b. The required documentation is authentic and accurate;
- c. The content of the shipment matches the description in the authorizations.

Police and other law enforcement agencies

Police and other law enforcement agencies, where applicable, should be provided with the necessary authority, investigative skills and capacity to deal with enforcement of national export control laws and regulations.

Judiciary

States may develop a cadre of prosecutors and judges specialized in national export control, to facilitate expeditious processing of relevant cases.

1.4.3. Industry

- States are encouraged to place obligations on companies and individuals involved in the manufacture and export of weapons, in particular regarding record-keeping, reporting of exports of items covered by the ATT, and cooperation with enforcement agencies.
- Companies and individuals involved in the manufacture and export of weapons should familiarise themselves with export control laws, regulations and procedures so as to facilitate compliance.
- Industry may establish nationally a consultative body or forum to help enhance industry compliance to national export control laws and regulation.

III. International cooperation and assistance

1. International cooperation on sharing of information

- States Parties shall cooperate with each other, consistent with their respective security interests and national laws, to effectively implement the ATT.⁵⁴
- States Parties should cooperate, in accordance with their national law, to assist national implementation of the Treaty, including through sharing information on illicit activities or actors.⁵⁵ Information provided could be limited by national laws on protection of personal data, commercial confidentiality and States' security considerations.
- States Parties are encouraged to cooperate in the validation of relevant documents for screening the legitimacy of all parties involved in a proposed transfer of items.
- States Parties should consider cooperating in law enforcement efforts to investigate illicit transfer activities.
- States Parties should engage in bilateral or multilateral cooperation pertaining to the investigation and prosecution of any individual or legal entity allegedly involved in illicit transfer activities.
- States Parties could conclude bilateral and multilateral arrangements or make use of existing arrangements for sharing information on illicit transfer activities.
- Contact between national points of contact on the ATT is an obvious first step to establish bilateral cooperation on sharing information.⁵⁶

⁵⁴ Article 15 (1).

⁵⁵ Article 15 (4).

⁵⁶ See Article 5 (6), and module 4 of this toolkit.

2. International assistance

➤ States Parties may seek assistance (technical, legal, financial and other support) to regulate arms export activities.

➤ States Parties in a position to offer assistance are encouraged to do so when a request has been made.

➤ States Parties should explore possibilities of strengthening capacity-building in preventing and combating illicit brokering activities, including (e.g. through the World Customs Organization (WCO) SAFE framework).⁵⁷ WCO's Columbus Programme aims at full implementation of the SAFE Framework of Standards and other WCO conventions and instruments.⁵⁸

➤ Where relevant, States Parties should work with INTERPOL on operationalizing access to and efficient use of INTERPOL databases, including:

- the INTERPOL Firearms Reference Table (IFRT)⁵⁹
- the INTERPOL Ballistic Information Network (IBIN)⁶⁰
- the INTERPOL Illicit Arms Records and tracing Management System (iARMS)⁶¹
- the INTERPOL Stolen Administrative Documents (SAD) database
- the INTERPOL Stolen and Lost Travel Documents database (SLTD)⁶²
- the INTERPOL Counterfeit Documents database⁶³
- the INTERPOL Comparison of Genuine and Fake Documents database⁶⁴
- the INTERPOL Maritime Piracy database.⁶⁵

➤ Note that all relevant INTERPOL databases are accessible real-time through the I-24/7 network which connects all INTERPOL National Central Bureaus (NCBs).⁶⁶

➤ INTERPOL encourages NCBs to extend I-24/7 access to additional authorized law enforcement entities, such as border control units and customs officials. INTERPOL continues to provide technical assistance and support to further extending its I-24/7 system to additional authorized law-enforcement organizations.

➤ INTERPOL's Integrated Border Management Task Force is the central point of contact and coordination for international border-security activities at INTERPOL. The Task Force supports law enforcement officers working at the frontline of border security by providing them with access to INTERPOL tools and services, delivering capacity building and training courses, and coordinating operational activities.⁶⁷

⁵⁷ www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx.

⁵⁸ [www.wcoomd.org/en/about-us/wco-secretariat/the-](http://www.wcoomd.org/en/about-us/wco-secretariat/the-directorates/-/link.aspx?_id=D581386AEDDA4B328142E78D89F76536&_z=z)

[directorates/-/link.aspx?_id=D581386AEDDA4B328142E78D89F76536&_z=z](http://www.wcoomd.org/en/about-us/wco-secretariat/the-directorates/-/link.aspx?_id=D581386AEDDA4B328142E78D89F76536&_z=z)

⁵⁹ www.interpol.int/Crime-areas/Firearms/INTERPOL-Firearms-Reference-Table-IFRT.

⁶⁰ www.interpol.int/Crime-areas/Firearms/INTERPOL-Ballistic-Information-Network-IBIN.

⁶¹ www.interpol.int/Crime-areas/Firearms/INTERPOL-Illicit-Arms-Records-and-tracing-Management-System-iARMS.

⁶² www.interpol.int/INTERPOL-expertise/Border-management/SLTD-Database.

⁶³ www.interpol.int/INTERPOL-expertise/Databases.

⁶⁴ www.interpol.int/INTERPOL-expertise/Databases.

⁶⁵ www.interpol.int/INTERPOL-expertise/Databases.

⁶⁶ www.INTERPOL.int/Public/Region/Default.asp

⁶⁷ www.interpol.int/INTERPOL-expertise/Border-management.



Arms Trade Treaty Implementation Toolkit

Module 7 Import

Available on: www.un.org/disarmament/ATT

I. Introduction

Any country joining the Arms Trade Treaty (ATT) commits to putting in place effective measures to implement the Treaty.

Each State will decide which measures it needs to put in place in order to carry out its obligations under the ATT. These measures may vary from country to country.

