

EXPERT GROUP ON ATT IMPLEMENTATION

Key issues for ATT implementation: Information exchange under the ATT

**Draft Chair's Interim Conclusions from
deliberations of the Expert Group on
ATT Implementation**

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Introduction

Article 1 of the Arms Trade Treaty (ATT) establishes that one of its key purposes is “promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.” This provides an overarching framework for interaction among the States Parties and, together with the numerous requirements for information sharing throughout the Treaty, supports the premise that sustained and systematic information sharing will be central to the operation of the ATT regime.

Information sharing among States can take place either bilaterally or multilaterally, and on a regular, periodic, or an *ad hoc* basis; it can also include the dissemination of information more widely, to bodies such as national legislatures and others in the public sphere. Information can be transmitted verbally, electronically and/or in written form directly from State to end-user or via a third party, such as a Secretariat. States can also engage in information sharing through the fulfilment of reporting requirements.

In addition to enabling States to demonstrate the quality and extent of their implementation efforts and compliance with their obligations under the ATT, information sharing will also enable exchanges of experiences, good practices and lessons learned, thereby helping to promote more effective Treaty implementation. It can also enable States to clarify and develop understandings in relation to the interpretation or application of Treaty provisions. All of these functions will, together, contribute to the core ATT purposes of confidence-building among States and, more widely, to transparency and accountability.

States that have ratified and are implementing the ATT thus have privileged and central roles and responsibilities in respect to information sharing under the ATT. However, **it will be important to take opportunities to include, as far as possible in the Treaty’s information-sharing processes, those States that have pledged their support for the ATT by signing the Treaty.** This will help towards fulfilment of the object and purpose of the ATT while supporting universalisation of ATT norms.

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Information-sharing functions of the ATT

Information sharing on national transfer control systems and provisions

The ATT requires States Parties to “establish and maintain a national control system, including a national control list” in order to implement the Treaty’s provisions [Article 5.2]; they are also required to provide the control list to the Secretariat and are encouraged to make it publicly available [Article 5.4]. Such information sharing among States Parties in relation to their national control systems will be an important means whereby States Parties can demonstrate that they are applying the Treaty’s provisions to the minimum agreed list of conventional arms, ammunition, parts and components. The additional recommendation that States Parties make their control lists public is also critical as it is unreasonable to expect defence industry and other concerned stakeholders to always comply with national laws regulating international arms transfers if they are not in a position to know the items to which those controls apply. **States Parties should make their national control lists publicly available (on the Internet) and should seek to promote them among interested parties, for example, through defence industry outreach programmes.**

The other major provision relating to information sharing on national control systems concerns the requirement under Article 13.1 that States shall, within a year of the Treaty entering into force, provide an initial report to the Secretariat detailing the measures that have been undertaken in order to implement the Treaty, “including national laws, national control lists and other regulations and administrative measures”. The information provided in such reports will be crucial in facilitating sharing of experiences, approaches and good practice in arms transfer control. They may also help to highlight areas where States Parties may be experiencing implementation challenges, thereby helping to identify assistance needs. (See below for further discussion of this issue.)

Information sharing as part of the transfer assessment/authorisation process

There are a number of ATT provisions that establish a requirement for information sharing on arms transfer authorisations, in particular between importing and exporting States:

- Article 7.6 obliges exporting States to make information available about authorisations to importing and transit states.
- Article 8.1 obliges importing States to provide information to exporting States in order to assist them in undertaking an export risk assessment.
- Article 8.3 entitles importing States to request information from exporting States concerning exports into their territory.

While these provisions are potentially useful in supporting information sharing between States Parties, if interpreted strictly to the letter, their effectiveness could be limited. For example, Article 7.6 obliges exporting States to make information about authorisations available to importing States *upon request* (emphasis added); however, if an importing State is aware of an arms transfer into its territory then it may be unnecessary for them to seek further information. On the other hand, if an importing State is *unaware* of a proposed transfer into their territory then it will not know to request information from the exporter. Similarly, while under Article 8.3 an importing State may request information from exporting States concerning exports into its territory, the exporting State is not obliged to accede to any such request. In order to address this potential confusion, **States Parties should establish the practice whereby exporting States, as a matter of routine, communicate all relevant details concerning an export authorisation to the ATT contact point of the final destination.**

