

EXPERT GROUP ON ATT IMPLEMENTATION

Implementing the ATT: Essential elements of an effective arms transfer control system

EGAI

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<https://www.un.org/disarmament/unscar>

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Introduction

Article 5.2 of the Arms Trade Treaty (ATT) requires that States Parties “establish and maintain a national control system, including a national control list, in order to implement the provisions of [the] Treaty”. Whereas most States that manufacture and export conventional arms have, in place, a well-developed system for arms transfer control, the same cannot always be said for States with more limited involvement in the international arms trade. Regardless, the requirements of Article 5.2 are equally binding on all States Parties to the ATT and, as such, present a potentially significant challenge to less-capacitated States in their efforts to implement the Treaty.

Building on discussions that have taken place during several meetings of the Expert Group on ATT Implementation, this briefing seeks to explore and elaborate the key elements of an effective arms transfer control system that are required for national implementation of the ATT. In order to assist those States that are working towards full ATT implementation this briefing focusses upon the development of the requisite legislative, regulatory and administrative infrastructure that forms the basis of a national arms transfer control system and considers the potential role of various government stakeholders at key points in the arms transfer control process. In addition, the important role of public and parliamentary oversight of all ATT-related processes is also highlighted as a means of ensuring consistent and effective implementation of any national system for controlling international arms transfers.

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ATT obligations and their implications for States Parties

While the ATT is clear on the core requirement that States adopt and maintain a transfer control system, the precise nature and extent of each State's controls and the way in which they operate and are enforced will depend on the situation, capacity and political priorities of individual States Parties. States that regularly export arms will require a system that is more developed and has greater capacity than States that rarely import and export arms and that, for example, experience only small volumes of transit trade. While it is unlikely that many States will be required to start their arms transfer control system from scratch – most will have something on which to build – this briefing starts from first principles in order to set out each of the steps involved in developing an effective system of control.

Beyond the requirements of Article 5.2 noted above, the ATT sets out a range of binding and non-binding provisions relating to controlling the international trade of conventional arms (see Annex¹ for a detailed breakdown). The “activities of the international trade” are defined in Article 2.2 as including export, import, transit/transshipment and brokering. In each case, the exact regulatory requirements vary. States Parties are required:

- to regulate arms exports (Article 7) and brokering (Article 10);
- where necessary, to regulate arms imports (Article 8); and
- where necessary and feasible, to regulate transit and transshipment of arms (Article 9).

States are also required to take measures to prevent the diversion of conventional arms (Article 11).²

The Treaty stipulates that controls on the “activities of the international arms trade” should apply in respect of the conventional arms listed in Article 2.1; ammunition (Article 3) and their parts and components (Article 4) are also controlled for export. Beyond the types of arms and items specifically listed in Articles 2, 3 and 4, States Parties are “encouraged to apply the provisions of [the] Treaty to the broadest range of conventional arms”; in this regard, emerging best practice among States Parties points to the application of the ATT's provisions to the full range of conventional arms, ammunition and components as set out in comprehensive national and multilaterally agreed control lists.

¹ Annex: Saferworld's *Matrix of Essential and Desirable Provisions for ATT Implementation*

² For a full discussion of how ATT implementation can help tackle diversion see EGAI briefing output No.2: *Key issues for ATT implementation: Preventing and combating diversion* www.saferworld.org.uk/resources/view-resource/885-key-issues-for-att-implementation-preventing-and-combating-diversion

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A legal and regulatory framework for international arms transfer control

Developing or amending legislation to provide for international arms transfer control will, for many States, be a vital first step towards full implementation of the ATT. Legislation enables the establishment of governmental jurisdiction in this area and provides the legal basis for its application to all those individuals and entities that fall within the scope of relevant laws. However, in the field of arms transfer control it is also important for the State itself to be bound by relevant laws. In the context of ATT implementation, this means that when the State is itself transferring arms it should fully apply the relevant provisions (principally Articles 6 for transfers and Articles 7 and 11 for exports) although the specific process that is undertaken may be different from that applied to commercial transfers.

Legislation will also be the means of establishing, in law, a basis for the principles, parameters and elements of a system for controlling international arms transfers. While most States have some relevant legislation, in some States the laws that exist do not provide a sufficiently comprehensive framework for national implementation of the ATT. For example in States that do not manufacture or export conventional arms, the scope of any arms transfer control laws may be confined to controlling imports of firearms for individual sale and use; alternatively, States may have, in place, legislation for controlling arms exports but this may lack provisions for risk assessment or end-user verification.

It is important to note that while legislation should provide a basis and framework for government control of international transfers of conventional arms, it is not essential that every detail of the control system be elaborated in the legislation itself. Instead, particularly in respect of those aspects that may be subject to change or may require amendment in the future, there are benefits to developing certain details of the arms transfer control system in more flexible regulations.

Developing or amending arms transfer control legislation will potentially require the involvement of a wide range of national stakeholders, including government ministries and agencies, the national legislature and civil society. Each will need to be consulted at various points, including at the beginning of the process, when the terms of reference for any new or amended legislation are being developed, to ensure that all relevant issues are addressed and to build a national consensus around the need for effective arms transfer controls and ATT implementation.

Principles underpinning arms transfer controls

One of the primary functions of arms transfer control legislation is to establish sole State jurisdiction in this area. This means that the State takes the power to regulate the transfer of conventional arms and is solely responsible for implementing and enforcing legislation and regulations in this field. This will require a relevant government minister to be specifically designated as bearing ultimate responsibility for the development and implementation of arms transfer control legislation. It should also legally require any entities under State jurisdiction wishing to engage in the transfer of arms to seek authorisation from, or be licensed by, the relevant authorities. This should involve case-by-case licensing or authorisation of arms exports and potentially imports, transit/transshipment and brokering (see below); it could also include a requirement for relevant entities to register with a designated national authority before being eligible to apply for transaction authorisations. In addition, pursuant to Article 7.7 of the ATT, national legislation should include the power to review, suspend and/or revoke any arms transfer authorisation should material circumstances require this.

In order to ensure clear understanding of the purposes of arms transfer controls and to ensure their consistent implementation States Parties should set out the guiding principles for legislation in this field.³ These could incorporate some or all of the elements set out in Article 1 (object and purpose) of the ATT, together with other international obligations and national priorities, for example:

- to contribute to national, regional and international peace, security and stability;
- to contribute to human security and human rights at home and abroad;
- to implement the highest standards for the regulation of the international trade in conventional arms; and
- to ensure transparency and accountability in respect of the State's role in the international trade in conventional arms.

Scope of legislation

Another vital function of arms transfer control legislation is to establish the scope of arms transfer controls. This will involve defining relevant activities and items that are subject to control and the extent of State jurisdiction in each case. As noted above, the ATT requires States Parties to regulate arms exports and brokering, and to regulate import, where necessary, and transit/transshipment where necessary and feasible. States Parties should therefore, at a minimum, define in legislation what is meant by export, import, transit/transshipment and brokering and should provide clear reference in law to the items that are subject to control.