Article 8 of the ATT explicitly requires States Parties to take measures to allow them to regulate, where necessary, the import of the conventional arms covered in Article 2 (1), but are encouraged to apply the provisions of the Treaty to the broadest range of conventional arms.¹

This seventh module, *Import of conventional weapons*, provides States with practical information to consider when establishing and maintaining control over imports.

II. National control system

➤ States Parties are required to establish and maintain a national control system, including a national control list.²

➤ States Parties have to designate competent national authorities to ensure the effective and transparent national control and regulation over the import of items covered under the ATT.³

III. States Parties' obligations regarding imports of conventional arms

➤ States Parties shall adopt measures to regulate, where necessary, imports of conventional arms covered in Article 2(1) into their jurisdiction.⁴ (The Treaty also provides that such measures may include import systems, but it does not provide further guidance on such systems.)

➤ States Parties can also adopt measures to regulate the import of ammunition and parts and components, although the ATT does not explicitly require them to do so under Article 8. Such measures would be consistent with Article 5 (5), by which States Parties are required to take the measures

¹ Article 5 (3).

² Article 5 (2).

³ Article 5 (5).

⁴ Article 8 (2).

necessary to implement the provisions of the ATT and to designate national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms, ammunition and parts and components.

➤ States Parties shall prohibit the importation of conventional arms ammunition, parts and components if such importation would violate Article 6 of the Treaty.

IV. Regulation of import

➤ At a minimum, a State Party needs a system that can ensure the prohibition of import of items listed in Article 2(1), 3 and 4 if it violate the provisions contained in Article 6 of the ATT.

➤ Import regulation enables a State Party to authorize or deny applications for imports and to ensure that actual shipments into its territory are consistent with authorizations and the national control lists. Moreover, In line with Article 7(1) and 8(1), the importing State Party has to have in place measures to enable it to provide appropriate and relevant information to assist exporting States in the conduct of export assessments, when such information is requested and is consistent with the importing State's national law.

➤ By exercising import regulation, the importing State is likely to have a mechanism for obtaining prior notification that enables the competent authorities to determine whether the goods should be allowed to enter the importing State's territory and whether they should be subject to inspection upon arrival (including the possibility of seizure).

➤ Effective import regulation can help to prevent diversion of weapons, ammunition, parts and components.

➤ Proper import regulations can inform decision-making processes – including export assessments – of the national authorities in the exporting State. Importing States can thus help ensure the reliability of information contained in end-use/user documentation, and the authentication of such documentation.

➤ Import regulation can also contribute to build confidence with other States. Having an effective and transparent system in place for regulating imports can enhance the importing State's credibility as a destination for weapons.

➤ Consequently, importing States Parties may have an incentive to review their import laws, policies, practices and procedures in order to ensure the effectiveness and transparency of their systems for regulating the import of weapons.

1. Elements of imports regulation

➤ The basic elements needed to effectively regulate imported conventional weapons are:

- a. National legislation, including a national control list;
- b. National authorities;
- c. Regulatory procedures, including record-keeping;
- d. Enforcement mechanisms.

2. National legislation, including a national control list

➤ The national legislation should state:

- a. Which items are subject to import regulation (national control list);
- b. Which government ministries, departments and agencies are responsible for regulating conventional arms imports (national authorities);
- c. Criteria for granting or refusing import authorizations (regulatory procedures);
- d. Record-keeping by applicants and national authorities;
- e. The legal and/or administrative actions that would be applied in case of import offences (e.g., enforcement measures and mechanisms, prosecution and punishment).

States Parties are required to maintain and establish a national control list.⁵

➤ See module 6 for details on national control lists.

3. National authorities

➤ States Parties have to designate competent national authorities to ensure that they have an effective and transparent national control system for regulating transfers of items covered under the ATT.⁶

➤ The designated national authorities should consult with other relevant government ministries or departments before deciding on any authorization application.

➤ Tasks to be undertaken by the authorization agency may include:

- a. Receiving and reviewing import applications, including verifying and assessing end-use/user documentation, if applicable, feasible and practical;
- b. Issuing import authorizations;
- c. Keeping records of import licences/authorizations as well as actual imports, if applicable;
- d. Reporting to the oversight body and providing data for the national reports to be submitted to the ATT Secretariat, where applicable and in accordance with national laws;
- e. Requesting, where applicable, information from the exporting State on any pending or actual export authorizations where the importing State is the country of final destination of the export;
- f. Cooperating with the exporting State in its export assessment, as appropriate;
- g. Establishing or undertaking mitigation measures, such as confidence-building measures or jointly developed and agreed programmes with the exporting States, if required.

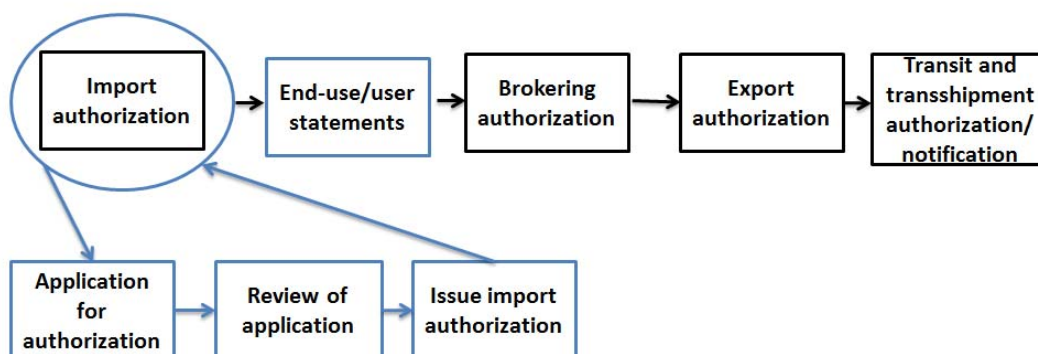
⁶ Article 5 (5).

