

REINVIGORATING THE NARRATIVE

**THE BROADER BENEFITS OF
THE ARMS TRADE TREATY**



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The Centre for Armed Violence Reduction

The Centre for Armed Violence Reduction (CAVR), an international non-governmental organisation (NGO), provides evidence-based research and services to prevent and reduce armed violence as a necessary precondition for effective and sustainable development. In partnership with governments and civil society we promote public health and safety by analysing, encouraging and contributing to effective regional and national armed violence reduction initiatives. A non-profit entity, the Centre facilitates the implementation of multilateral arms control instruments by adapting their aims to local needs, history and capacity.

We bring together officials and key actors to tackle armed violence prevention, using a 'whole of government' approach. The Centre finds donors and provides training, capacity-building, technical expertise and tools to help identify and fill legislative, technical and policy gaps. Our evidence-based research and analysis is made actionable through context-specific policy recommendations determined by consensus. We deliver affordable, sustainable programmes, always in close collaboration with local stakeholders.

With support from the United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR), our work has focused on applying global arms control instruments—the Arms Trade Treaty (ATT) and the United Nations small arms Programme of Action (UNPoA)—predominantly in Southeast Asia, the Pacific and the Caribbean. We provide states with full-scope support to enable them to understand the technical requirements of international arms control instruments, to incorporate their provisions in national policies and legal frameworks and to implement compatible local arms control systems.

CAVR also hosts the Secretariat of the Pacific Small Arms Action Group (PSAAG), a network of civil society organisations in Oceania which acts as regional coordinator for Control Arms and supports linked global systems such as the Arms Trade Treaty-Baseline Assessment Project (ATT-BAP) and the International Small Arms Control Standards (ISACS).

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The vision of the Arms Trade Treaty (ATT) is a noble one. It aims to advance international peace, security and stability, reduce human suffering and promote cooperation and transparency to foster a responsible trade in conventional arms.¹ These objects present no simple task. As the first of its kind, the treaty should set global standards high enough to improve the regulation of international trade in conventional arms and to reduce and prevent their illicit trade and diversion.²

Since the adoption of the ATT in 2013, states have demonstrated support by entering the treaty into force in record time.³ At the time of writing, the ATT has 92 States Parties and 41 additional signatories.⁴ This is impressive. However, for the treaty to be effective globally, it must be more widely adopted. Without universalisation, weaknesses in the worldwide arms control system will continue to exist, while vulnerable points become the focus of diversion or irresponsible trade.

When transferred irresponsibly or used illegally, conventional arms can pose a serious threat to peace, security, public health and sustainable development.⁵ The Global Burden of Armed Violence estimates that half a million people die violently, in both conflict and non-conflict settings, each year.⁶ The annual number of deaths in conflict has increased significantly since 2011,⁷ with illicit small arms and light weapons responsible for 90% of those fatalities.⁸ The misuse of conventional arms has the effect of forcing civilians from their homes⁹ and exacerbating sexual and gender-based violence.¹⁰ Modern light-weight firearms are easily used by children, which promotes the recruitment of child soldiers.

Even more than in armed conflict, the misuse of conventional arms has seen an increase in fatal violence in communities at peace. Firearms are now used in nearly 50% of all homicides¹¹—half, that is, of the estimated annual total of 438,000.¹² One-quarter of all the world's violent deaths take place in 18 countries that represent only 4% of the world's population.¹³ The economic costs of violence are astronomical: up to two trillion US dollars in violence-related economic losses could have been saved between 2000 and 2010 if the homicide rate had been reduced from an average of 7.4 to 3.0 deaths per 100,000 population.¹⁴

Our Centre works mainly with non-States Parties to the ATT, whose officials invariably ask the same two questions: 'Why should we join the ATT?' (What's in it for us?) and 'How can we join the ATT if our system is not yet fully compliant with its obligations?' (Why not wait?). To help officials persuade their leaders that the value of the ATT outweighs its implementation cost, the Centre links the ATT to its wider range of benefits, then engages stakeholders to offer substantial assistance to developing states.

CAVR has partnered with Australia's Department of Foreign Affairs and Trade to reinvigorate this narrative by gathering the broader benefits of the ATT into a single, readily accessible reference brief and infographic. You have here a practical guide that enables officials, NGOs, academics and participants in the arms trade to weigh the value of the ATT.

We discuss the reasons why so many States Parties have joined the ATT, the concerns of non-States Parties who delay ratification or accession to the treaty, and the strong links between the ATT and other global frameworks such as the Sustainable Development Goals (SDGs). We address national concerns about international arms regulation and demonstrate the value of the ATT in curbing the illicit and irresponsible trade without encroaching on sovereign rights. But we also tackle the myth that the ATT restricts the lawful possession and use of small arms.

For those who hesitate to adopt the ATT until they fill gaps in their current systems, the reality is that states can 'come as they are' to the treaty, then attract capacity-building assistance from within the ATT framework. We hope to inspire states to adopt the ATT and to support them through the process, then to implement the treaty effectively as one means of reducing human suffering at the point of a gun.

Laura Spano, Director of Arms Control
Philip Alpers, Programme Director

 CENTRE FOR
**ARMED VIOLENCE
REDUCTION**

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SNAPSHOT

THE BROADER BENEFITS OF THE ARMS TRADE TREATY



HUMAN SECURITY

- Enhances Atrocity Prevention
- Combats Gender-Based Violence
- Promotes International Humanitarian Law
- Saves Lives
- Reduces Drivers of Refugee Flows

THE SDGs

- Creates Stability for Development
- Advances Tourism
- Advances Education Opportunities
- Expands Investment Opportunities
- Improves Public Health
- Reduces Poverty

NATIONAL SECURITY

- Enhances National Defence
- Supports National Interests
- Combats Unregulated Arms Flows
- Complements Other Arms Agreements

MARKET VALUE

- Supports Industry and Investor Stability
- Creates Reliable Regulatory Standards
- Enhances Industry Reputation
- Provides Certainty for Importers and Exporters
- Weakens Black Market Supply

REGIONAL SECURITY

- Creates a Framework for Regional Engagement
- Enhances Cross-Border Cooperation

GLOBAL COLLABORATION

- Supports Relationship Building
- Generates Cooperation and Assistance Opportunities
- Provides a Seat at the Table
- Enhances Reputation