Whereas the ATT is relatively explicit regarding the requirements for export control, the exact details of how, and in what circumstances, import, transit/transshipment and brokering controls are to apply is a matter for States Parties. For example, legislation could specify that transit/transshipment controls are only applicable in prohibited circumstances (see below); while particular points of entry and exit could be specified for the import, export and transit of controlled goods.

In respect of arms brokering, the ATT identifies registration of brokers and authorisation of transactions as possible options for control. States will therefore be required to decide on how they intend to regulate arms brokering, however, a simple licensing

³ See for example the South African National Conventional Arms Control Act 2002 www.gov.za/sites/www.gov.za/files/a41-02_0.pdf

system which serves as an extension of provisions for export control would, in most cases, prove a relatively straight forward and effective option.⁴

In accordance with Article 5.2 of the ATT, States Parties are required to establish and maintain a control list of those goods that are regulated for transfer. Relevant lists have already been established by major exporters and are available in the public domain; these tend to have a large degree of similarity across different jurisdictions to the point where there is, in effect, a common understanding of good practice in this regard. Rather than developing their own unique lists, States could look to adopting an already-established list which would be referred to relatively briefly in legislation but then elaborated in regulations (see below). Other issues that could be addressed in regulations could include specific requirements for movement and storage of imported arms as well as arms in transit.

Prohibitions

Under Article 6, States Parties to the ATT are required to prohibit the transfer of arms if they would:

- violate obligations pursuant to measures adopted by the UN Security Council under Chapter VII, in particular arms embargoes;
- violate agreements to which a State is Party, in particular those relating to the transfer of, or illicit trafficking of, arms;
- 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.

All of these prohibitions are based on existing international law and so should already be familiar to State authorities; however, some States have yet to incorporate these provisions in their legislation. It is therefore a priority that States Parties ensure that the Article 6 prohibitions are directly reflected in their arms transfer legislation and implemented in the context of their export, import, transit/transshipment and brokering controls. This means that where a State has knowledge that the above consequences will arise from an arms transfer it is in a position to prevent that transfer within or through its jurisdiction.

In addition, States may also wish to adopt a list of prohibited goods, the transfer of which into, out of, or through national jurisdiction is proscribed. These prohibited goods may be based on international obligations arising from treaties and conventions that control or ban the transfer, possession and use of certain arms (such as anti-personnel landmines), chemicals, biological agents or sensitive technologies.⁵

⁴ For a full discussion of implementation of arms brokering controls under the ATT see EGAI briefing output No.4: *Implementing the ATT: developing brokering controls in less capacitated States* www.saferworld.org.uk/resources/view-resource/1029-implementing-the-att-developing-brokering-controls-in-less-capacitated-states

⁵ See for example: Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (APM Treaty) www.apminebanconvention.org/; Convention on Cluster Munitions (CMC) www.clusterconvention.org/; 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 [as amended] (CCW) [www.unog.ch/80256EE600585943/\(httpPages\)/4F0DEF093B4860B4C1257180004B1B30?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/4F0DEF093B4860B4C1257180004B1B30?OpenDocument); Treaty on the Non-Proliferation of Nuclear Weapons (NPT) <https://www.iaea.org/publications/documents/treaties/npt>; Convention on the Prohibition of the Development, Production and Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC) <https://www.opcw.org/chemical-weapons-convention/>; Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC) [www.unog.ch/80256EE600585943/\(httpPages\)/04FBDD6315AC720C1257180004B1B2F?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/04FBDD6315AC720C1257180004B1B2F?OpenDocument)

Export criteria

Under Article 7, States Parties to the ATT are obliged to conduct a national (risk) assessment prior to taking a decision regarding the authorisation or refusal of a conventional arms export. This involves assessment of the potential that the arms or items in question:

- would contribute to or undermine peace and security;
- could be used to commit or facilitate a serious violation of international humanitarian law or international human rights law;
- 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; or
- could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organised crime to which the exporting State is a Party.

After considering whether there are measures that could be undertaken to mitigate the above risks States Parties are required to refuse an export if there is an overriding risk of the aforementioned negative consequences accruing. In addition, States Parties are also required to take into account the risk of the arms or items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children (Article 7.4). Beyond this, Article 11 of the ATT also requires exporting States to assess the risks of diversion associated with exports of conventional arms listed under Article 2.1 and sets out a range of steps that could be considered in order to mitigate any identified risks.⁶

Legislation governing arms export controls in States Parties will necessarily require adoption of the criteria set out in Article 7 of the Treaty; it may also include criteria that are derived from other international and regional obligations to which a State is bound, or any further relevant provisions existing under the State's national law. These criteria should provide the basis for decisions on whether arms exports should be authorised or refused. States Parties may wish to adopt these criteria directly into national legislation; alternatively they may wish to reference the criteria in legislation and elaborate them in the attendant regulations.

Other provisions

There are a number of additional ATT provisions that ought to be established in national law:

Competent authority

Article 5.5 of the ATT requires States Parties to designate competent national authorities that will ensure implementation of the Treaty. Regardless of whether a State Party is a major arms exporter or plays a limited role in the international arms trade, effective, transparent and accountable implementation of the ATT will require designation of governmental responsibility in this area. In addition to finalising decisions on arms transfers, a competent authority could, for example, be tasked with overseeing the administration of the arms transfer licensing/authorisation system and/or with chairing or facilitating an interagency coordination body. While the Treaty allows for the possibility of more than one competent authority in each State Party, it may be desirable to restrict ultimate responsibility for arms transfer control authorisation/licensing to

⁶ See *Key issues for ATT implementation: Preventing and combating diversion, Ibid.*

one senior figure (such as a minister) in a key government ministry or agency. If more than one exists, a clear differentiation of responsibility will be necessary.

Point of contact

It is a legally binding obligation on all States Parties under ATT Article 5.6 to designate a point of contact to enable the exchange of information on matters relating to Treaty implementation. States Parties are also required to notify the Secretariat of the details of their national point of contact and to keep the information updated in respect of any changes. Although designation of a point of contact could be considered an administrative matter, if a State Party is introducing or amending legislation in order to enable national implementation of the ATT, reference to the establishment of an appropriate point of contact could usefully be made therein.

Interagency coordination

Coordination among national stakeholders, from government, parliament, industry and civil society will be vital to ensure joined-up and effective implementation of the ATT at national level. Given the cross-cutting nature of arms transfer controls it is likely that a significant number of government ministries, departments and agencies will be required to bring their concerns and their expertise to bear in terms of discussions and decisions in this field. Parliamentarians, industry and civil society could also be involved in some capacity, either as members of the coordination body or through some associated structure(s).

One of the key potential roles of an interagency body could be the consideration of arms transfer licence applications. However, given the general reluctance of States to involve industry or civil society in such decision-making processes, if such actors are represented on an interagency body it may be necessary to create a sub-committee of relevant government ministries or agencies. This could be specifically tasked with processing arms transfer licensing applications and making authorisation/denial recommendations to the competent authority.