4. Regulatory procedures for the import of conventional arms

- Procedures to regulate imports of conventional arms establish the conditions under which import licences or import authorizations may be granted.
- There are different approaches for regulating imports of conventional arms:
 - a. *Licensing system*: Importing entities (companies, associations etc) are required to obtain import licences, permits or authorizations prior to the transfer of the weapons, as well as the transfer of ammunition and parts and components, where such items are also subject to a licensing system. Specific requirements vary from State to State, such as:
 - Provisions requiring that any import of weapons (and ammunition and parts and components, when applicable) need prior authorization;
 - Limited provisions requiring that the imports of certain weapons (and ammunition and parts and components, when applicable) are subject to an import authorization;
 - Limited provisions requiring that certain entities can import only after receiving an import authorization;
 - Provisions stating that certain types of weapons are prohibited.
 - b. *Import regulation by customs authorities*: States use their customs as a primary means to inspect, regulate, and control imports of items.
- In both cases, custom authorities should control imports of items, including verifying all necessary documentation. Specific measures aimed to regulate or control imports of weapons do not supersede the broader prerogatives and responsibilities of customs authorities.

Import procedures

- When the items to be imported fall under the national control list, the importer should apply for import authorization to the national authority in the importing State.
- The typical sequencing of the import procedures is:
 - a. Application for import authorization
 - b. Review of application by national authorities
 - c. Issuance/denial of import authorization



Prerequisite operating licence (only if required by national laws)

- States Parties, according to their national laws, may (but are not required to) establish an import licensing system whereby only the holders of a valid operating licence can apply for import authorization for each transaction.
- In such cases, the operating licence is a pre-requisite for applying for an import authorization.

Application for operating licence

- Applicants for operating licences should be required to meet the criteria set forth by national regulations.
- An application for an operating licence should be refused if:
 - a. The applicant has failed to meet the licensing criteria established by national regulations;
 - b. There is evidence of past involvement by the applicant in illicit trade of weapons;
 - c. Information submitted in support of the application is false, inaccurate or incomplete;
 - d. The applicant has been refused an operating licence in another State on grounds that would also apply in the State considering the application.

Expiration of the operating licence

- Where import licences are issued, the validity of licences should be limited in time. These documents should have an expiration date. The expiration date should be indicated clearly on operating licences.

Step 1 – Application for import authorization

➤ Applications for import authorization should be detailed, and preferably contain the following information:

- a. Name and contact details of the applicant (the importer);
- b. Name and contact details of the end-user;
- c. Country of export;
- d. Name and contact details of the exporter;
- e. Country of transit and trans-shipment, if practical and known at the time of application;
- f. Name and contact details of brokers and other intermediaries, if applicable and practical;
- g. Value / quantity of the import;
- h. Intended use of the items to be imported;
- i. Detailed descriptions of the items to be imported.

Step 2 – Review of application by national authorities

➤ The competent national authorities should assess each application for import authorization in accordance with clearly defined criteria.

➤ Article 6 provisions on prohibitions of transfers must be applied to the import assessment.⁷ In other words, imports shall not be authorized if they would violate Article 6 of the ATT.

➤ The competent authorities could also consider whether the quantity and the nature of the imported items are commensurate with the needs of the importer.

➤ Applicants and end-users should be checked and scrutinized during the assessment. Specifically, the assessment should verify that the applicant and the end-user:

- a. Are legally registered companies or individuals;
- b. Are in good legal standing and, when applicable, in good financial standing;
- c. Are not included on a black list;
- d. Have not previously misrepresented/falsified documents and information submitted;
- e. Have not been denied an application for import authorization;
- f. Have not been involved in transfers that constituted a violation of the prohibitions stipulated in Article 6;
- g. Have not been involved in transfers that undermined peace and security or were used to commit or facilitate any of the violations or acts listed under Article 7 (b).

⁷ For a detailed discussion of States Parties' obligations under Article 6, see module 5.

Step 3 – Denial of import authorization

Suggested grounds for denial

- Import authorizations should not be granted if:
 - a. The application is incomplete, contains wrong information, or is wilfully misrepresented;
 - b. The proposed import is prohibited under Article 6;
 - c. There is a risk that some or all of the items could be diverted before or after reaching the authorized end-user;
 - d. The intended recipient is not legally entitled to be in possession of the items in the country of import;
 - e. The importer does not have the storage facilities to securely store the imported items or cannot guarantee that the items will be safely and securely stored.
- Denial of authorization should be communicated in written form to the applicant.
- Information on denial of authorization is of particular use in preventing diversion and illicit trade of weapons. Thus States are encouraged to share the details with other States, in accordance with national laws.

Step 4 – Authorization of import

- Import authorizations should be detailed and specific. Without prejudice to relevant national law and regulation, the import authorization could include:
 - a. Import authorization number/ record identifier;
 - b. Date of issuance;
 - c. Name of national authority issuing the authorization;
 - d. Signature, printed name and position of the designated official of the authority issuing the authorization;
 - e. Name and contact details of the recipient of the authorization;
 - f. Detailed description (e.g., type, model name, model number, calibre and quantity) of items authorized for import;
 - g. Date of expiration of authorization;
 - h. Countries/ports of transit and/or transshipment, if applicable, practical and known at the time of authorization);
 - i. Names and contact details of brokers, intermediaries or any other parties involved in the transfer, if applicable and practical;
 - j. Details of the transport route, including the means of transport to be used for each segment, if practical and known at the time of authorization;
 - k. Country of export;

- l. Intended use of the items being imported;
- m. Name and contact details of the authorized end user;
- n. Detailed descriptions of the items to be imported, including their value;
- o. Seal of national authority issuing the authorization. It should be noted that the shift towards electronic applications may bring about new forms of authentication other than watermarks and embossed stamps or seals. However, such traditional methods continue to serve their purpose where electronic systems are not in place or where hard copies are required in addition to electronic applications.
- p. Any other conditions attached to the import.