A FEW QUICK FACTS

A QUARTER OF
THE ESTIMATED
US\$4 BILLION

ANNUAL GLOBAL GUN
TRADE IS BELIEVED TO
BE ILLICIT.⁴

46.3%

OF WORLDWIDE
NON-CONFLICT
HOMICIDES WERE
COMMITTED WITH
FIREARMS.¹

SMALL ARMS
KILL MORE
PEOPLE THAN ALL OTHER
WEAPON SYSTEMS
COMBINED.⁶

EACH YEAR
AS MANY AS
500,000
PEOPLE ARE KILLED
IN ARMED VIOLENCE,
70,000 OF THEM IN
CONFLICT ZONES.⁷

OF THE CHILDREN
NOT IN PRIMARY SCHOOL,
77% ARE IN
COUNTRIES AFFECTED BY
FRAGILITY, CONFLICT
OR VIOLENCE.⁸

ARMED VIOLENCE
IN NON-CONFLICT
SETTINGS COSTS UP TO
US\$163 BILLION

ANNUALLY IN LOST
PRODUCTIVITY ALONE.²

APPROXIMATELY
60% OF HUMAN RIGHTS
VIOLATIONS

HAVE INVOLVED THE USE
OF SMALL ARMS AND
LIGHT WEAPONS.¹⁰

IN 2016

THE ECONOMIC COST
OF VIOLENCE WORLD-
WIDE WAS PUT AT
13% OF GDP.³

TRADE CAN
DROP BETWEEN
12-25%

IN THE FIRST YEAR OF
A CIVIL CONFLICT.⁵

IT'S EXPECTED THAT
BY 2030,

75% OF PEOPLE IN EXTREME
POVERTY WILL BE LIVING
IN COUNTRIES AT RISK
FROM HIGH LEVELS
OF VIOLENCE.⁹

1 Geneva Declaration Secretariat 'Global Burden of Armed Violence 2015: Every body counts' (2015), Published in Switzerland by the Geneva Declaration Secretariat 171.
2 Geneva Declaration Secretariat 'Global burden of armed violence' (2008), Geneva Declaration on Armed Violence and Development 1, 2.
3 Institute for Economics and Peace (IEP) 'Global Peace Index 2016: Vision of Humanity' 23.
4 Kofi Annan 'Proliferation of illicit small arms has spawned "culture of violence and impunity", says Secretary-General, as UN Review Conference opens at headquarters', Two-week session aims to assess progress against illegal small arms trade since adoption of 2001 Action Programme, 1st & 2nd Meetings (AM & PM), (26 June 2006), DC/3029.
5 World Bank 'Conflict, security and development' (2011), World Bank Development Report 64.

6 Kofi Annan 'Backgrounder' (2006), UN Small Arms Review Conference.
7 Geneva Declaration 'The global burden of armed violence: Every body counts' (2015).
8 Saferworld 'From the Sustainable Development Goals to the Post-2015 Development Agenda: Building a consensus for peace September' (September 2014), Saferworld 5.
9 Amnesty International 'Killer facts: The impact of the irresponsible arms trade on rights, lives and livelihoods' (2010), Amnesty International Publication 3.
10 Paul Collier VL Elliott, Håvard Hegre, Anke Hoefler, Marta Reynal-Querol, & Nicholas Sambanis Breaking the Conflict Trap: Civil War and Development Policy (2003), World Bank and Oxford University Press 21.

INFOGRAPHICS

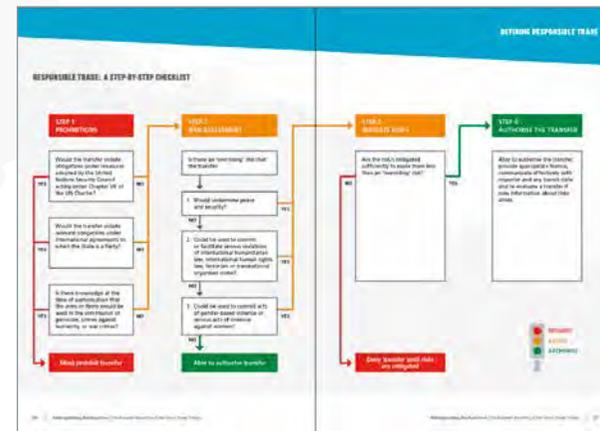
SUSTAINABLE DEVELOPMENT GOALS



SDG icons have been extracted from the United Nations Sustainable Development Goals website <http://www.un.org/sustainabledevelopment/news/communications-material/>



Infographic on page 6 shows a quick snapshot of the broader benefits of the ATT

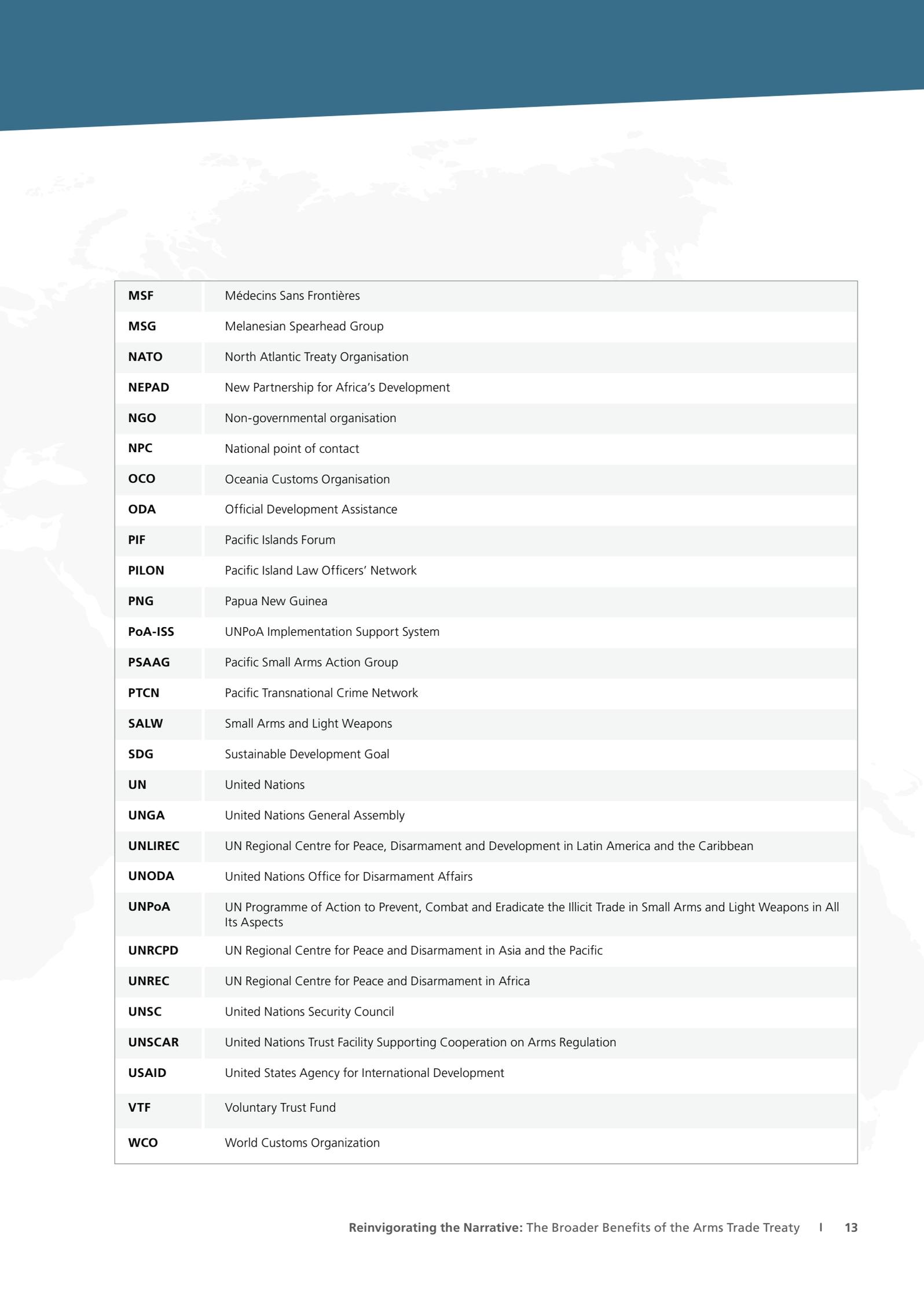


Flowchart on page 28 demonstrates a step-by-step checklist for the Export Risk Assessment