Many States already have interagency/coordination structures that address arms control issues (whether from an arms transfer control perspective or small arms proliferation control perspective) and so establishment of an appropriate forum may only require a change in the mandate of an existing body. If no such forum exists, however, it would be advisable to ensure that there is provision in legislation for the establishment of a new body, thus ensuring its mission and functionality is clear for the long-term and will endure irrespective of changes in government.

Record-keeping

Article 12 of the ATT requires States Parties to maintain, for a minimum of 10 years, records of their export authorisations/actual exports of conventional arms listed under Article 2.1 of the Treaty; it also encourages States Parties to keep records of the import authorisations/actual imports of the same. Accordingly, it will be important for States Parties to ensure that the requirement to maintain records is established in national legislation and that there is a legal obligation that individuals and corporate entities under State jurisdiction provide, as requested, any relevant information in their possession to the competent government authorities. At a practical level, all States should seek to ensure that records are maintained electronically in a way that enables easy access to information on the part of those that are required to compile reports or to present the data for wider consumption. An electronic system would also enable records to be kept indefinitely, as is now standard good practice, rather than the minimum 10 years.

Reporting/disclosure of information

Article 13 of the ATT requires States Parties, within a year of joining the Treaty, to provide an initial report to the ATT Secretariat on steps taken to implement the Treaty. It also requires States Parties to provide an annual report on their authorised or actual exports and imports of conventional arms under Article 2.1. In order to ensure that they can fulfil these reporting obligations States Parties should establish, in legislation, the requirement to report under the ATT and other relevant multilateral agreements. This will clarify and ensure the responsibility of all relevant government ministries to support and enable reporting on arms transfers in line with international agreements. In addition, legislation should also enable and protect the disclosure of information to the national legislature and the public in respect of arms transfer policy and practice, for example in the form of an annual public report.

Offences and penalties

The question of offences and penalties is not addressed in the ATT, however it will be vital for all States Parties to ensure that national arms transfer controls legislation criminalises violations of laws, regulations and procedures established by government, for example by trading without a licence or providing false information. It will also be important to establish guidance regarding appropriate penalties with details set out in either legislation or in attendant regulations.

Enforcement provisions

Article 14 of the ATT requires States Parties to take appropriate measures to enforce national laws and regulations that implement the Treaty's provisions, however the details of how this is to be done is left to national discretion. In most States, it is likely that a number of different government ministries and agencies—for example police, customs, licensing authorities, intelligence agencies—will be involved in ATT enforcement and it is important that these roles and responsibilities are legally established. It will also be important that the scope of the enforcement powers are detailed to include the power to investigate suspected breaches of arms transfer controls. This could potentially involve the right to conduct searches and to inspect documentation as well as to interdict, seize and confiscate arms transfers within State jurisdiction when there are, for example, implications for national security or for the application of Article 6 of the ATT (see Prohibitions above).

International cooperation

Article 15 of the ATT requires States Parties to cooperate with one another in order to implement the Treaty effectively. In order to ensure that this can take place, States should embed the principle of international cooperation on arms transfer control matters within national legislation. This should involve the ability of government to gather and share information with international partners on relevant matters,⁷ the lending of mutual legal assistance, and joint efforts to prevent and combat diversion and corrupt practices in relation to arms transfers.

Regulations and administrative procedures

As referred to above, while it is important that all major requirements for arms transfer control are given a basis in national legislation, it may not be appropriate or workable

⁷ For a full discussion of how information exchange can support ATT implementation see EGAI briefing output No.1: Key issues for ATT implementation: Information exchange under the ATT www.saferworld.org.uk/resources/view-resource/872-key-issues-for-att-implementation-information-exchange-under-the-att

to include comprehensive details of each measure within the legislation itself. Rather, in some areas, it may prove more appropriate to establish regulations which can be more easily amended or adapted in response to changing circumstances. The elements of a national arms transfer control system that could be elaborated in regulations include the following:

Control list

As noted above, States Parties to the ATT are required to establish and maintain a control list, which at a minimum must include the weapons listed in Article 2.1 plus their ammunition/munitions (Article 3) and their parts and components (Article 4). However, the Treaty also encourages States Parties to apply its provisions to “the broadest range of conventional arms” and, while voluntary in nature, this provision clearly points States Parties towards adopting best practice in this area. In this regard, the Wassenaar Arrangement Munitions List (WAML)⁸ is widely considered as the emerging international standard for international arms transfer control. Developed by the participating States of the Wassenaar Arrangement – many of whom are significant manufacturers and exporters of military equipment – the WAML is comprised of 22 categories and is reviewed and updated annually. Of the 41 participating States, 36 are ATT States Parties and three are Signatories, while the Member States of the EU have adopted their own customised version of the WAML. For those States Parties that do not already have a comprehensive national control list, adoption of the WAML in national legislation/regulations presents an efficient option, including for States that have limited involvement in the international arms trade. Moreover, the WAML is updated by technical experts from Wassenaar Arrangement States on a regular basis, so that little or no ongoing maintenance is required on the part of States that have adopted it. On the other hand, States that decide to develop their own bespoke control lists will themselves be responsible for ensuring that it is kept up to date with latest developments – both technological and political.

Transfer licences

States, particularly those that manufacture and export conventional arms, utilise a variety of types of international arms transfer licences⁹ in order to control and facilitate trade. However, for States with only a limited role in the international arms trade, where arms exports are few and far between, it may prove sufficient to use only ‘Individual’ licences that allow the transfer of specific items to specific end-users licences. This may also be a suitable approach for control of firearms imports and arms brokering taking place at similarly low levels. The issue of how to regulate transit, however, is more complex, particularly for States with limited resources and with less experience in arms transfer control. In this case, the priority is to establish the prohibitions of ATT Article 6 in legislation so that where the State is aware that arms are in transit or being transhipped through its territory in breach of international law it has the power to interdict, conduct searches and seize items.

Transfer licensing/authorisation process including appeals process

The nature and complexity of the transfer licensing/authorisation process in any state will depend to a large extent upon its level of involvement in the international arms trade. States that manufacture and regularly export conventional arms will require more detailed procedures in order to address the range of potential arms transfer scenarios that may arise. Nevertheless, it will be important for all States to set out the

⁸ See www.wassenaar.org/wp-content/uploads/2016/04/WA-LIST-15-1-CORR-1-2015-List-of-DU-Goods-and-Technologies-and-Munitions-List.pdf

⁹ In addition to basic ‘Individual’ licences, States also use ‘General’ and ‘Global’ licences which allow multiple shipments of less sensitive technology potentially to a range of different end-users, where certain specified conditions are met.

terms under which an arms transfer licence should be sought. Some States may require entities to obtain authorisation even before entering into discussions regarding a transfer; other States may wish to establish an authorisation requirement prior to the act of conducting the transfer. It will be up to individual State authorities to decide on the particularities of its national system, while ensuring that it meets the ATT obligation to assess every potential export. States should seek to ensure that as much of the authorisation process as possible can be carried out electronically, either through an on-line system or portal, or through the electronic transmission of applications and documentation; they should also set clear targets or standards for government performance in processing export licences. It will also be important to set out in regulations a process whereby those refused a transfer licence may register an appeal, along with a timeframe for a response and a final decision.