5. *Enforcement mechanisms*

5.1. *Fines, penalties*

➤ Laws and regulations related to weapons imports should have sufficiently severe penalties for their violations. Penalties for import offences could include:

- a. Fines;
- b. Administrative sanctions
 - suspension or revocation of licences and/or authorizations;
 - barring violators from applying for licences or authorizations for certain lengths of time;
 - placing additional burdens or imposing restrictive conditions for subsequent application of licences or authorizations;
- c. Imprisonment.

5.2. *Control by customs officials*

➤ At the point of entry, customs officials should determine that:

- a. The shipment of the imported items is accompanied by all required authorizations and documentation;
- b. Actual content of the shipment is consistent with the descriptions contained in the authorizations.

5.3. *Delivery verification*

➤ It is desirable that the importing State informs the exporting State that the shipment of the imported items has entered its territory. When possible, the importing State should also verify that the imported items reached the authorized end user.

➤ This can be done through different means, such as:

- a. Provision of a delivery certificate;
- b. Provision of other delivery documentation or notification;
- c. Post-delivery control and on-site verifications.

5.3.1. *Delivery verification certificate*

➤ A delivery verification certificate is a document certified by the customs or other competent authority of the importing State, confirming that imported items have been received by the authorized end-user.

➤ A commitment by the importer to provide the exporting State with a delivery verification certificate could be included from the outset in the end-use/user certificate or statement or sale contract.

➤ National authorities of the exporting State should verify the authenticity of documents submitted by the importer.

5.4. *Non-re-export clause*

An exporting State may require the inclusion of a non-re-export clause in a sales contract. In general, such clauses could stipulate that the end-user cannot re-export the arms at all or that the end-user must ask for prior written approval from the original exporting State.

6. *Record keeping*

➤ Each State Party should maintain records of conventional arms that are transferred to its territory as the final destination.⁸ The ATT does not explicitly require importing States to keep such records. However, under Article 13 (3), each State Party is required to submit an annual report concerning authorized or actual exports *and imports* of conventional arms.

➤ For details on record keeping, see module 6.

⁸ Article 12 (2).

V. International cooperation and assistance

See module 6 for details.



Arms Trade Treaty Implementation Toolkit

Module 8 Transit and Trans-shipment

Available on: www.un.org/disarmament/ATT

I. Introduction

Any countries joining the Arms Trade Treaty (ATT) are required to put in place effective measures to implement the Treaty.

Each State Party will decide which measures it needs to adopt in order to carry out its obligations under the ATT. These measures may vary from country to country.

This eighth module, *Transit and trans-shipment*, aims to assist States in regulating arms transit and trans-shipment taking place under their jurisdiction, where necessary and feasible.

II. Regulating transit and trans-shipment under Article 9 of the ATT

➤ Both transit and trans-shipment constitute a “transfer” under Article 2 (2) of the ATT. States Parties shall take measures, where necessary and feasible, to regulate transit or trans-shipment under their jurisdiction of conventional arms covered under Article 2 (1) through its territory in accordance with international law.¹

➤ States Parties have the prerogative to adopt measures to regulate the transit or trans-shipment of ammunition and parts and components, even though the ATT does not explicitly require them to do so under Article 9.

➤ Measures to regulate transit and trans-shipment shall be taken in accordance with relevant international law. For instance, any transit and trans-shipment regulation should be consistent with the rights and obligations under the UN Convention on the Law of the Sea (UNCLOS),² the Convention on International Civil Aviation,³ the International Convention concerning the Carriage of Goods by Rail (CIM)⁴ and the Convention on Transit Trade of Land-locked States.⁵

➤ Regulating transit and trans-shipment poses challenges, particularly in countries with long borders or large territorial waters and limited capacity (human and technical) to exercise control over goods transiting.

¹ Article 9.

² United Nations, *Treaty Series*, vol. 1833, p. 3.

³ United Nations, *Treaty Series*, vol. 15, p. 295.

⁴ United Nations, *Treaty Series*, vol. 1101, p. 226.

⁵ United Nations, *Treaty Series*, vol. 597, p. 3.

➤ Countries that process large volumes of trans-shipment operations can also find it difficult to effectively regulate trans-shipment. Moreover, there are different approaches to regulation of air, land and sea transport. Consequently, a one-size-fits-all approach is not feasible.

III. What constitutes transit and trans-shipment?

- The ATT does not provide a definition for transit and/or trans-shipment.
- According to the International Small Arms Control Standards (ISACS),⁶ transit and trans-shipment are:

ISACS 01.20

Transit: "Movement of goods across the territory of a State as part of a transfer between two other States, including the trans-loading of the goods at the points of entry into and exit from the transit State".

Trans-shipment: "Transport of goods to an intermediate location outside the exporting and importing States, where they are loaded to a different transport vessel and transported to their final destination (or additional point of trans-shipment) without crossing the territory of the State in which the trans-loading takes place.

Note. Trans-shipment usually takes place in transport hubs at ports and often takes place within designated customs areas, which are not subject to customs checks or duties".

- States Parties may wish to adopt these definitions or draw from them, when adopting relevant national laws and policies to implement the ATT.

IV. Measures to be considered by States Parties when regulating transit and trans-shipment

States Parties are in charge of their implementation efforts to comply with their obligations under the ATT. To this effect, they may consider adopting any of the following measures:

a. Adopting laws, regulations and procedures stating:

- National definition of transit and/ or trans-shipment;
- National authorities (which ministries or agencies are responsible for regulating transit and trans-shipment);

⁶ Available at www.smallarmsstandards.org.