ACRONYMS

FREQUENTLY USED ABBREVIATIONS

ACNC	Australian Charities and Not-for-profits Commission
AFRIPOL	African Mechanism for Police Cooperation
ASD	Aerospace and Defence Industries Association of Europe
ATT	Arms Trade Treaty
ATT-BAP	Arms Trade Treaty-Baseline Assessment Project
AU	African Union
CAAFAG	Children associated with armed forces and armed groups
CARICOM	Caribbean Community
CASA	United Nations Coordinating Action on Small Arms
CAT	Convention Against Torture
CAVR	Centre for Armed Violence Reduction
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERP	Commander's Emergency Response Program
CRC	Convention on the Rights of the Child
CSO	Civil society organisation
CSP	Conference of States Parties
EU	European Union
GDP	Gross Domestic Product
iARMS	Illicit Arms Records and Tracing Management System
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IMPACS	CARICOM Coordinating Agency for Crime and Security
INTERPOL	International Police Organization
IS	Islamic State
ISACS	International Small Arms Control Standards
ITI	International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons
MANPADS	Man-Portable Air Defence Systems
MDG	Millennium Development Goal



MSF	Médecins Sans Frontières
MSG	Melanesian Spearhead Group
NATO	North Atlantic Treaty Organisation
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental organisation
NPC	National point of contact
OCO	Oceania Customs Organisation
ODA	Official Development Assistance
PIF	Pacific Islands Forum
PILON	Pacific Island Law Officers' Network
PNG	Papua New Guinea
PoA-ISS	UNPoA Implementation Support System
PSAAG	Pacific Small Arms Action Group
PTCN	Pacific Transnational Crime Network
SALW	Small Arms and Light Weapons
SDG	Sustainable Development Goal
UN	United Nations
UNGA	United Nations General Assembly
UNLIREC	UN Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean
UNODA	United Nations Office for Disarmament Affairs
UNPoA	UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
UNRCPD	UN Regional Centre for Peace and Disarmament in Asia and the Pacific
UNREC	UN Regional Centre for Peace and Disarmament in Africa
UNSC	United Nations Security Council
UNSCAR	United Nations Trust Facility Supporting Cooperation on Arms Regulation
USAID	United States Agency for International Development
VTF	Voluntary Trust Fund
WCO	World Customs Organization

INTRODUCTION

THE ARMS TRADE TREATY



Photo: Royal Australian Navy

INTRODUCTION

THE ARMS TRADE TREATY

At the beginning of the 20th century, combatants accounted for 90% of conflict-related casualties. Ninety years later, 90% of casualties in armed conflicts were civilian instead.¹ Conventional arms kill more people than all other weapon systems,² and currently approximately 70,000 people are killed in conflict zones each year.³

Concern at the use of conventional arms has been raised in UN Resolutions covering 12 different conflicts.⁴ Even outside conflict zones, armed violence kills around half a million people each year,⁵ with casualties from conventional arms now concentrated in countries that are at peace.⁶

Organised crime, militia and terrorist groups, enabled by high-powered firearms, continually threaten public health and safety while also putting a strain on socio-political and security structures.⁷

The impact of conventional arms is transnational. Porous borders and poor legislative and enforcement frameworks allow conventional arms to be diverted from legal transfers or moved illegally across borders to enter illicit markets;⁸ such arms are then used to perpetrate crimes.⁹ Several regions have become corridors for illegal activity that are protected by heavily armed criminal and terrorist groups.¹⁰ The lines between armed conflict and profit-driven transnational criminal violence have become increasingly blurred.¹¹

The price we pay is both human and financial. The economic cost of violence in 2016 was 13.3% of global gross domestic product (GDP).¹² The humanitarian cost is twofold: the casualties and suffering of people who live day to day amid armed violence and the lost opportunities to improve the livelihoods of whole nations of peoples. One-and-a-half billion people now live in regions affected by state fragility, conflict or violence from large-scale organised crime.¹³

Each year, an estimated 700,000 to 900,000 new small arms and light weapons are added to the global stockpile of 875 million weapons already in circulation.¹⁴ Seventy-four per cent of firearms are not in military stockpiles but in the possession of civilians;¹⁵ developing countries spend 10–15% of their GDP on law enforcement, compared to 5% in developed countries.¹⁶ Changes in weapon technology, dual-use technologies, access to these technologies and the changing nature of conflict and violence place new responsibilities on governments to regulate the arms trade.¹⁷

Illicit arms trade accounts for 10–20% of the annual value of the legal arms market.¹⁸ Dealers of illicit arms obtain weapons through irresponsible state transfers, corruption and diversion from state stockpiles.¹⁹ To hide illicit transactions from enforcement agencies, transnational criminals organise networks across multiple jurisdictions. This highlights the need for strong and consistent international trade standards aimed at preventing diversion. The Arms Trade Treaty (ATT) is a timely and appropriate response to our rapidly altering world.

As the many impacts of illicit and irresponsible transfers of conventional arms become clear, states are recognising increasingly that the issue of regulating the conventional arms trade must be dealt with. Adopted in 2013, the ATT entered into force in record time in 2014.²⁰ The treaty regulates the conventional arms trade in order to prevent the diversion of arms that enable organised criminals, terrorists and end-users to commit crimes of atrocity. It does this by establishing what is considered to be, and what is not considered to be, a legal arms transfer.

The ATT is not a disarmament treaty. Instead, it is a framework within which the international community can cooperate to prevent legitimate arms transfers from being diverted into the illicit market. Becoming a State Party indicates a commitment to collaborating against and preventing irresponsible international trade in arms. The treaty builds confidence among states first by allowing States Parties to communicate mutual interest, then to provide clarity of intent and capability by discussing additional information on arms exports or imports.²¹

The trade in conventional arms touches every state as an exporter, importer and/or a transit location. The ATT is an opportunity for every state to identify the leakage of arms from legal trade to the illicit market. By setting uniform trade standards, the ATT reinforces existing international law. But the treaty does more: by helping states to identify gaps in their own national control system; to establish cross-border collaboration to create regional stability, and to facilitate relationship-building between states.

This brief illustrates and brings together the broader benefits of the ATT. Sections 1, 2 and 3 review the object and purpose of the ATT and outline the meaning of 'responsible' trade under the treaty. The brief then examines the value of transparency to all stakeholders, including the arms industry. Sections 4, 5 and 6 demonstrate how the ATT benefits the three pillars of the United Nations—peace and security, sustainable development, and human rights. In doing so, we review how these benefits act not only in isolation but in many ways that are also mutually reinforcing.

Sections 7, 8 and 9 look at the wider benefits of the treaty for the arms industry and for states at both a regional and a global level. Our brief concludes by demonstrating that non-States Parties who wish to join, but who fear that their national systems are non-compliant with the ATT, should 'come as they are'.

As States Parties, nations can use the developing treaty framework to progress, support and strengthen their own systems. This is the additional benefit of the treaty: the ATT itself is a tool for improving national, regional and global arms trade systems. States come to the table with different systems and capacity strengths. An added value of the treaty is that it encourages the international community to build confidence and oversight collectively in order to prevent illicit flows of arms that currently make possible atrocities, violations of international humanitarian law (IHL) and terrorist activity.