Export risk assessment

When considering whether or not to authorise the export of conventional arms or items covered by the ATT, a State Party should first of all consider whether Article 6 is applicable. If it is not, then the competent authority must then undertake a national (risk) assessment under Article 7 applying the export criteria (listed above).¹⁰

Two key parameters should guide an assessment of the risks associated with any transfer of conventional arms:

- the nature of the recipient
- the nature of the equipment.

Depending on circumstances, transfers of certain types of equipment to a particular end-user for certain purposes could be approved, while others may be refused.

In considering whether or not to authorise an arms transfer, States Parties should draw on a wide variety of information sources. Information should first be sought from the prospective importing State authorities and, where appropriate, the end-user. Both the importing authorities and the end-user may, for example, be able to provide important information not in the public domain that can address concerns arising during the transfer assessment process. However, multiple other sources will need to be consulted as it is unlikely that a full picture of the risks attached to a transfer can be properly understood from a single source.

Standard sources include:

- competent UN bodies;
- diplomatic missions of the transferring State, and potentially of its allies or regional bodies it belongs to;
- the International Committee of the Red Cross (ICRC) and other international or regional organisations;
- relevant government departments and institutions, including intelligence services;
- counterparts from licensing authorities of other States;
- research institutes;
- humanitarian and human rights NGOs and other civil society organisations (local and international);
- media (specialised and general, traditional and social).

Any proposed export should be considered against each of the criteria listed under Article 7.1 and 7.4 as well as under Article 11 (diversion). Given that authorisations may be valid for a period of years and the items themselves typically have a shelf life

¹⁰ For a more in-depth discussion the application of Article 6, 7 and 11 of the ATT see Control Arms ATT Monitor 2015, <http://armstreatchmonitor.org/current/wp-content/uploads/2015/08/Chapter-1.2.pdf>

of many years, licensing authorities should take into account not only the risk of immediate misuse or diversion of the arms/items but should also be forward-looking so as to consider the possibility of negative repercussions arising in the foreseeable future. In addition, Article 7.2 also obliges States Parties to “consider whether there are measures that could be undertaken to mitigate risks identified” in Article 7.1. These might include inserting additional end-use restrictions into an export authorisation, carrying out follow-up inspections in the recipient State, or providing training to end-users. However, States Parties are not obliged to implement any of the mitigation measures that may have been identified.

Similarly, under Article 11 States Parties are required to seek to prevent diversion of arms exports “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”. Information included in reports of various UN Security Council Sanctions Panels of Experts sources can be of particular value when assessing diversion risks.

Overall, the Users’ Guide to EU Council Common Position 2008/944/CFSP¹¹ provides detailed guidance designed for licensing officials on the issues and sources to consider as part of a risk assessment process. Although the EU Common Position is more wide-ranging than the ATT in some respects, the Users’ Guide is nevertheless a potentially very useful resource for those involved in licensing of arms transfers.

Under Article 7.3 if, after conducting the risk assessment outlined in Article 7.1 and considering available mitigation measures outlined in Article 7.2, an exporting State Party determines that an ‘overriding’ risk of any of the negative consequences in Article 7.1 is present, it shall not authorise the export. There is no definitive legal interpretation of the term ‘overriding’ however some States have declared their interpretation to be one of ‘clear’ or ‘substantial’ risk.

Risk assessment for other types of transfers

The ATT does not specify any particular risk assessment process for evaluating import, transit/transshipment or brokering transfers. However, the ATT is a floor and not a ceiling and States will be obliged to control these activities where Article 6 applies, although how this is to be done is left to each States Party’s discretion. In situations where an authorisation is required States will need some means of deciding whether or not to give approval to a transfer.

For **brokering** transactions, emerging State practice points to the application of a similar, if not identical, set of criteria to that adopted for export control. Indeed, consideration of the potential for arms to be used in violation of international human rights or humanitarian law, for example, appears applicable both to arms exports and to brokered transfers. A similar situation also pertains to the **transit/transshipment** of arms in cases where a State is requiring a licence: a risk assessment similar to that conducted in respect of arms exports should also be considered as part of an approach to arms transfers that is both logical and internally consistent.

With regard to arms **imports**, while some States do not have formal controls in this area, most States do have restrictions on who may import and own arms – particularly firearms – and on their use. While import controls are a matter for the priorities and legal traditions of individual States, a distinction needs to be made in terms of arms imported by the State and arms imported by private or commercial end-users. With regard to the former, the decision to import will already, in effect, be the culmination of an assessment process and therefore it is unrealistic to expect States to also undertake a formal ATT risk assessment. However, in respect of the latter, concerns over

¹¹ See *User’s Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment* <http://data.consilium.europa.eu/doc/document/ST-10858-2015-INIT/en/pdf>

risks of diversion and misuse of weapons by private citizens, firearms dealers and private security companies are highly relevant.

Documentation requirements

Article 5.5 of the ATT requires exporting State Parties to ensure that authorisations are detailed and issued prior to an export taking place. This means that States Parties are required to issue export licences; however, in practice, they should include a range of additional documentation in their arms transfer authorisation/licensing system.

This may include:

- export/import /transit/transshipment licence application forms;
- export/import/transit/transshipment licences;
- import certificates/delivery verification certificates;
- end-user certificates.

Each document will have its own particular specifications; for example, an export, transit or brokering licence should contain as much as possible of the following information:

- unique serial number;
- name and address of issuing authority;
- place and the date of issuance;
- date of expiration of the licence;
- name of and address of exporter and importer;
- name and address of consignee (where applicable);
- name and address of final recipient;
- name and address of any brokers/intermediaries and, where known, transportation agents;
- description and quantity/value of the arms or items;
- where known, means of transport and shipping route/countries of transit.

An end-user certificate¹² should contain the following:

- exporter's details (company name, contact name, address);
- consignee's details (company name, contact name, address);
- end-user's details (company name, contact name, address);
- country of final destination;
- a description of the goods being exported (type, characteristics);
- quantity and/or value of the exported goods;
- signature, name and position of the end-user;
- the date of the end-user certificate;
- end-use and/or non re-export clause potentially prohibiting re-export of the goods covered in the end-user certificate without the prior written consent of the exporting authorities;
- details of the end-use of the goods;
- details of any brokers or intermediaries and, where known, transportation agents;
- an undertaking, where appropriate, that the goods being exported will not be used for purposes other than the declared use.

It will be incumbent upon the competent authorities in the exporting State to take steps to authenticate all end-user certificates received and to verify the bona fides of the end-user. The exporting authorities may also require the importing authorities to provide a Delivery Verification Certificate or Import Certificate which will assure the exporting State that the arms or items exported have reached the country destination.