Overall, the lack of qualitative or quantitative details about the information to be provided in each situation could also limit the effectiveness of the information-sharing provisions of Articles 7 and 8. One solution could be for the **Conference of States Parties (CSP) to agree upon some form of guidance for States about the amount and types of information that should be shared** in each case. It will also be important to consider the potential value of sharing such information more widely in those instances where all parties concerned are happy to do so. This would enable the dissemination of invaluable experience and knowledge that could subsequently assist State Signatories, for example, in making better-informed arms export risk assessments and transfer decisions.

Another aspect of the transfer assessment/authorisation process that could benefit from information sharing concerns that of risk mitigation. Under Article 7.2 States Parties are required to consider whether there are any measures that could be taken to mitigate the risks identified during the transfer assessment process, such as “confidence building measures or jointly developed and agreed programmes by the exporting and importing States”. Again, while most of these discussions will occur bilaterally between prospective exporting and importing State Parties, **wider information sharing on possible avenues for risk mitigation could be a productive area for discussion at the CSP**, particularly given that many States have little experience of appropriate and effective systems and procedures for risk assessment and risk mitigation in relation to authorisation of arms transfers (exports, imports, transit, transshipment and brokering).

Finally, under Article 13.3 State Parties are also obliged to provide information on authorisations or actual exports and imports of the items listed in Article 2.1 on an annual basis to the Secretariat. While much of this type of information is already provided by States to the UN Register on Conventional Arms (UNROCA), reporting rates have been declining in recent years. It is to be hoped, therefore, that the legal obligation to report under the ATT will provide fresh impetus to States in this area. It is also to be hoped that, **given the significant number of States that already publish information far in excess of the minimum ATT requirements, other States Parties will be encouraged to take a maximalist rather than a minimalist approach to reporting.**

Information sharing on diversion

Preventing diversion of conventional arms is an explicit object of the ATT [Article 1] and, accordingly, the issue is addressed in significant detail under Article 11. Given the complex and multifaceted nature of diversion, the ATT's provisions for information sharing and cooperation so as to identify risks and to tackle cases of diversion are key to its effectiveness in this area.

In an echo of the national assessment provisions of Article 7, exporting State Parties are obliged to assess the risk of diversion and, together with importing State Parties, are encouraged to consider the establishment of diversion risk-mitigation measures, including confidence-building measures and joint programmes [Article 11.2]. However, the onus is not merely on exporters and importers, but rather on all State Parties involved in an arms transfer who – whether they are involved in the import, transit, transshipment, brokering or export – are required to “co-operate and exchange information ... in order to mitigate the risk of diversion” [Article 11.3]. This is a crucial obligation and one which gives States Parties considerable scope for cooperative action and information sharing and which could be extremely important in terms of supporting effective implementation of the ATT. Accordingly, **arrangements to promote and facilitate information sharing, risk assessment and the consideration of mitigation measures to prevent diversion merit specific active consideration at the earliest opportunity afforded by the CSP.**

There are also information-sharing requirements for States Parties in terms of responding to cases of diversion. Under Article 11.4 States Parties are to take appropriate measures to address cases of diversion that arise and may notify potentially affected States Parties, examine diverted shipments and take follow-up measures through investigation and law enforcement. Under Article 11.5 States Parties “are encouraged to share relevant information with one another on effective measures to address diversion”. While these provisions could be considered optional they are crucial nonetheless: **comprehensive action to combat diversion will require States Parties to implement all of the provisions of Article 11 to the fullest extent possible and to share experiences and lessons learned as widely as possible.** This will require States to ensure that, at national level, there are no legislative or other obstacles to the sharing of information about diversion internationally. It could also be beneficial to consult with external actors – such as shipping agents and non-governmental organisations – that may possess crucial intelligence relating to cases of diversion. Furthermore, given that cases of diversion sometimes come to light many years after the initial export takes place, it will be important for all States Parties to ensure that they fulfil their record-keeping obligations under Article 11 and that records are maintained on a long-term basis.