SECTION 1

THE SCOPE OF THE ARMS TRADE TREATY



Photo: Australian Federal Police

SECTION 1

THE SCOPE OF THE ARMS TRADE TREATY

WHAT IS THE PURPOSE OF THE ATT?

This section provides an overview of what constitutes 'conventional arms' covered within the scope of the treaty. The section will then clarify how the ATT defines a 'transfer'. These are important points of clarification because they demonstrate that the ATT is concerned with international trade and is not a disarmament treaty, nor does it interfere with a state's sovereign right to regulate domestic firearm ownership and use. To begin with, however, this section provides an overview of the ATT's object and purpose. This will direct the reader's interests to more detailed examinations of the treaty's provisions offered in later sections of this brief.

Before the ATT came into force, there were no agreed standards on the international trade in conventional arms.¹ As a result, the global trade in conventional arms remained poorly regulated.² The need for the ATT was first identified by UN Member States because poorly regulated conventional arms were imposing devastating impacts on security and socio-political, economic and humanitarian conditions around the world.

With the adoption of the ATT, this is changing. The treaty now requires States Parties, as responsible members of the international system, to encourage conduct that reinforces and establishes norms for secure international arms transfers. The treaty is founded on the principles of the Charter of the United Nations.³ ATT States Parties commit themselves to 'promot[ing] the establishment and maintenance of international peace and security'.⁴ Collective security is best achieved if states cooperate to establish norms that reinforce peace and security, human rights, and development.⁵

The ATT promotes and coordinates the 'responsibility of all States, in accordance with their respective international obligations, to effectively regulate the international trade in conventional arms, and to prevent their diversion'.⁶

*'Given the widespread death, destruction and political destabilization caused by small arms and light weapons, CARICOM Member States are of the firm opinion that there is an urgent need for strict transfer controls which would contribute to political stability and to peace and security in countries throughout the world.'*⁷

HE Ambassador Philip Sealy, Permanent Representative of the Republic of Trinidad and Tobago to the United Nations on behalf of CARICOM Member States (2006)



UN Photo: Martine Perret

Object and purpose of the Treaty

The object of the ATT is to prevent and eradicate the diversion of legal arms into the illicit arms trade or their diversion to unauthorised end-uses and end-users. This is done by establishing 'the highest possible common international standards for regulating or improving the regulation' of conventional arms transfers.⁸

The purpose of the ATT is to contribute to international and regional peace, security and stability; to reduce human suffering, and to promote cooperation, transparency and responsible action by States Parties in the international trade of conventional arms.⁹

The benefit of preventing and eradicating illicit trade in conventional arms is that it diminishes the destructive ability of organised criminals, terrorist organisations or end-users who commit crimes of atrocity and grave breaches of the Geneva Convention. The treaty also requires States Parties to assess the risk of each transfer and to determine whether it would contribute to, or undermine, peace and security.¹⁰ It does this by asking states to assess the likelihood that conventional arms could be used to commit or facilitate serious violations of IHL and international human rights law (IHRL) as well as commit or facilitate gender-based violence.¹¹

*'Conventional weapons, especially small arms, outside state control, do not just maim and kill, but enable rape, theft, extortion, terrorism and insurgency. Moreover, they present a means for the commission of genocide, war crimes, ethnic cleansing and crimes against humanity, which the international community committed to protecting populations from under the responsibility to protect principle at the 2005 UN World Summit. The framework provided by the ATT for prevention and eradication of the illicit trade and diversion of these weapons can help us protect populations against these atrocity crimes.'*¹²

HE John Quinn, Australian Permanent Representative to the United Nations, Geneva, and Ambassador for Disarmament, Arms Trade Treaty Second Conference of States Parties (2016)

What does the Treaty cover?

Article 2 Scope¹³

- (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
- (h) Small arms and light weapons.

Article 3 Ammunition/munitions¹⁴

Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2(1), and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such ammunition/munitions.

Article 4 Parts and components¹⁵

Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2(1) and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such parts and components.



UN Photo: Isaac Billy

What constitutes a transfer?

'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".'¹⁶

The terms 'export', 'import', 'transit', 'trans-shipment' and 'brokering' are not defined, and therefore such definitions are up to the state to interpret. It is worth noting that, for the purposes of the treaty, 'transfer' does not include equipping deployed security personnel or armed forces, provided these forces do not retransfer viable arms, ammunition or parts and components, equip other actors with them, or are negligent in leaving viable arms, ammunition or parts and components in the field of operation.¹⁷ In this context, conventional arms, ammunition and parts and components must remain under the ownership and control of a state's forces.¹⁸

The ATT does not infringe upon sovereign arms control legislation

The Preamble to the ATT clearly states that the scope of the treaty does not infringe upon the sovereign right of a State Party to establish arms control legislation within its jurisdiction.¹⁹ The state retains the exclusive right to legislate civilian ownership, possession and use of arms in accordance with its own legal or constitutional system.²⁰ The arms trade is legitimate and necessary to secure the political, security, economic and commercial interests of states.²¹ Therefore, States Parties retain the right under the treaty to decide which conventional arms are suitable for and appropriate to their security-sector personnel and armed forces in the performance of their duties, and to manufacture and trade in this equipment responsibly.²²

Implementation of the ATT should not be cited as superseding existing agreements in defence cooperation between States Parties.²³ The ATT should not be incompatible with existing or future international agreements, provided that the obligations established in these agreements are consistent with the treaty's purpose of contributing to international and regional peace, security and stability, and of reducing human suffering by promoting responsible trade.²⁴

THE ATT IS NOT A DISARMAMENT TREATY

The purpose of the ATT is to establish the highest possible standards for secure transfers of conventional arms. The ATT promotes 'cooperation, transparency and responsible conduct by States Parties in the international arms trade, in order to build confidence among States Parties'.²⁵ The treaty seeks to regulate international trade. It is not a disarmament treaty and sets no requirements to reduce a state's current stockpile levels. It does not proscribe to States Parties, nor does it interfere in a state's sovereign right to manufacture or procure arms to equip its own security-sector personnel, armed forces and citizens, or to trade in arms responsibly.



UN Photo: Kibae Park

SECTION 2

DEFINING RESPONSIBLE TRADE



UN Photo: Sylvain Liechti

This section explores how states define responsible trade in conventional arms. At present, most governments outline what ‘irresponsible’ trade entails, leaving the definition of ‘responsible’ trade to be established by overwhelming support for a conventional Arms Trade Treaty (ATT), the object and purpose of which is responsible transfer.¹

This section also examines the risk-assessment process required under the treaty to authorise each transfer of conventional arms. It provides an accessible evaluation of the process and its intention to uphold international humanitarian law (IHL) and international human rights law (IHRL).

Risk assessment is essentially a process of due diligence. Where risk is identified, it is necessary to mitigate those risks before authorising trade in arms. This constitutes responsible action while trading in conventional weapons.

HOW DO STATES DEFINE IRRESPONSIBLE TRADE?

This subsection examines how responsible trade is established under the ATT. This is achieved by a brief overview of the historical negotiations that established the need for a conventional arms trade treaty. It demonstrates how UN Member States articulated the ATT in reference to irresponsible transfers that saw conventional arms cause so many problems for individual states and the international community. Finally, we review the responsibilities of the different jurisdictions involved in the transfer supply chain and the risk-assessment process.