¹² See <https://www.gov.uk/government/publications/end-user-undertaking-euu-form> for an example of how one State approaches end-use certification.

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Conclusion

Regardless of whether a State is a major manufacturer and exporter of conventional arms or is only infrequently involved in the international arms trade, Parties to the ATT must all fulfil the Treaty's binding obligations. Central among these is the requirement under Article 5.2 that States Parties establish and maintain a control system, including a control list, to implement the Treaty's provisions. While the fundamentals of a State's arms transfer control system will need to be clearly established in legislation, many of the detailed operative provisions can be elaborated in more easily amended regulations and administrative procedures. While this may appear, to some, a daunting task, there exists a considerable amount of expertise and experience in both governments, in multilateral institutions (including the ATT Secretariat) and in civil society around the world on which less-capacitated States may draw as they seek to develop a transfer control system that meets their own specific requirements while fulfilling obligations under the ATT. At the same time, information exchange and cooperation among States Parties on arms transfer control matters will be a crucial means of ensuring consistent and effective implementation of the Treaty.

Beyond this, a key element in the functioning of an arms transfer control system is the establishment of an inclusive interagency coordination body (in which all relevant stakeholders from government, industry and civil society are represented) working in collaboration with a competent authority and the national point of contact. In addition, the existence of transparent and accountable structures with clear roles and responsibilities will be vital to ensuring that the aspirations and intentions of relevant national legislation as well as the control system are delivered consistently irrespective of the changing political priorities of government.

ANNEX

Matrix of essential and desirable provisions for ATT implementation

Introduction

The following matrix is an attempt to articulate the transfer control and related provisions of the Arms Trade Treaty in a structured format so as to aid understanding of implementation requirements. It was originally drafted as a tool for use by Saferworld in our programme of work that seeks to assist states in identifying their ATT implementation requirements by means of a detailed national assessment. This document has been circulated at a number of ATT implementation meetings since late 2013 and has been amended following feedback from government and civil society experts.

- **Column A** seeks to set out the obligatory provisions which could be considered as the essential minimum requirement for States on becoming a party to the ATT.
- **Column B** is an attempt to elaborate on what are the implications of the provisions of Column A and Column C for States' conventional arms transfer control systems. In most instances a basic outline is provided of what might be required along with suggested sources of further information.
- **Column C** is an attempt to set out those provisions that could be considered to be non-binding owing to the way in which each is framed in the Treaty text; States Parties that do not already implement the provisions set out in Column C might be expected to work towards their adoption during the short to medium term.
- **Column D** contains some notes on examples of current good practice or even best practice, where relevant. These indicate some of the further steps that could be taken away from the "floor" of the ATT and towards the "ceiling" of fully comprehensive transfer controls. States might see the adoption of these measures as a medium or longer term goal, depending on their particular circumstances and role in the international trade in arms and strategic goods.

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
<p>Scope [Article 2]</p>	<p>2.1 This Treaty shall apply to all conventional arms within the following categories:</p> <ul style="list-style-type: none"> (a) Battle tanks; (b) Armoured combat vehicles; (c) Large-calibre artillery systems; (d) Combat aircraft; (e) Attack helicopters; (f) Warships; (g) Missiles and missile launchers; and (h) Small arms and light weapons. <p>2.2 For the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as "transfer".</p> <p>2.3 This Treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party's ownership.</p>	<p>← States must apply their national arms transfer controls to the categories of weapons specified within Article 2.1, at a minimum. [See below for suggested reference sources and information on control lists.]</p> <p>← An international transfer of conventional arms may also be considered to take place where there is an international transfer of title or control irrespective of any physical movement of the arms. [See the 1994 Report on the continuing operation of the UN Register of Conventional Arms and its further development http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/329/51/PDF/N9432951.pdf?OpenElement]</p>		<p>Transfer controls apply to all conventional arms, internal security equipment, their parts, components, ammunition and related technologies including intangible technologies and blueprints.</p> <p>Explicit regulation of licensed production and incorporation arrangements e.g. where items are transferred to an intermediate recipient for manufacture, assembly, modification or incorporation into another system prior to onward export. [Also relevant to Article 4, Parts and Components.]</p>
<p>Control System/ Control List/ General Implementation [Articles 3, 4 and 5]</p>	<p>3. Each State Party shall establish and maintain a national control system to regulate the export of ammunition/ munitions fired, launched or delivered by the conventional arms covered under Article 2 (1), and shall apply the provisions of Article 6 and Article 7 prior to authorising the export of such ammunition/ munitions.</p>	<p>← A typical national control system is likely to include the following:</p> <p>Legislation providing a legal basis for controlling international transfers of conventional arms and which sets out the main components of the control system and establishes associated criminal/civil offences and penalties.</p>		<p>Establish and maintain a national control system to regulate the transfer of all conventional arms and internal security equipment, their parts, components, ammunition and related technologies.</p> <p>Control lists include all conventional arms, internal security equipment, their parts, components and ammunition and related technologies.</p>

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
Control System/ Control List/ General Implementation [Articles 3, 4 and 5] <i>continued</i>	<p>4. Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2 (1). Each State Party shall apply the provisions of Article 6 and Article 7 prior to authorising the export of such parts and components.</p> <p>5.2 Each State Party shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty.</p> <p>5.4 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.</p> <p>5.5 Each State Party shall take measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms covered under Article 2 (1) and of items covered in Article 3 and Article 4.</p>	<p>A competent authority that is responsible for administering the international arms transfer control system.</p> <p>A control list of items that are subject to transfer regulation including, at a minimum, items covered in Articles 2, 3 and 4.</p> <p>Examples of comprehensive lists of military equipment and related technology can be found at www.wassenaar.org/controllists/index.html [Munitions List]; http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:090:FULL:EN:PDF [EU Common Military List]</p> <p>An authorisation or licensing system which sets out a process whereby relevant actors may seek government authorisation for proposed arms transfers from, into or through national jurisdiction, potentially with extra-territorial application.</p> <p>A risk assessment process whereby the risks associated with a proposed transfer – determined <i>inter alia</i> by the nature of the items for transfer and of the proposed recipient – are assessed, the outcome of which determines whether or not a transfer can be authorised.</p> <p>Guidelines/criteria governing the international transfer of controlled items setting out the legal and normative framework for arms transfer regulation (including the provisions of Articles 6, 7 and 11 of the ATT) and which provide the fundamental basis for the arms transfer risk assessment.</p>		