- Criteria for granting or refusing transit/trans-shipment authorizations (regulatory procedures), if applicable. These should include the requirement that authorization be denied when the transit or trans-shipment would violate or contribute to violate Article 6 of the ATT;
- Record keeping of conventional arms authorized to transit or be trans-shipped;
- Legal and/or administrative actions that would be applied in case of offences (enforcement measures and mechanisms, prosecution and punishment).

b. Establishing regulatory procedures,⁷ such as:

- Licensing system. Under this system, an exporter needs to apply and obtain a transit/trans-shipment authorization from the national authority in the transit/trans-shipment State prior to the transit/trans-shipment of weapons through the territory under the jurisdiction of said State.
- Prior notification.⁸ Notification procedures requiring the national authority in the transit/ trans-shipment State to be provided with information and documentation on the movement of weapons transiting/being trans-shipped through territory under its jurisdiction, in advance of the weapons' arrival in its territory.
- Transit/trans-shipment control by customs authorities. Customs authorities of the transit/trans-shipment State have to be notified of the arms shipments at the point of entry. A technical and documentary check could be conducted.

c. Putting in place enforcement measures and mechanisms to ensure compliance with laws, regulations and administrative procedures related to transit and trans-shipment of conventional arms.

d. States with limited resources may wish to limit transit/trans-shipment to certain entry points/ports.

e. Maintaining records of conventional arms authorized to transit or be trans-shipped in the territory under the State Party's jurisdiction.⁹

V. International cooperation and assistance

See module 6 for details.

⁷ For example, States Parties to the Inter-American Convention against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials have to establish and maintain an effective system of international transit licences or authorizations for transfers of firearms, ammunition, explosives and other related materials under Article IX.

⁸ For example, see Article 10.2 (b) of the Firearms Protocol.

⁹ Article 12 (2).



Arms Trade Treaty Implementation Toolkit

Module 9 Brokering

Available on: www.un.org/disarmament/ATT

I. Introduction

Any countries joining the Arms Trade Treaty (ATT) are required to put in place effective measures to implement the Treaty.

States will decide which measures they need to carry out their obligations under the ATT. These measures may vary from country to country.

This ninth module, *Brokering*, aims to assist States in regulating arms brokering taking place under their jurisdiction. In particular, this module will discuss measures to be considered by States Parties in adopting national brokering controls.

II. Regulating brokering under Article 10 of the ATT

➤ Brokering constitutes a “transfer” under Article 2 (2) of the ATT. In accordance with Article 10, States Parties, pursuant to their national laws, shall regulate brokering for conventional arms covered under Article 2 (1) taking place under its jurisdiction.

➤ Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.¹ Each State Party has discretion in determining how to design such regulation provided that it complies with its obligation on prohibitions of transfers under Article 6 of the ATT, and more generally with its obligation not to undermine the object and purpose of the Treaty.

➤ Although Article 10 of the ATT does not explicitly require States Parties to regulate brokering in ammunition or parts and components, each State Party has the prerogative to adopt measures to regulate brokering in those items taking place within its jurisdiction. This would be consistent with the aims of the ATT and the provisions of Article 5 (5).

¹ Article 10.

III. What constitutes arms brokering?²

Brokering refers to activities performed by a broker, which might include:

- serving as a finder of business opportunities to one or more parties;
- putting relevant parties in contact;
- assisting parties in proposing, arranging or facilitating agreements or possible contracts between them;
- aiding parties in obtaining the necessary documentation;
- assisting parties in arranging the necessary payments.

A broker can be described as a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction in return for some form of benefit, whether financial or otherwise.

As part of the process of putting a deal together to gain benefit, a broker might perform other activities closely associated with brokering which might not constitute brokering activities in themselves. In this context, the broker might:

- act as a dealer or agent;
- provide technical assistance and/or training;
- supply transport and/or freight forward;
- set up storage;
- provide finance services;
- obtain insurance policies;
- give maintenance;
- provide security and other services.

IV. The trans-boundary nature of brokering activities

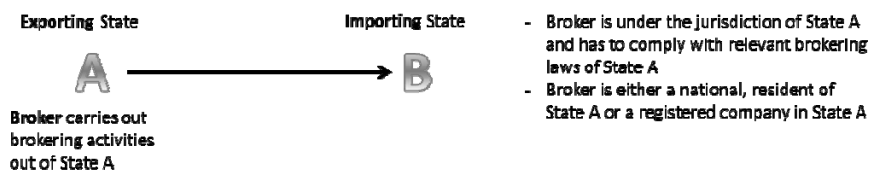
- Brokering activities can take place in the broker's country of nationality, residence or registration. They can also take place in another country.
- The items being brokered do not necessarily pass through the jurisdiction of the State where the brokering activity takes place and the broker might never take ownership of those items.

² See the Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons (A/62/163). For more information on brokering, also refer to the International Small Arms Control Standards (ISACS) 01.20

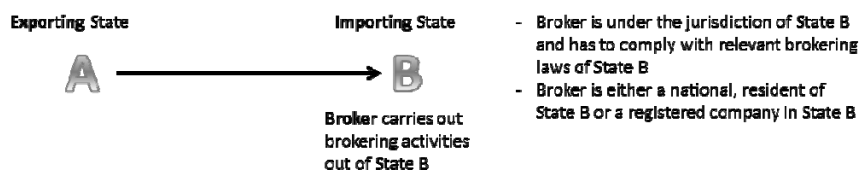
- Given the trans-boundary nature of brokering activities, national controls could be exercised by different States with jurisdiction over the same activity.
- Brokering activities can take place under the jurisdiction of the exporting State, the importing State, the transit/ trans-shipment State or any other country (third country).
- If the brokering takes place in the exporting State, the importing State or the transit/ trans-shipment State, then the items will actually pass through the territory of the States where the broker operates. Figure 1 illustrates the different regulatory criteria of brokering activities taking place under the jurisdiction of the exporting, importing or transit/ trans-shipment States.