On 6 December 2006 the UN General Assembly, through Resolution 61/89, unanimously recognised that the absence of common international standards for transfers of conventional arms contributed to ‘conflict, the displacement of people, crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable development’.²

Resolution 61/89 is important because almost 100 UN Member States argued for a legally binding instrument that established common international standards applicable to conventional arms.³ This constitutes a wide commitment to the concept of responsible trade as it would come to be framed through negotiating the ATT.

Before the ATT, it was said that an ‘eclectic set of national and regional control measures and a few global instruments on arms transfers exist, but the absence of a global framework regulating the international trade in all conventional arms has obscured transparency, comparability and accountability ...’.⁴

‘... With every transfer it authorizes, a government deciding on exporting weapons must realize the profound international responsibility of that decision. And, conversely, an importing government must ensure that it will use these weapons only to provide for the safety and security of its citizens and that it has the capacity to safeguard all weapons within its possession throughout their life cycle.’⁵

UNODA Occasional Papers No 23 (2013)

DEFINING RESPONSIBLE TRADE

Responsible trade, within the scope of the ATT, is established by reading the treaty as a whole. The ATT's purpose is specified in Article 1 but is broadly discerned from its title, Preamble and the negotiated intent of establishing an arms trade treaty.⁶ Under the 1969 Vienna Convention on the Law of Treaties, States Parties and Signatories are obliged to refrain from acts that would defeat the object and purpose of a treaty.⁷

Two themes from the ATT Principles repeat in Article 1 the purpose and object of the treaty and start to build a picture of what responsible trade means:

1. Building confidence among States Parties through cooperation, transparency and responsible action
2. Helping to prevent the diversion of conventional arms.

In addition to these themes, Articles 6 and 7, forming the body of the risk-assessment process, contribute two more important elements of responsible trade:

3. States need to develop their national control systems to close legislative, enforcement and technical gaps
4. States need to identify the end-user of arms transfers and assess what they are using the arms for.

The ATT institutes a framework for developing responsible trade norms. States Parties are agreeing to establish and work within common international standards for the transfer of conventional arms. The outcome of regulation is 'contributing to international and regional peace, security and stability, and reducing human suffering'.⁸ But how does regulation achieve this?

The responsibility for preventing diverted arms from reaching corrupt end-users does not fall only on the exporter. The importer and jurisdictions involved in the supply chain also have responsibilities to develop their national control systems.⁹ Each state—whether exporter, transit or transshipment or importer—ought to enable designated authorities to act effectively if those authorities deem it necessary and feasible to do so within the scope of the ATT.¹⁰ This the state should do by means of material, procedural and legislative mechanisms.

*Countries face different kinds of challenges related to arms controls in different regions of the world. We have armed conflicts, terrorist attacks and organized crime, which all use conventional arms. These are phenomena across borders. No one can deal with this alone so we need cooperation between neighbours and regions. We also need to make the global environment more safe and better regulated.*¹¹

ATT President HE Klaus Korhonen (2017)

Robust domestic control systems not only close gaps where domestic corruption and diversion occur, but also enable more effective international cooperation between states. Comprehensive national control systems generate information about transnational.

*'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',*¹²

Sharing this information contributes to national and international crime-fighting efforts and in turn reinforces domestic security. Compared to other jurisdictions involved in the transfer, it is the exporter who carries the main responsibility for doing the initial risk assessment and the mitigation of any risks identified. In its risk assessment the exporter must account for relevant factors regarding the end-user or the end-use of the arms.

This information can be obtained through obligatory reciprocal information exchange with the importer on the proposed end-use and end-user of the conventional arms.¹³ If the exporter has knowledge at the time of authorisation that there is 'overriding risk', yet is unable to mitigate this risk cooperatively with the importer, the exporter should not authorise the transfer.¹⁴

RESPONSIBILITY OF JURISDICTIONS IN TRANSFER SUPPLY CHAINS

Each state involved in the transfer supply chain has different responsibilities under the treaty.

Exporting state	Transit states	Importing states
<p>Article 6 Prohibitions¹⁵</p> <p>The exporting state must investigate if there is a prohibition involved in the transfer. The most obvious consideration is if one or more UNSC arms embargoes restrict trade with the importer or end-user.¹⁶</p> <p>Other factors to assess include knowledge at the time of authorization that the end-user is committing:</p> <ul style="list-style-type: none"> • genocide • crimes against humanity • grave breaches of the Geneva Conventions of 1949 • other war crime.¹⁷ 	<p>Article 9 Transit or trans-shipment¹⁸</p> <p>Each State Party shall adopt appropriate measures to regulate, where necessary and feasible, the transit or transshipment under its jurisdiction of conventional arms.¹⁹</p>	<p>Article 8 Import²⁰</p> <p>Each importing State Party shall ensure that appropriate and relevant information is provided, upon request, to the exporting state to assist with risk assessment under Article 7.²¹</p> <p>Such measures may include supplying end-use or end-user documentation.²²</p>
<p>Transit or transshipment states may also be required to assist in a transfer if new information becomes available that indicated that the transfer would violate Article 6 or 7.²³ This may include seeking to obtain information on the risk assessment and import licence from the exporting state.</p>		
<p>Article 7 Export and export assessment²⁴</p> <p>The exporting state must consider whether there is an overriding risk that the arms will be used in:</p> <ul style="list-style-type: none"> • serious violation of IHL • serious violation of IHRL • organised crime or terrorism • gender-based violence • undermining peace and security.²⁵ 		
<p>Article 11 Diversion²⁶</p> <p>The exporting state shall seek to prevent the diversion of the transfer of conventional arms.²⁷ Exporting states shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion.²⁸</p> <p>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.²⁹</p>	<p>Article 11 Diversion³⁰</p> <p>Transshipment states shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion.³¹</p>	<p>Article 11 Diversion³²</p> <p>Importing states shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion.³³</p>

Responsible trading in conventional arms requires that states establish the identity and intent of both the end-user of the conventional arms and the end-user. Together with Article 7 (see below), Article 6 is regarded as the 'heart' of the treaty.³⁴ To act responsibly, States Parties must prohibit transfers in certain clear circumstances—the treaty prohibits a transfer of conventional arms if a UN Security Council sanction such as an arms embargo restricts the end-user.³⁵

Prohibitions are also in place if a State Party has knowledge at the time of authorising that transfer that the end-user is committing crimes of atrocity, genocide, crimes against humanity, or certain war crimes.³⁶ If such a transfer would violate an existing international agreement, it would also be prohibited.³⁷ If information becomes available about such crimes during the transit and transshipment of arms, both the exporting state and transiting states are also obligated to reassess the transfer.³⁸

Considering existing international agreements in Article 6

The extent to which international agreements can be enforced will depend on the individual states' membership of them or not. When assessing a particular transfer, some examples that States Parties may consider, beyond the Geneva Conventions, might include:

- Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.
- UN Register of Conventional Arms.
- UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.
- The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (Firearms Protocol).
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Treaty).
- 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 (Convention on Certain Conventional Weapons)
- Convention on Cluster Munitions.³⁹

Article 6 imposes no new obligations on States Parties. Instead, it reinforces international legal obligations that already bind all UN Member States, for example as States Parties to the Geneva Conventions.⁴⁰ In the case of most states these prohibited situations are identified by the UNSC. In other cases, Article 6 requires an exchange of information about and a thorough analysis of the end-user as well as of the intended end-use.