Article 11 also provides for sharing of information so as to develop a better understanding of diversion. Specifically under Article 11.5 States are encouraged to share information *inter alia* in relation to “corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion”, while under Article 11.6, “States Parties are encouraged to report to other States Parties, through the Secretariat” on measures taken to address diversion. This is further reinforced by the encouragement to States Parties, under Article 13.2, to report to the Secretariat “information on measures taken that have been proven effective” in tackling diversion. Whereas gaining access to the right information at the right time is vital for States Parties to be able to fulfil their obligations under the ATT and to take action against possible diversion of arms, it should also be recognised that States Signatories to the ATT are likely also to have an interest in addressing this issue. While some of the information that emerges may be regarded as sensitive and more suitable for sharing on a bilateral basis,

effective action to prevent and respond to diversion will require as many States as possible to be properly alert to the risks and characteristics associated with this phenomenon, thus placing the onus on sharing information openly.

Information sharing to facilitate international cooperation and to enhance Treaty implementation

Most, if not all, forms of cooperation among States involve sharing of information. Consequently, the ATT contains a number of generic provisions that facilitate international cooperation and the sharing of information among the States Parties. Article 5.6 requires each State Party to “designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty” and to inform the Secretariat of this and of any subsequent changes. This will be essential in order for States Parties to be kept informed of a potentially wide range of ATT developments including activities and reports of the Secretariat and arrangements relating to the CSP.

Beyond this, Article 15 contains the main body of provisions that support cooperation through information sharing. Article 15.2 encourages State Parties “to facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of this Treaty”; Article 15.3 encourages States Parties to “consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty”; Article 15.7 encourages States Parties “to exchange experience and information on lessons learned in relation to any aspect of this Treaty”. These provisions provide an extremely broad basis for cooperation and information sharing on potentially any issue relating to the ATT or its implementation.

Article 15.4 encourages States Parties “to cooperate... in order to assist national implementation of the provisions of [the] Treaty, including through sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion...”. While this has some crossover with the provisions of Article 11.5 on information sharing to prevent diversion, it goes further in that it actively encourages States Parties to *cooperate* on implementation of the Treaty at national level. Such cooperation could potentially take a variety of forms – from the provision of technical, financial and other assistance, to cooperation on law enforcement and the extension of mutual legal assistance in taking action against illicit activities and actors.

The ATT thus draws a clear link between the sharing of information and effective implementation of its provisions, and in practice there are few limits to the extent and nature of information sharing and cooperation among States Parties that could be established in support of ATT implementation. Accordingly, **States Parties should be encouraged to prepare for exchanges on all aspects of ATT implementation very early on in the life of the Treaty so that this contributes to the progressive development of the ATT regime.**

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Ensuring effective arrangements for information sharing under the ATT

Developing reporting templates and guidelines

Through the fulfilment of their reporting requirements under the ATT, States Parties will be able contribute to information sharing *inter alia* on their arms transfers and control systems. During the ATT negotiation process, the potential desirability of developing a reporting template was often raised. However, as it became apparent that the scope of reporting on transfers would, in all probability, closely follow that of the existing requirements under the UNROCA the urgency around developing some form of tailor-made reporting guidance dissipated somewhat.

Nevertheless, the question of how States Parties should report on steps taken to implement the ATT (as per the requirements of Article 13.1) remains open. Given the complexity of the ATT and the potentially extensive measures that are required for national implementation and the range of government departments and agencies that may be involved, producing a comprehensive report may appear daunting to some States Parties. **This would therefore point to some kind of reporting template or guidance being developed or adopted by the States Parties so as to provide much needed clarity on the extent of their initial reporting obligations** thereby encouraging the production of sufficiently detailed and comparable reports. Ideally such a template or guidance would be produced as early as possible prior to the first CSP given that some States Parties may wish to produce their initial report on steps taken to implement the Treaty around the time of this meeting.