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
<p>Control System/ Control List/ General Implementation [Articles 3, 4 and 5] <i>continued</i></p>	<p>5.6 Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty. A State Party shall notify the Secretariat, established under Article 18, of its national point(s) of contact and keep the information updated.</p>	<p>Inter-agency communication structure e.g. a committee that allows government departments and agencies involved in the arms transfer control process to exchange information and to feed into the decision-making process.</p> <p>Provisions for enforcement including clear roles and responsibilities for relevant agencies including law enforcement, customs, border agency and judiciary.</p> <p>Training and capacity building for all actors involved in the administration of the arms transfer control system.</p> <p>Transparency and accountability provisions such as regular public reporting on arms transfers allowing for parliamentary and public scrutiny.</p> <p>Outreach to industry including by providing ready access to information on the workings of the arms transfer control system and industry's obligation to comply with relevant laws.</p> <p>A point of contact for sharing information on ATT implementation with other States Parties and the Secretariat.</p> <p>For further information on the formulation and content of a national control system see <i>National implementation of the proposed Arms Trade Treaty: A practical guide</i> www.safeworld.org.uk/100714%20national%20implementation%20-%20practical%20guide%20%282%29.pdf also see <i>OSCE Best Practice Guide on Export Control of Small Arms and Light Weapons</i> www.osce.org/fsc/13651</p>		

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
Control System/ Control List/ General Implementation [Articles 3, 4 and 5] <i>continued</i>		<p>↑ National definitions of any of the categories within Article 2.1 (a-g) shall not be less than those listed at www.un-register.org/Background/Index.aspx</p> <p>National definitions of the items covered in Article 2.1 (h) shall not be less than the descriptions within relevant UN instruments. See, for example, the 2005 International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (The International Tracing Instrument) see www.poa-iss.org/InternationalTracing/ITI_English.pdf</p> <p>↑ See, for example, the UK strategic export control lists the consolidated list of strategic military and dual-use items that require export authorisation www.gov.uk/government/publications/uk-strategic-export-control-lists-the-consolidated-list-of-strategic-military-and-dual-use-items-that-require-export-authorisation</p>	<p>5.3 Each State Party is encouraged to apply the provisions of this Treaty to the broadest range of conventional arms. National definitions of any of the categories covered in Article 2 (1) (a-g) shall not cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of this Treaty. For the category covered in Article 2 (1) (h), national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty.</p> <p>5.4 States Parties are encouraged to make their control lists publicly available.</p>	
Prohibitions [Article 6]	<p>6.1 A State Party shall not authorise any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.</p>	<p>↓ There are currently 15 mandatory UN arms embargoes in place. See www.sipri.org/databases/embargoes</p>		<p>Prohibitions on the transfer of all controlled items that is undertaken by States or actors subject to State jurisdiction where the state has knowledge that the arms or items would facilitate violations of obligations under the UN Charter, or international human rights or humanitarian law, including customary international law.</p>

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
<p>Prohibitions [Article 6] <i>continued</i></p>	<p>6.2 A State Party shall not authorise any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.</p>	<p>← Relevant international agreements could include <i>inter alia</i>:</p> <ul style="list-style-type: none"> ■ 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime www.unodc.org/pdf/crime/a_res_55/255e.pdf ■ 1997 Anti-personnel Mine Ban Convention www.apminebanconvention.org/ ■ 2008 Convention on Cluster Munitions www.clusterconvention.org/ <p>NB: Obligations arising from multilateral – including regional and sub-regional – agreements on conventional arms may also be relevant here.</p> <p>← Relevant international obligations include, for example, as set out in:</p> <ul style="list-style-type: none"> ■ The 1948 Convention on the Prevention and Punishment of the Crime of Genocide www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&docu mentId=1507EE9200C58C5EC12563F6005FB3E5 ■ The 1949 Geneva Conventions and their Additional Protocols www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/ 		
<p>6.3 A State Party shall not authorise any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 if it has knowledge at the time of authorisation that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.</p>				

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
Prohibitions [Article 6] <i>continued</i>		<ul style="list-style-type: none"> ■ The 1998 Rome Statute of the International Criminal Court www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf [See also www.icrc.org/eng/resources/documents/misc/party_main_treaties.htm] 		
Export assessment [Articles 7 and 11]	<p>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:</p> <p>a) would contribute to or undermine peace and security;</p> <p>b) could be used to:</p> <p>i. commit or facilitate a serious violation of international humanitarian law;</p>	<p>← If a prospective export is not prohibited under Article 6, before deciding on whether or not to give authorisation, states must assess the risks associated with an export. Resources that might help in making this assessment are set out below.</p> <p>← Information that may be useful in assessing the risk that an export could be used to commit or facilitate violations of international humanitarian law can be found at: www.icrc.org/eng/assets/files/other/what_is_1h1.pdf</p>		<p>When considering authorisation of any transfer of any controlled items a State should refuse an authorisation if:</p> <ul style="list-style-type: none"> ■ there is considered to be a clear or substantial risk of any of the negative consequences outlined in Article 7 or if there is a substantial risk of diversion as per Article 11 <p>or</p> <ul style="list-style-type: none"> ■ if the risk that the negative consequences outlined in Article 7 or Article 11 arising is judged to outweigh the risk of these negative consequences not arising and where it is not possible to ensure effective mitigation of the risk.

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
<p>Export assessment [Articles 7 and 11] <i>continued</i></p>	<p>ii. commit or facilitate a serious violation of international human rights law;</p> <p>iii. commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party, or</p> <p>iv. commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organised crime to which the exporting State is a Party.</p>	<p>— Information that may be useful in assessing the risk that an export could be used to commit or facilitate violations of international human rights law may be found at www.humanrights.com/what-are-human-rights/international-human-rights-law-continued.html</p> <p>— Information that may be useful in assessing the risk that an export could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism may be found at www.unodc.org/documents/terrorism/Publications/Int_Instruments_Prevention_and_Suppression_Int_Terrorism_Publication_-_English_-_08-25503_text.pdf</p> <p>— Information that may be useful in assessing the risk that an export could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organised crime may be found at www.unodc.org/unodc/treaties/CTOC/</p>		

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
<p>Export assessment [Articles 7 and 11] <i>continued</i></p>	<p>7.2 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.</p> <p>7.3 If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorise the export.</p>	<p>← Mitigation measures could include <i>inter alia</i>:</p> <ul style="list-style-type: none"> ■ Information exchange and transparency provisions ■ End-use/end-user assurances ■ Post-shipment controls including Delivery Verification Certificates, on-site physical inventory checks, record-keeping requirements/checks ■ Training of relevant actors in the application of international law including international humanitarian law, international human rights law ■ Training of relevant actors in respect of other international standards such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx 		

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
<p>Export assessment [Articles 7 and 11] <i>continued</i></p>	<p>7.4 The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4, being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.</p> <p>11.2 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 authorising the export or other appropriate measures.</p>	<p>← Information that may be useful in assessing the risk that an export could be used to commit or facilitate serious acts of gender based violence may be found at http://gbvaor.net/ See also www.un.org/womenwatch/osagi/wps/ and www.unicef.org/crc/</p> <p>← Exporting states can help prevent diversion of conventional arms by, <i>inter alia</i>:</p> <ul style="list-style-type: none"> ■ Conducting a full risk assessment of a proposed export including assessment of the importer's record with regard to unauthorised re-transfer/respect for end-use assurances, authentication of end-user and import licence documentation ■ Requiring the exporting entity to provide information on the proposed transportation agent and transit route for a shipment ■ Ensuring that port-sites and border posts within their jurisdiction have adequate security provision for arms in transit ■ Raising any concerns that arise with the authorities in transit and/or importing states ■ Ensuring that adequate stockpile management and security provisions exist within the importing states and that policies and procedures exist to ensure responsible disposal of surplus weapons (preferably through destruction) 		