UN Photo: Marco Dormino

THE ATT RISK ASSESSMENT: DOING DUE DILIGENCE

This subsection provides an overview of the risk assessment process, with Article 6, Prohibitions and Article 7, Export and Export Assessment forming the heart of the treaty. It then defines ‘overriding risk’ and mitigation factors and explores some of the considerations, other than the Geneva Convention, that a State Party might incorporate into its risk-assessment process. The section also reviews responsibilities of the jurisdictions involved in the transfer supply chain.

Article 7, aptly named Export and Export Assessment, works in tandem with Article 6 to build the framework of the ATT’s Risk Assessment.⁴¹ It reiterates obligations not to violate existing international law or to facilitate crimes of atrocity, and is concerned with absolute prohibitions.⁴² Article 7 requires exporting States Parties to assess whether transferring the requested arms would undermine peace and security.⁴³ Important information about the end-user includes the type and quantity of arms being transferred as well as the intended end-use. This allows the exporting state to evaluate whether this is a common weapon type and volume of transfer for the importing state. If it is not, this may raise alarms or require further investigation as to why the state seeks to acquire conventional arms dissimilar to its current stockpiles.

An exporting state should take precautions to ensure it does not transfer arms to an end-user when that end-user will undermine peace and security.⁴⁴ When states consider whether a transfer would contribute to or undermine peace and security, the ATT requires them to consider whether there is an ‘overriding risk’ that the arms could be used to commit or facilitate serious violations of IHL or IHRL. It also requires states to consider whether arms could be redirected to enable terrorism or organised crime.⁴⁵ The possibility that the arms might be used to facilitate gender-based violence must also be considered in the exporter’s risk assessment.⁴⁶ The list of risks to consider is not cumulative and even if only one ‘overriding risk’ is present, the state is required to mitigate that risk.

Establishing ‘overriding risk’

Part of the Australian Export Control Policy provides an example of the kind of consideration involved in establishing an ‘overriding risk’.⁴⁷

International obligations
Is the export destined for countries where it might be used in a manner contrary to Australia’s international obligations or commitments?
Human rights
Does the export pose a clearly identifiable risk that the goods will be used to commit or facilitate serious human rights abuses?
Regional security
Might the export contribute to instability in the region or aggravate a threat to international and regional peace and security? Or might it aggravate the situation in a region which becomes a cause of serious concern that it might be used in internal or external conflict or that it could further militarise the situation in the destination country?
National security
Might the export compromise Australia’s wider security interests, its obligations to its allies and friends and its broader international responsibilities?
Foreign policy
Might the export cause adverse reactions by third countries important to Australia, which may affect Australia’s interests—in particular, our regional relations? And might the export be used for mercenary, terrorist or other criminal activities? ⁴⁸

UN Global Compact: Establishing complicity in human rights violations

Complicity means being implicated in a human rights abuse that another company, government, individual or other group is causing. The risk of complicity in a human rights abuse may be particularly high in areas with weak governance and/or where human rights abuse is widespread. However, the risk of complicity exists in every sector and every country.⁴⁹

Complicity may affect the arms industry, and the state from which it operates. This is so because the fact that a company knows that products, operations, services or a failure to act in a certain way facilitates, legitimises, assists or encourages another party to carry out human-rights abuses establishes the company's complicity in those abuses.⁵⁰

The important consideration about complicity is that it is not merely formal accusations of violations of international law. Investigation by and the advocacy of the media, NGOs and civil society organisations can have an impact on the reputation of both states and the private arms industry. A standardised risk assessment process creates beneficial clarity for both parties.⁵¹ If states have information that there is an 'overriding risk' that peace and security will be adversely affected by a particular transfer, then it is incumbent on the supplying state to mitigate such a risk.⁵² If the risk can be reduced to a threshold below 'overriding risk', then the transfer may be authorised. If, after attempts are made to mitigate the risk, an 'overriding risk' remains, the transfer should be denied.⁵³ This mitigation of risk becomes part of the overall picture of responsible trade.

There is no supra-national body that monitors adherence to the ATT. Therefore, there is no reviewing body that says what correct or incorrect behaviour is. The treaty was negotiated by UN Member States and its infrastructure will continue to be developed through negotiations by States Parties. It is therefore incumbent on States Parties to interpret the treaty in good faith as per the Vienna Convention on the Laws of Treaties.⁵⁴ That being said, the treaty's text is interpreted by each State Party against its own legislative and constitutional system.⁵⁵

There is no definitions section in the ATT. Consequently, there may be further discussion to establish international norms regarding responsible trade in conventional arms and the practicalities of conducting thorough risk assessments. This is evident from Articles 6 and 7 in the list of priorities for the ATT Working Group on Effective Implementation.⁵⁶ Only as an ATT State Party can a government influence the future direction of those trade norms.

Identified risk factors do not automatically prohibit an exporting state from transferring arms, provided there is thorough investigation and an assurance that such arms are not likely to be used in any violations.⁵⁷ For example, an exporter may be concerned that certain conventional arms have been used by a state (in a lawful conflict or in another lawful use of force situation) in a manner that has attracted allegations of breaches of IHL or IHRL. Yet this may not prevent the transfer of another type of conventional arm that has a different end-use or the same conventional arm to a different end-user within the state, where unlawful use is unlikely. Whereas there may be no overriding risk with differentiated exports to the same state, there remains, of course, scope to promote continual improvements in compliance with IHL and IHRL.