Role of the Secretariat

The Secretariat is specifically mentioned in the ATT as having a role to play in supporting information sharing, in particular, by receiving and making available reports, maintaining and sharing details of national points of contact, and in matching offers of, and request for, assistance for Treaty implementation [Article 18]. In addition the Secretariat is to be a repository for information relating to the States Parties

national control lists [Article 5.4] and on measures that have been effective in tackling diversion [Articles 11.6 and 13.2]. With regard to the latter, while it is not fully clear in the ATT itself what the Secretariat is supposed to do with the information provided on measures to address diversion, the CSP has authority to determine this. It is to be hoped, therefore, that the CSP will act promptly to clarify this issue and that effective action to tackle diversion will be encouraged by sharing relevant information as widely as possible.

It is clear that the Secretariat – in line with the wishes of the States Parties – could have a very important role in gathering, collating, packaging and distributing a variety of information, thereby supporting information sharing, lessons learned and cooperation among the States Parties and other stakeholders. Crucial among these functions is the Secretariat's central role in fostering information exchange and cooperation between States Parties that require assistance with their ATT implementation efforts and those that are in a position to provide help. As such **it will be important for the Secretariat to develop internal procedures that facilitate constructive interactions and the timely provision of appropriate assistance to those in need.**

Facilitating general consultations among the States Parties and other stakeholders

As noted throughout this discussion, the principal vehicle for consultations among the States Parties will be the CSP and any associated committees and subsidiary bodies. These fora will enable the face-to-face contact among government officials essential to the effective maintenance and operation of any international regime. At the same time, the CSP and related processes should also provide an opportunity for civil society organisations that have been active in promoting the ATT to raise awareness of important work, including on reporting, monitoring and transparency initiatives, implementation assistance, and efforts to trace illicit arms.

Given the likely pressures on time and the myriad issues that could conceivably be placed on the agenda of the CSP – such as the establishment, funding and tasks designated to the Secretariat, to the interpretation of particular articles of the Treaty, progress on implementation at national level, discussions of global and regional trends and issues that could impact upon the ATT, the existence of rogue actors and diversion risks, and so on – **it will be vital for the CSP agenda to be clearly set out in advance and for as much preparatory work to be undertaken as possible in advance of the meetings themselves.**

Facilitating wider access to relevant information and assessments under international regimes

It is important to recognise that the ATT will not operate in a vacuum. Instead, it will become part of the global non-proliferation architecture which includes other agreements on conventional weapons, such as the UN small arms Programme of Action, the Cluster Munitions Convention and the Anti-Personnel Landmines Convention, as well as those initiatives and treaties relating to weapons of mass destruction, such as the UN Security Council Resolution 1540, the Chemical Weapons Convention, the Biological and Toxin Weapons Convention, and the Nuclear Non-Proliferation Treaty. Each of these agreements, and others, involves the sharing of information and levels of cooperation among the States Parties; some – notably the Treaty-based regimes – also include civil society in the exchanges that take place. In addition, proliferation-control regimes such as the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement all involve the sharing

of information among participating States on proliferation risks and responses, the development of guidelines and the sharing of information on good practice in the field of strategic export controls.

Given the extent of these international commitments it will be beneficial to States if synergies can be developed, particularly in relation to the wider sharing of information that may be relevant across several of these regimes and fora. In addition, cooperation to develop effective national export controls on WMD-related materials should, as far as possible, also seek to include elements applicable to conventional arms control so as to help build capacity for full ATT implementation. This would also have the advantage of increasing value-for-money in government expenditure and in helping to avoid duplication of effort.

Developing good-practice guidelines

The ATT incorporates provisions, including those relating to risk assessment and risk mitigation, which will be relatively new to some States. As such, **there is likely to be plenty of scope for the development of good-practice guidelines to assist State Parties in their national implementation efforts.** In addition to addressing the aforementioned issues, guidelines could be developed in relation to:

- how to interpret particular operative provisions of the ATT;
- elements of an effective arms transfer control system;
- compiling national reports as per the requirements of Article 13;
- establishing effective end-use controls to prevent diversion; and
- submitting requests for and provision of assistance.

In addition, templates could be developed for the provision of routine information to the Secretariat, for example, concerning updates on national arms transfer controls, or for the provision of *ad hoc* information such as in relation to cases of diversion. Guidelines and templates could be developed by the Secretariat or by individual/groups of States Parties, or by civil society groups for consideration by the States Parties.