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
Export assessment [Articles 7 and 11] <i>continued</i>		<ul style="list-style-type: none"> ■ Securing the recipient's agreement to post-shipment controls including Delivery Verification Certificates, on-site physical inventory checks, record-keeping requirements/checks <p>For further information that may be useful in assessing the risk of diversion of conventional arms see <i>Preventing Diversion of Small Arms and Light Weapons: Issues and Priorities for Strengthened Controls</i> www.safeworld.org.uk/downloads/pubdocs/BTB%20Diversion%20Feb%2009%20rev.pdf (in particular pp 10–14 and pp 29–35. For information on possible diversion mitigation measures see pp 14–16 and p 34.)</p>		
Export licensing/authorisation provisions [Article 7]	<p>7.5 Each exporting State Party shall take measures to ensure that all authorisations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export. [Article 7.5]</p> <p>7.6 Each exporting State Party shall make available appropriate information about the authorisation 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.</p>	<p>← A licence should contain, <i>inter alia</i>, the following information:</p> <ul style="list-style-type: none"> ■ the place and the date of issuance or an unique identifier ■ the exporter's name, address and contact details ■ the date of expiration of the licence ■ the country of export and the country of import ■ the consignee and final recipient ■ a description and the quantity of the conventional arms ■ the value of the goods and ■ transit states, when possible 		

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
<p>Export licensing/authorisation provisions [Article 7] <i>continued</i></p>		<p>→ A previously issued licence may be revoked under certain circumstances. A decision to revoke a licence should be explained in writing. The licence may be revoked, for instance, for the following reasons:</p> <ul style="list-style-type: none"> ■ The entry into force of an arms embargo concerning the recipient country ■ A significant change in the situation of the recipient country resulting in a situation where arms exported under the licence may be used for unacceptable purposes ■ A significant change in the terms of export, which the exporter neglects to report ■ The decision to grant a licence was taken on incomplete, misleading, or false information <p>[See www.osce.org/fsc/13651 p8]</p>	<p>7.7 If, after an authorisation has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorisation after consultations, if appropriate, with the importing State.</p>	<p>If, after an authorisation has been granted, new relevant information comes to light that suggest that there is a substantial risk of the negative consequences outlined in Articles 6, 7 and 11, all relevant arms transfer licences/authorisations should be suspended or revoked.</p>
<p>Import regulation [Article 8]</p>	<p>8.1 Each importing State Party shall take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment under Article 7. Such measures may include end use or end-user documentation.</p>	<p>← End-user certificates or other relevant documentation – such as International Import Certificates – should contain <i>inter alia</i> the following information:</p> <ul style="list-style-type: none"> ■ A detailed description of the goods ■ Quantity of the goods ■ Value of the goods ■ Names and addresses of all parties involved in the transaction ■ A description of the end-use 		<p>Import licensing system and/or a requirement that exporting states provide prior notification of a proposed shipment of controlled items into national jurisdiction.</p>

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
Import regulation [Article 8] <i>continued</i>	<p>8.2 Each importing State Party shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms covered under Article 2 (1). Such measures may include import systems.</p>	<ul style="list-style-type: none"> ■ The location where the goods will be used; ■ Assurances that the goods will only be used by the end-user and for the stated end-use and ■ A clause setting out the terms of any restrictions on re-export <p>[See www.osce.org/fsc/13651 pp9–10]</p> <p>← States approaches to import control vary depending on the type and volume of arms to be imported, the end-user of the arms that are being imported (e.g. government or commercial/private) and the state agencies involved in the issuing of licences and authorisations. They include the following:</p> <ul style="list-style-type: none"> ■ A licensing requirement for all imports of conventional arms with the possibility of exemptions for state armed and security forces ■ A licensing requirement only for the import of particular types of conventional arms (e.g. SALW) ■ A licensing requirement only for the import of conventional arms by non-state entities ■ A control of conventional arms imports only by customs authorities at the point of entry <p>[See <i>Import Controls and an Arms Trade Treaty</i>, SIPRI, July 2011 https://www.sipri.org/publications/2011/sipri-background-papers/import-controls-and-arms-trade-treaty]</p>		

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
<p>Import regulation [Article 8] <i>continued</i></p>		<p>→ An importing State may seek relevant information from an exporting state in order to:</p> <ul style="list-style-type: none"> ■ Access information on the nature of proposed shipment ■ Access information on the transit route of the proposed shipment ■ To determine whether it is in its interests to allow the shipment to take place ■ Whether to subject a shipment to inspection on arrival ■ To enable it to check the bona fides of the proposed end-user <p>[For further information, including relating to international obligations and guidelines for conventional arms import control see https://www.ciaonet.org/attachments/19436/uploads]</p>	<p>8.3 Each importing State Party may request information from the exporting State Party concerning any pending or actual export authorisations where the importing State Party is the country of final destination.</p>	
<p>Transit/transhipment regulation [Article 9]</p>	<p>9. Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms covered under Article 2 (1) through its territory in accordance with relevant international law.</p>	<p>← Transit of arms takes place when the arms in question pass through the territory or jurisdiction of a state whether by land, sea or air; transshipment takes place when arms are unloaded from an importing means of transport and then loaded on to an exporting means of transport. [See EU Common Position Users Guide http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%209241%202009%20INIT&r=http%3A%2F%2Fregister.consilium.europa.eu%2Fpd%2Fen%2F09%20Fst09%2Fst09241.en09.pdf p23]</p>		<p>Transit licensing system including prior authorisation requirement for land transit/transhipment of specified controlled items. Transit licensing system including prior notification of proposed sea or air transit of specified controlled items through national jurisdiction.</p>