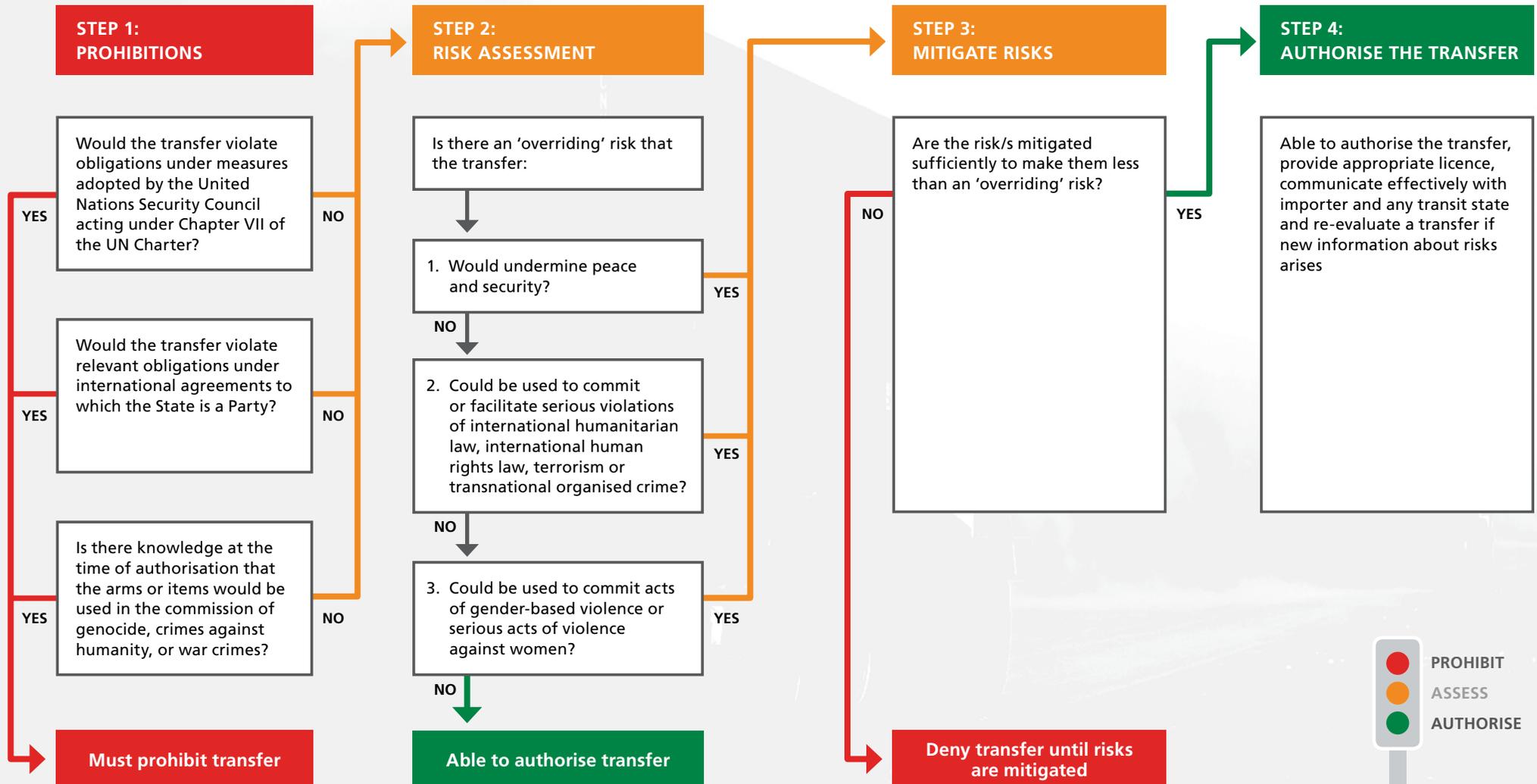
The ATT aims to promote peace and security by standardising the trade practices that most states are already, or should already be, engaged in. One method of restricting non-state actors' access to the most common tools used in crime and terrorism is to decline transfers when there is an overriding risk that the end-user is retransferring those arms to non-state actors.

ATT RISK MITIGATION GUIDANCE

The ATT provides broad guidance on risk mitigation. The negotiations about and the structure of mitigation are developed between those States Parties involved in transfer supply chains.

Exporter	Transit or transshipment	Importer
<p>Article 11 (2)⁵⁸</p> <ul style="list-style-type: none"> Confidence-building measures; jointly developed and agreed programmes by the exporting and importing states; examining parties involved in the export; requiring additional documentation, certificates, assurances; not authorising the export or other appropriate measures. 		<p>Article 11 (2)⁵⁹</p> <ul style="list-style-type: none"> Confidence-building measures; jointly developed and agreed programmes by the exporting and importing states; examining parties involved in the export; requiring additional documentation, certificates, assurances; not authorising the export or other appropriate measures.
		<p>Article 8 (2)⁶⁰</p> <p>... shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction ...'</p>
<p>Article 11 (4)⁶¹</p> <p>... examining diverted shipments ... and taking follow-up measures through investigation and law enforcement ...'</p>	<p>Article 11 (4)⁶²</p> <p>... examining diverted shipments ... and taking follow-up measures through investigation and law enforcement ...'</p>	<p>Article 11 (4)⁶³</p> <p>... examining diverted shipments ... and taking follow-up measures through investigation and law enforcement ...'</p>
<p>Article 5 (5)⁶⁴</p> <p>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 ...'</p> <p><i>And ...</i></p> <p>Article 14</p> <p>'Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.'⁶⁵</p>	<p>Article 5 (5)⁶⁶</p> <p>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 ...'</p> <p><i>And ...</i></p> <p>Article 14</p> <p>'Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.'⁶⁷</p>	<p>Article 5 (5)⁶⁸</p> <p>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 ...'</p> <p><i>And ...</i></p> <p>Article 14</p> <p>'Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.'⁶⁹</p>

RESPONSIBLE TRADE: A STEP-BY-STEP CHECKLIST⁷⁰



The risk-assessment process is context-specific and relies on the behaviour of each State Party. Each actor in the supply chain in a conventional arms transfer will have differing obligations.⁷¹ The context of the transfer and the number and type of jurisdictions involved in a supply chain will activate different treaty obligations for different parties.⁷² Responsible action by States Parties includes making sure that transferred arms move from the supplier to the secure custody of the receiving client without diversion to the illicit market along the way.⁷³ This is in the interests of those transferring and receiving arms because neither party wants to see its product lost or stolen. It is also in the interests of the transiting state, the illicit use of diverted arms possibly having a negative impact on it.⁷⁴

The risk-assessment process will reinforce international law, human security and regional stability. For example, in Côte d'Ivoire arms and ammunition entered the country from neighbouring countries in violation of an arms embargo. In addition, weapons that fuel armed violence and crime were taken from military and police stockpiles and also from local manufacturers.⁷⁵ The ATT contributes to regional security by restricting transfers of arms to territories where crimes of atrocity are being perpetrated. Subsequently, the ATT can also help to protect and reduce the number of internally displaced persons and refugees by restricting arms flows to countries where violence is causing population displacement.

Summary

In summary, 'irresponsible' trade occurs when an arms transfer is authorised when the exporter has knowledge at the time that the end-user is committing atrocities and grave breaches of the Geneva Conventions. In addition, the exporter has a suspicion that there is an overriding risk that the weapons would be used in violation of IHRL or IHL, or to facilitate terrorist activities and/or gender-based violence (see *Section 4*).

Conversely, 'responsible' trade occurs when a state conducts due diligence by ensuring that it does not authorise prohibited transfers, conducts thorough risk assessments to establish that overriding risks are not present, and mitigates any existing overriding risks before authorising a transfer.



UN Photo: Unknown

SECTION 3

THE ARMS TRADE TREATY AND TRANSPARENCY



The Arms Trade Treaty (ATT) aims to promote cooperation and confidence-building by creating more transparency around conventional arms trade practices among States Parties.¹

Such transparency in the context of the ATT involves the State Party completing and submitting an initial baseline report on its current system, plus annual reports to the ATT Secretariat that list imports and exports of conventional arms.² The treaty also encourages voluntary information exchange regarding best practices and lessons learned between States Parties.³

This section begins by examining the reporting obligations established by the ATT. It provides a description of the obligatory initial report and subsequent annual reports. It then explores the benefits to States Parties of information exchange. In so doing, this section shows how the ATT creates a more transparent arms trade, and why that matters.

MAKING THE TRADE IN CONVENTIONAL ARMS MORE TRANSPARENT

The initial report

The ATT obliges States Parties to submit an initial report within the first 12 months of the treaty's entering into force for that state.⁴ The initial report should include measures undertaken to implement the treaty. These may include amendments to national legislation, the development of national control lists and other regulatory and administrative measures.⁵ In addition, any new measures undertaken should be reported to the Secretariat when appropriate.⁶

States Parties depositing their ratification, acceptance, approval or accession after the treaty has entered into force on 24 December 2014 wait 90 days until the treaty becomes active.⁷ From that date, the State Party has one calendar year within which to submit its initial report to the ATT Secretariat.⁸

THE INITIAL REPORT IS VALUABLE FOR THREE REASONS:

(1) The initial report creates a picture of the arms trade infrastructure

Obligatory initial reporting monitors a state's commitment to meeting its treaty obligations.⁹ Initial reporting would also provide lessons learned on which implementation strategies worked, which did not, and what challenges were foreseeable for future ratifications or accessions.¹⁰ Having a state compile this reported information gives the Secretariat an opportunity to develop implementation guidance for ratifying or acceding states.¹¹ Initial reporting also provides an overview of how States Parties interpret and implement the ATT.¹² In addition, ATT reporting helps the international community to build a stronger picture of the current arms trade infrastructure.