Figure 1 – Brokering in export/import/transit States

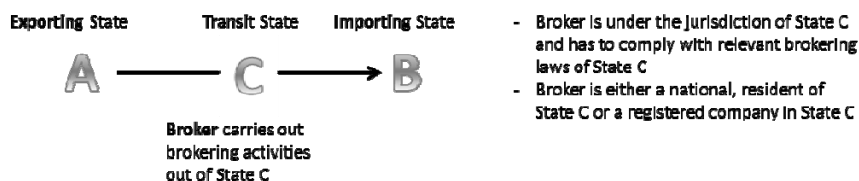
CASE 1



CASE 2



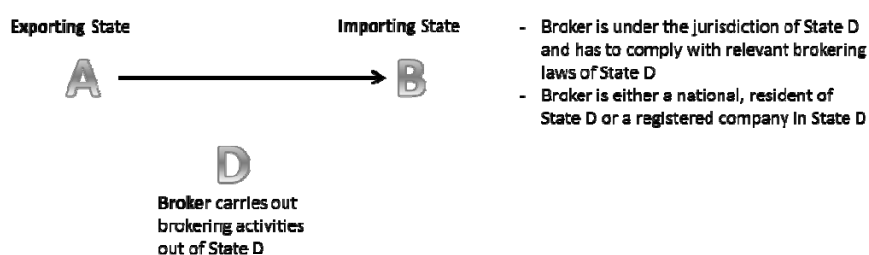
CASE 3



➤ When brokering activities take place in a third country (different from the exporting, importing, transit/trans-shipment States), the items may never enter the country from where the broker operates. This is called “third country” brokering.

➤ Under Article 10, States Parties have an obligation to regulate brokering activities taking place under their jurisdiction. Therefore, “third country” brokering will also need to be regulated if the “third country” is a party to the ATT. In sum, brokering activities taking place in a territory under the jurisdiction of any State Party to the ATT must be regulated.

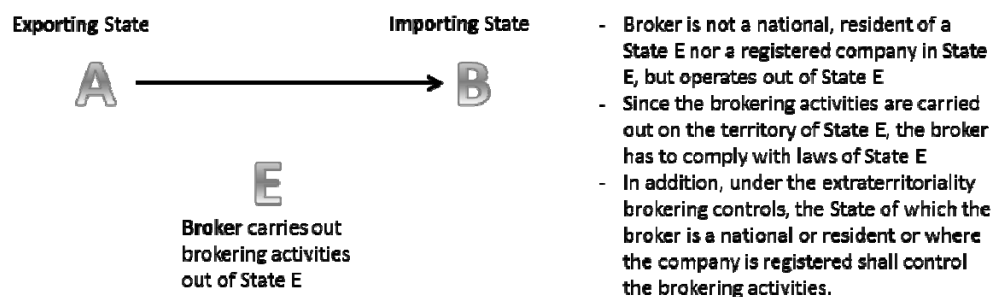
Figure 2 – Third-party / third-country brokering



➤ In some cases, the broker might travel outside of his/her home country (country of nationality or legal permanent residence) and carry out brokering activities in another country. This is known as “extraterritorial brokering”.

➤ To regulate “extraterritorial brokering,” States Parties to the ATT should consider including extraterritorial clauses in their national legislation to exercise control over brokering activities carried out outside their territories by brokers of their nationality, brokers who are residents or are established in their territories. Figure 3 illustrates “extraterritorial brokering”.

Figure 3 – Extraterritorial brokering



➤ The regulation of “extraterritorial brokering” is consistent with the rights of States Parties under the ATT. Exercising control over “extraterritorial brokering” would contribute to the establishment of the

highest possible common international standards in the regulation of the international trade in conventional arms.³

➤ Moreover, exercising control over “extraterritorial brokering” would facilitate mutual legal assistance and extraditions between States concerned, consistent with Article 15(5), which obliges States to 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.

➤ Enforcing brokering regulations extraterritorially may require extradition of brokers indicted for violations.

V. Measures to be considered by States Parties in the regulation of brokering

Each State Party is in charge of its own efforts to comply with its obligations under the ATT. States Parties may consider adopting any of the following measures:

1. Designation of competent national authorities that exercise brokering controls

➤ The competent national authorities tasked with regulating brokering of conventional arms should be clearly identified in the national legislation.

➤ Although it is a prerogative of each State Party to decide which authorities should be entrusted with the responsibility of regulating brokering, it would be consistent with ATT implementation obligations to consider placing that responsibility with the same authorities entrusted with the regulation of exports.

2. National implementation of legislation and administrative procedures

➤ It is up to each State Party to decide how to regulate brokering activities in conventional arms taking place under its jurisdiction, provided that the State Party complies with its obligations under Article 6 of the ATT.

➤ As an example, the measures listed below could be an integral part of the regulatory process.

- Adoption of a national definition of broker and brokering activities;
- Registration and licensing procedures;
- Record-keeping by government;

³ Article 1.

-Penalties and fines ;

-Criminalization of brokering activities that violate Security Council arms embargoes.⁴

➤Registration and screening of prospective brokers may be required by the national authorities. To this end, prospective brokers could be asked to provide the following information:

- Broker's country of nationality and residence;
- Broker's ownership of any entity or involvement in any relevant businesses used to facilitate brokering activities;
- Range of conventional weapons that the broker may wish to be involved in brokering.

➤In screening potential brokers, the State Party may assess if the applicant:

- a. Is in good legal standing and, when applicable, in good financial standing;
- b. Is not included in a black list;
- c. Has not previously misrepresented/falsified documents and information submitted;
- d. Has not been denied an application for brokering authorization;
- e. Has not been involved in transfers that constituted a violation of the prohibitions stipulated in Article 6;
- f. Has not been involved in transfers that undermined peace and security or were used to commit or facilitate any of the violations or acts listed under Article 7 (b).

➤The State Party may also conduct other checks on the information provided by the potential broker.