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Conclusion

Sharing information will support a number of important functions of the ATT, from establishing good practices to preventing diversion; it can help contribute to clarification of those aspects of the Treaty that are either underdeveloped or are unfamiliar to some States; it can also facilitate the development of consistent and high levels of implementation among the States Parties.

Fulfilling the aspirations of the ATT with regard to reporting, information sharing and cooperation will thus be crucial to the development of a robust and enduring regime. In particular, for States Parties that do not have well-established contacts and networks in the field of conventional arms control, sharing information multilaterally under the ATT could be very useful. Moreover, it is to be hoped that the norm of information sharing will contribute to the life of the Treaty beyond the interactions between States Parties and will hopefully have an influence on states outside the Treaty framework.

Finally, the establishment of regular and substantive information sharing from the outset will be vital in order to contribute to effective implementation and the overall strength of the regime. While it will undoubtedly take time for all of the reporting, information sharing and cooperation efforts to develop fully, by prioritising these aspects as early as possible in the life of the Treaty the chances of meaningful interactions among the States Parties will be greatly enhanced.

ANNEX

Selected excerpts from the Arms Trade Treaty with relevance to information sharing

Article 5: General Implementation

4. Each State Party, pursuant to its national laws, shall provide its national control list to the Secretariat, which shall make it available to other States Parties. States Parties are encouraged to make their control lists publicly available.
6. Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty. A State Party shall notify the Secretariat, established under Article 18, of its national point(s) of contact and keep the information updated.

Article 7: Export and Export Assessment

2. The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.
6. Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.

Article 8: Import

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

Article 11: Diversion

2. The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms covered under Article 2 (1) through its national control system, established in accordance with Article 5 (2), by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States. Other prevention measures may include, where appropriate: examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures.
3. Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).
4. If a State Party detects a diversion of transferred conventional arms covered under Article 2 (1), the State Party shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include, alerting potentially affected State Parties, examining diverted shipments of such conventional arms covered under Article 2 (1), and taking follow-up measures through investigation and law enforcement.
5. In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2 (1), State Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.

6. States Parties are encouraged to report to other State Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1).

Article 13: Reporting

1. Each State Party shall, within the first year after entry into force of this Treaty for that State Party, in accordance with Article 22, provide an initial report to the Secretariat of measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures. Each State Party shall report to the Secretariat on any new measures undertaken in order to implement this Treaty, when appropriate. Reports shall be made available, and distributed to States Parties by the Secretariat.
2. States Parties are encouraged to report to other States Parties, through the Secretariat, information on measures taken that have been proven effective in addressing the diversion of transferred conventional arms covered under Article 2 (1).
3. Each State Party shall submit annually to the Secretariat by 31 May a report for the preceding calendar year concerning authorized or actual exports and imports of conventional arms covered under Article 2 (1). Reports shall be made available, and distributed to States Parties by the Secretariat. The report submitted to the Secretariat may contain the same information submitted by the State Party to relevant United Nations.

Article 15: International Cooperation

2. States Parties are encouraged to facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of this Treaty pursuant to their respective security interests and national laws.
3. States Parties are encouraged to consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty.
4. States Parties are encouraged to cooperate, pursuant to their national laws, in order to assist national implementation of the provisions of this Treaty, including through sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion of conventional arms covered under Article 2 (1).
7. States Parties are encouraged to exchange experience and information on lessons learned in relation to any aspect of this Treaty.

Saferworld

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. We work with local people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. Our priority is people – we believe that everyone should be able to lead peaceful, fulfilling lives, free from insecurity and violent conflict.

The Expert Group on ATT Implementation

The Expert Group on ATT Implementation (EGAI) is convened by Saferworld. Its purpose is to help develop common understandings among government and civil society experts from all world regions on issues relevant to Arms Trade Treaty (ATT) implementation, with a view to promoting progressive interpretation of the Treaty's provisions and the development of a robust ATT regime.

As of November 2014 the EGAI has met on three occasions – in London, November 2013; Stockholm, May 2014; and Berlin, July 2014. This briefing is Saferworld's summary of the discussions on the subject of ATT information sharing that took place at these meetings. The views and ideas expressed herein should not be taken as reflecting the official view of those States or individual experts that have participated in this process.



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