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
Transit/transhipment regulation [Article 9] <i>continued</i>		<p>A variety of state practices currently exist, from: the imposition of an import and export licence requirement on all land transit of arms; to requiring prior notification of an intended transit of arms; to the implementation of a transit licensing regime. Both the EU Common Position on Arms Exports requires, and the OSCE Best Practice Guide on Export Control of SALW recommends, that where member states impose a licensing requirement on transit/transhipment of arms/SALW, that the export criteria should be applied as part of the licensing process.</p> <p>[See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF (EU Common Position) and http://www.osce.org/fsc/13651 (OSCE Best Practice Guide)]</p> <p>[For further information including relating to international obligations and guidelines for conventional arms transit/transhipment control see: Transit and Transhipment Controls in an Arms Trade Treaty https://www.sipri.org/sites/default/files/files/misc/SIPRIBP1107a.pdf]</p>		<p>Explicit reference in national law to the right to refuse transit and/or for relevant authorities e.g. law enforcement, border and/or customs agencies to interdict/inspect/confiscate any controlled items transiting or being transhipped through national jurisdiction where the transfer is in contravention of national law, the ATT and/or other international obligations and commitments including those relating to the transit of dangerous goods.</p>
Brokering regulation [Article 10]	<p>10. Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2 (1). Such measures may include requiring brokers to register or obtain written authorisation before engaging in brokering.</p>	<p>← According to the Report of the Group of Governmental Experts on SALW brokering: "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."</p>		<p>Provisions requiring brokers to register with national authorities and to obtain written authorisation before engaging in brokering transactions involving any controlled items.</p> <p>Extra-territorial application of controls to activities of brokers undertaken within national jurisdiction and also to nationals and residents operating abroad.</p>

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
<p>Brokering regulation [Article 10] <i>continued</i></p>		<p>Within the context of these intermediary activities a broker might:</p> <ul style="list-style-type: none"> ■ Serve as a finder of business opportunities to one or more parties ■ Put relevant parties in contact ■ Assist parties in proposing, arranging or facilitating agreements or possible contracts between them ■ Assist parties in obtaining the necessary documentation ■ Assist parties in arranging the necessary payments <p>State practice for the control of arms brokering can include the following elements:</p> <ul style="list-style-type: none"> ■ Requiring brokers to seek authorisation before engaging in arms brokering activities in general and/or on a transaction by transaction basis ■ Requiring brokers to register as such with state authorities ■ Requiring brokers to seek authorisation before engaging in arms brokering activities where those activities take place within their territorial jurisdiction ■ Requiring brokers to seek authorisation before engaging in arms brokering activities beyond their territorial jurisdiction i.e. that is carried out abroad by brokers who are nationals or resident in their territory 		<p>Other relevant activities may also be subject to regulation, including transportation, logistics, freight forwarding, insurance and financial services.</p>

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
Brokering regulation [Article 10] <i>continued</i>		<p>Both the EU Common Position on the control of Arms Brokering requires, and the OSCE Best Practice Guide on the National Control of Brokering Activities recommends, that where member states impose a licensing requirement on brokering of arms/SALW, that the export criteria should be applied as part of the licensing process. [See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:156:0079:0079:EN:PDF and www.osce.org/fsc/13644]</p>		
Preventing diversion [Article 11]	<p>11.1 Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.</p> <p>11.3 Importing, transit, transshipment 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).</p>	<p>↓ States can work to prevent diversion, <i>inter alia</i>, by adopting or strengthening:</p> <ul style="list-style-type: none"> ■ Risk assessment procedures at the pre-authorisation stage ■ End-use/end-user controls ■ Controls on arms brokers ■ Controls on the transit/transshipment of arms ■ Controls on re-transfer of arms including to unauthorised recipients within the recipient state. ■ Stockpile management and security provisions <p>↓ Information exchange may also include, for example:</p> <ul style="list-style-type: none"> ■ Importing and exporting states notifying transit states of arms shipments that may enter their jurisdiction 		<p>Refusal of authorisation for any transfer of controlled items where there is a substantial risk of diversion and where it is not possible to ensure effective mitigation of the risk. Assessing whether or not there exists a substantial risk of diversion includes consideration of relevant stockpile management and security provisions in all states concerned in the transfer and of measures to ensure the security of controlled items in transit.</p> <p>Provision of assistance (technical, financial, legal) to other states parties in order to implement and enforce effective controls on the transfer of controlled items so as to prevent diversion.</p>

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
<p>Preventing diversion [Article 11] <i>continued</i></p>		<ul style="list-style-type: none"> ■ Tracing lines of SALW supply in accordance with the commitments under the International Tracing Instrument ■ Sharing information relating to marking of conventional arms, especially SALW ■ Sharing information – including real-time intelligence – relating to known diversion risks, such as where there is involvement of brokering and transportation agents that are known to have engaged in illicit trafficking of arms ■ Use of existing law enforcement, customs and other communications channels ■ Sharing of risk profiling tools, technologies and methods <p>States and the ATT Secretariat should also be aware of notifications sent out by UN Sanctions Committees with information relating to potential arms embargo violations.</p> <p style="text-align: right;">→</p> <p>A comprehensive overview of the problem of diversion of arms and on steps that can be taken to prevent and mitigate against its occurrence can be found in <i>Preventing Diversion of Small Arms and Light Weapons: Issues and Priorities for Strengthened Controls</i> (www.safeworld.org.uk/downloads/pubdocs/BTB%20Diversion%20Feb%2009%20rev.pdf)</p>	<p>11.5 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 organised groups engaged in diversion.</p>	

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
<p>Responding to diversion [Article 11]</p>	<p>11.4 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.</p>	<p>← A variety of possibilities exist with regard to the disruption of suspect shipments of arms:</p> <ul style="list-style-type: none"> ■ Interdiction or seizure of shipments of arms from, through or into state jurisdiction where there are concerns with regard to the potential diversion of arms and in particular where a transfer would contravene Article 6 of the ATT ■ Legal and financial measures, for example withdrawing insurance for a shipment ■ Sharing information in a timely manner and cooperating with other concerned States in respect of addressing suspected cases of diversion ■ Sharing information with the ATT Secretariat and other States Parties regarding cases of diversion and related prosecutions and, where necessary, the extension of mutual legal assistance <p>→</p>	<p>11.6 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).</p>	

Type of provision	Column A Essential minimum requirements	Column B Suggested explanation for provisions in columns A and C	Column C Desirable provisions	Column D Possible further steps
<p>Enforcement [Article 14]</p>	<p>14. Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.</p>	<p>← Measures to enforce national laws and regulations might include:</p> <ul style="list-style-type: none"> ■ Criminalisation of offences relating to non-compliance with national arms transfer control laws pursuant to the ATT ■ Empowering relevant agencies – including law enforcement, customs, border agencies and the judiciary to take action within their respective spheres in order to enforce arms transfer control laws ■ Implementing appropriate measures to monitor enforcement of national arms transfer laws/regulations ■ Implementation of appropriate measures to ensure the security of conventional arms and related materials imported into, exported from, or in transit through national jurisdiction ■ Cooperation and mutual legal assistance rendered to other States in the detection and prosecution of offences in relation to national and international law 		

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 in a world where everyone can lead peaceful, fulfilling lives, free from fear and insecurity.

We are a not-for-profit organisation with programmes in nearly 20 countries and territories across Africa, the Middle East, Asia and Europe.

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 ATT implementation, with a view to promoting progressive interpretation of the Treaty's provisions and the development of a robust ATT regime.

As of July 2016 the EGAI has met on five occasions – in London, November 2013; Stockholm, May 2014; Berlin, July 2014; San José, Costa Rica, March 2015; and Accra, November 2015. This briefing is based upon discussions 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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