3. Approaches to regulation of brokering

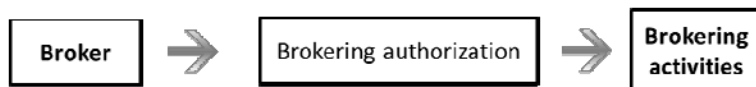
➤States Parties may regulate brokering activities by issuing licences, authorizations or permits. States Parties may adopt a one-step approach, whereby brokers are only required to obtain an operating licence or an authorization before engaging in brokering activities, or a two-step approach whereby brokers are required both to obtain a licence and to apply for an authorization for each brokering activity.

➤Figure 4 shows different approaches States Parties may adopt to regulate brokering activities.

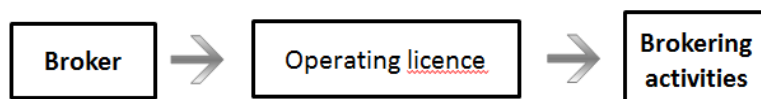
⁴ S/RES/1196 (1998).

Figure 4 – Approaches to regulate brokering activities

One step approach (a): Brokers need to apply only for authorization for each brokering activity



One step approach (b): Brokers need to only obtain an operating licence before engaging in brokering



Two step approach: Brokers need to obtain an operating licence **and** apply for authorization for each brokering activity



➤ The same criteria for granting arms export licences may be applied to the authorization of brokering activities. The prohibitions provided under Article 6 as well as the assessment criteria listed under Article 7 should be applied in decisions regarding the authorization of brokering activities.

VI. International cooperation and assistance

1. International cooperation on sharing of information

➤ States Parties should seek and provide information, in accordance with their national law, on brokering activities and brokers as well as those involved in illicit or suspicious activities and related entities or assets used in transfers (aircrafts, vessels, etc). Information provided could be limited by national laws on protection of personal data, commercial confidentiality and States' security considerations.

➤ States Parties could conclude bilateral and multilateral arrangements for promoting cooperation with regard to the control of brokering activities.⁵

⁵ Examples of such multilateral instruments include:
Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons (2005).
OAS "Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition", document CICAD/doc1271/03, 13 November 2003.

➤ For more details on international cooperation, see Module 6.

2. International assistance

For details on international assistance, see Module 6.



Arms Trade Treaty Implementation Toolkit

Module 10 Preventing Diversion

Available on: www.un.org/disarmament/ATT

I. Introduction

Any country joining the Arms Trade Treaty (ATT) commits to putting in place effective measures to implement the Treaty.

Each State will decide which measures it needs in order to carry out its obligations under the ATT. These measures may vary from country to country.

This tenth module, *Preventing weapons diversion*, aims to assist States in taking appropriate measures to that end.

II. The obligation to prevent diversion

1. *What is diversion?*

➤ The ATT does not provide a definition of diversion.

➤ In general terms, diversion is the transfer of items from an authorized owner/user to an unauthorized user.

○ Diversion can take place when items are intended for export to one end-user, but instead they are delivered to another, unauthorized, end-user.

○ Diversion of weapons is a key method by which States under arms embargo, warlords, human right abusers, terrorists and organized criminal groups obtain weapons.

➤ Diversion could take place at any time during the life-cycle of weapons, from production to distribution, from transfer to storage to destruction. Weapons are particularly vulnerable to diversion during transfers.

2. *Causes of diversion*

➤ Diversion of arms can occur as a result of:

a. Inadequate legislation, policies and procedures;

- b. Absence of appropriate controls over transfers;
- c. Limited capabilities for enforcement (e.g. border patrols and controls, especially when borders are extensive or located on hard-to-access areas);
- d. Falsification of documents;
- e. Unauthorised re-transfers;
- f. Theft and leakages from poorly managed stockpiles;
- g. Hand-outs or sale to armed groups;
- h. Capture of government forces stockpiles;
- i. Corruption.

3.Diversion under the ATT

➤ The prevention of diversion is one of the cornerstones of the ATT. The goal of preventing weapons from reaching illicit hands or those who systematically misuse them could not be achieved with trade regulation alone, without a serious effort to prevent and combat diversion.

➤ Each State Party involved in a transfer of conventional arms (exporting, transit/trans-shipment and importing States) shall adopt measures to prevent diversion.¹

➤ While the ATT does not require States Parties to take measures to prevent diversion of ammunition or parts and components, each State Party is free to adopt such measures.

➤ The exporting State shall assess the risk of diversion of the proposed export of conventional arms through its national export control system by conducting an export assessment.²

➤ Exporting, transit/trans-shipment and importing States Parties shall cooperate and share information, pursuant to their national laws, to mitigate the risk of diversion of arms transfers.³

➤ When a State Party detects diversion of transferred weapons, the State Party is required to take appropriate measures to address such diversion in accordance with both national and international law.⁴

➤ When a State Party detects diversion of transferred weapons it should also alert potentially affected States Parties.

➤ States Parties should share information on their experiences in addressing diversion.⁵

➤ States Parties should also report to other States Parties, through the ATT Secretariat, on effective measures taken to address diversion.⁶

¹ Article 11 (1).

² Article 11 (2). For a discussion on how to conduct an export assessment, refer to module 6 of this toolkit.

³ Article 11 (3).

⁴ Article 11 (4).

⁵ Article 11 (5).

⁶ Article 11 (6).

4. Preventative measures

➤ All parties involved in a particular transfer of conventional weapons shall take measures to prevent their diversion.

4.1. Measures by the exporting State

4.1.1. Include the risk of diversion in the export assessment⁷

The exporting State should:

- a. Examine all relevant information and parties;
- b. Pay particular attention to documents that:
 - are missing essential information (e.g. importer is not identified, lack of address or contact number);
 - can be easily forged or re-used (e.g. document lacks ministerial or government seal, the space used to provide the document with an individual certification number has been left blank);
 - contain inconsistent information.
- c. Request additional documentation and information if needed;
- d. Contact the importing and/or transit and trans-shipment States, as appropriate, regarding the proposed export;
- e. Consult any databases (if available) or other sources of information on previous cases of diversion, illicit transfers and illicit brokers;
- f. Consult embassies and other diplomatic officials.

➤ If the exporting State Party determines that there is a risk of diversion it should not authorize the export.

Suggested indicators to assess the risk of diversion

- Whether or not the recipient State has the capacity to ensure that the exported arms are not diverted or transferred to other entities or destinations. This may include a determination of whether or not the recipient State or end-user has adequate systems for the management of stockpiles;
- Whether or not the recipient State has a national control system, including a national control list;

⁷ See module 6.

- Whether or not the recipient State has adopted national legislation and regulations to prevent and combat diversion of conventional arms;
 - Whether or not the recipient State has legislation and effective procedures for investigating offences related to diversion of conventional arms;
 - Whether or not the recipient State has a competent, independent, impartial and functioning judiciary with the capacity and the will to prosecute offences related to diversion of conventional arms;
 - Whether the recipient State exercises effective control over conventional arms imported into its territory;
 - Whether or not the end-user or any other actor involved (e.g., broker) has a record of diverting conventional arms;
 - Whether end-use assurances provided by the end-user are credible;
 - Whether the types, quality and quantity of items requested are compatible with the legitimate security needs of the end-user;
 - Whether the carriers to be used in the transport of the arms to be transferred are well-established and reputable;
 - Whether the means of transport/ transport route have been used in previous cases of diversion.
- It is recommended that the above indicators also be used to assess the risk of diversion of ammunition and parts and components.

4.1.2. Mitigation measures

If the exporting States Parties determines that there is a risk of the exported weapons being diverted to unauthorized end-users and/or end-use, it may consider whether there are measures to mitigate the risk identified. Such mitigation measures could include:

- Confidence-building measures;
- Jointly developed and agreed programmes by the exporting and importing States;
- Examining parties involved in the export;
- Requiring additional documentation, certificates and assurances;
- Post-delivering monitoring programme;
- Requesting delivery verification certification;
- Conduct on-site visits;
- Other appropriate measures.

4.2. Measures by the transit/trans-shipment State

- Establish and maintain a system for regulating transit/trans-shipment;
- Issue a transit/trans-shipment authorization;
- Collaborate with the exporting State, upon request, in the export assessment.

4.3. Measures by the importing State

- Commit to no re-exporting or to effectively control re-exports;
- Improve and strengthen weapons stockpile management and security;
- Put in place effective procedures for import authorization.
- Ensure that all documents issued to importers by the competent authorities are authentic, reliable and trustworthy. The more credible the documents issued by the importing State the easier it is for the authorities of the exporting and transit/trans-shipment States to process their respective authorizations and detect diversion risks.

4.4. Other preventative measures as required in each specific situation.

4.4.1. Transportation control

Weapons can be diverted during transportation (e.g. en route to transit/trans-shipment State or importing State, by re-routing the vessel, aircraft or other means of transportation to a destination that is different from the one in export/import/transit/transshipment authorization).

- Specific measures a State could adopt to control transportation of arms are:⁸
- a. Requiring detailed information on transport and transport service providers in applications for import and export licences or authorizations;
 - b. Requiring transport service providers to maintain comprehensive and verifiable documentation, including manifests, bills of lading and invoices for possible inspection by State authorities.
 - c. Make it mandatory for the transporter and/or the parties involved in the transfer to notify the exporting and the importing State whenever there is a change in the transportation plan (route, carrier, date, etc.).

⁸ For more information on this matter, refer to "Elements for Controlling Transportation of Conventional Arms Between Third Countries", agreed at the 2011 Plenary Meeting of the Wassenaar Arrangement.

4.4.2. Weapons marking

- Importing States are encouraged to mark imported weapons, particularly small arms and light weapons (SALW), at the time of import, and to keep adequate records.
- The International Tracing Instrument adopted by the UN General Assembly in 2005 recommends and provides standards for marking SALW at the time of manufacture. That instrument also encourages States to require the marking of SALW at the time of import.
- The Firearms Protocol requires its States Parties to ensure that SALW are marked at the time of manufacture and of import.

4.4.3. Tracing

- States are encouraged to develop national capacities to trace illicit or diverted weapons, particularly SALW.
- Weapons tracing can help law enforcement officials to uncover trafficking routes, to identify parties engaged in the illicit trade and the methods used by them.⁹ This type of information is critical to efforts to prevent diversion.

4.4.4. Stockpile management

Taking regular and comprehensive inventory of weapons, ammunition, and parts and components is essential to ensure that weapons are not diverted. States should endeavour to strengthen the physical security of stocks and improve their management system.

5. Information exchange

In preventing diversion, States Parties should cooperate with one another and exchange information on:

- a. Export licence/authorization;
- b. Import licence/authorization;
- c. Transit/trans-shipment licence/authorization;
- d. Broker licence/authorization and brokering activities authorization;
- e. End-user certificates data to help verify the truthfulness of end-use claims;
- f. Information on weapons transportation providers;
- g. Cases of previous diversion;
- h. Denials of export and import licences;
- i. Known international trafficking routes, methods, illicit brokers, intermediaries and transport agency/carriers involved in diversion;

⁹ For more information on tracing, refer to International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons.

- j. Any other relevant information, pursuant to national laws.

6. Actions to be taken in case of diversion

Under Article 11(4), when States Parties detect a diversion of conventional arms, they shall take appropriate measures promptly. These may include:

- a. Alerting potentially affected States (Exporting, importing, transit and trans-shipment States, neighbouring States and States with current conflicts or tension in the region.);
- b. Examining diverted shipments. Re-examine all relevant documents to identify the weapons being diverted and the possible point and method of diversion;
- c. Tracing weapons that have been diverted. Cooperate and exchange information with all States concerned. Use available tools such as the INTERPOL iARMS database, where appropriate;
- d. Initiating/cooperating in criminal investigations of cases of diversion.