THE ARMS TRADE TREATY AND TRANSPARENCY

Although the ATT Secretariat has not provided an analysis of reports received, those made public already allow civil society and others to deduce information about national control systems.¹³ For example, the ATT Baseline Assessment Project (ATT-BAP) has used the data from 46 of the first publicly available initial reports to extract information concerning each treaty provision,¹⁴ while national reports already contain links to 36 publicly available national control lists. They reveal that 45 States Parties prohibit arms transfers in all circumstances specified in ATT Article 6.¹⁵ Furthermore, the reports reveal that many states do not undertake national assessments because they do not export weapons¹⁶ and the reports describe, for example, how some states define transit or transshipment in their legislation.¹⁷ All this begins to create a more detailed picture of current arms control systems.

As more States Parties submit initial reports, all stakeholders gain access to more and more comparative data. States can also gauge their implementation progress in comparison with that of other states. This will rapidly build a more accurate picture of the strengths, weaknesses and challenges of the arms trade.

(2) The initial report serves as a diagnostic tool

Completing an initial report benefits a State Party in that it provides a diagnostic tool for its national control systems prior to ratifying the treaty.¹⁸ For example, Fiji's ATT-BAP identified legislative gaps on brokering legislation,¹⁹ a technical gap (decentralised manual record-keeping) and the need for a national control list.²⁰

(3) The initial report helps identify cooperation and assistance opportunities

The initial reports identify good practices and can highlight States Parties that require or could provide implementation assistance.²¹ This assistance will help to build the capacity to comply with treaty provisions or to improve control systems.

Samoa provides an example of identifying assistance opportunities. It had previously expressed capacity challenges regarding the collection of information for its ATT reports. Through the ATT Voluntary Trust Fund, Samoa and the Centre for Armed Violence Reduction (CAVR) collaborated to submit an application to develop Samoa's electronic database system for record-keeping and reporting.²²

Annual reports

States Parties are then obliged to submit annual reports to the Secretariat by 31 May of each year.²³ The annual reports should list authorised or actual transfers of conventional arms in the previous calendar year.²⁴ Although States Parties are encouraged to include as much information as possible, 'reports may exclude commercially sensitive or national security information'.²⁵

The 2016 Second Conference of States Parties to the ATT recommended that the first annual report of an adopting State should cover the first full calendar year after entry into force of the treaty for that State Party.²⁶ This report should be submitted no later than 31 May of the following year.²⁷

*State Parties must agree on how to balance the urgent need for full, transparent reporting with the necessity of making reporting tasks as smooth and convenient as possible; Denmark recognizes the differences of opinions about public reporting during the negotiating phase of the Treaty, reflected in the treaty text. However, it is important that we work towards the highest possible degree of transparency in reporting.*²⁸

HE Susanne Rumohr Hækkerup, ATT First Conference of State Parties Statement (Monday, 24 August 2015)

ATT REPORTING WILL HELP TO IDENTIFY TRANSFER TRENDS AND POINTS OF WEAKNESS

ATT annual reports on arms transfers help to identify trends, strengths and points of weakness. These reports allow all stakeholders to examine the practices of those involved in shipping conventional weapons. They also enable the community to gauge the amount and type of arms being transferred by whom, and to whom.²⁹ Used as an early-warning signal for potential armed violence, annual reports can reveal arms circulation trends by region or by end-user,³⁰ and in this way they help States Parties to strengthen their conflict-prevention efforts.³¹

Standardised reporting templates are available, and these provide an easy analytical tool for States Parties to gauge whether or not a particular transfer requires a risk assessment.³² For example, annual reports might show that a state is requesting arms incongruent with its existing weapon systems. While this in itself might not prevent a transfer, it could spur the exporting or transiting state to investigate further.

ATT reporting will also flag gaps where, for example, State A declares a certain quantity of arms or ammunition transferred to State B, while State B reports that it received a lesser quantity.³³ Such a discrepancy might be explained by differences in record-keeping and reporting methods—or it could indicate that the missing arms were not transferred, suggesting instead a point of diversion. Such discrepancies do not prohibit future transfers, nor do they identify illegal activity on their own. Instead, shared knowledge can prompt further analysis and understanding of reported transfers.



UN Photo: Stuart Price

ATT REPORTING WILL ENHANCE CROSS-BORDER COOPERATION TO COMBAT DIVERSION

The ATT encourages States Parties to provide voluntary information on measures they take to deal with the diversion of conventional arms.³⁴ Examples of relevant measures 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.³⁵

By providing this information, States Parties help to develop bilateral, regional and global strategies for combatting transnational diversions.³⁶ Substantive dialogue between 'export and import countries will help reach common understanding on ways and means to prevent and combat diversion of conventional arms to the illicit market'.³⁷ This will better enable a State Party to adapt its national control systems and risk analysis so as to address the challenges of diversion. Robust national control systems provide a stronger basis from which international cooperation can develop targeted mitigation measures for combating diversion.³⁸

*'The Treaty will fill an important gap with regard to transparency and code of conduct concerning global arms trade, as it defines the highest common international standards governing conventional arms exports. It is also important to note that the Treaty aims at placing transparency as well as international law and human rights at the focal point of arms transfers The whole region [neighbouring Turkey] is thus suffering from the brunt of terrorism as well as various forms of internal conflicts which take toll on humanitarian, economic and social domains on a grand scale. Consequently, Turkey is among those countries that have been most affected by uncontrolled transfers of arms and is a country best placed to appreciate what the Arms Trade Treaty has to offer in terms of transparency and curbing illicit transfers of arms.'*³⁹

HE Basat Ozturk, ATT First Conference of State Parties Statement
(Tuesday, 25 August 2015)



UN Photo: John Isaac

ATT REPORTING WILL MONITOR IMPLEMENTATION AND COMPLIANCE OF ARMS TRANSFERS

Annual reporting is a precondition of monitoring the implementation of and compliance with the treaty.⁴⁰ Open reporting allows for democratic oversight to gauge each government's adherence to its ATT obligations. Public scrutiny of transfer behaviour will involve academics, journalists, NGOs, think tanks and civil society organisations.⁴¹ This constitutes scrutiny not only of transfer authorisations and risk-assessment processes, but also of all aspects of treaty implementation.⁴²

All nations have national security concerns. The ATT was negotiated to take this into account. Hence, there is nothing in the treaty that affects military secrecy.⁴³ States Parties can choose to report publicly, to keep their reporting private or to make it available only to other States Parties. In recognition of security sensitivities, states also have the option to report by value or by volume.⁴⁴ It is worth noting that consumables such as fuel are not included in the scope of the treaty.⁴⁵

*'Costa Rica will continue to stress that the Arms Trade Treaty must be faithful to the principles that inspired it as well as live up to the challenges ahead. It is not sufficient to express shock at the bloodshed and devastation that we see every day on the streets of Central America and the Caribbean, or in Darfur, Libya, South Sudan, Yemen, Syria and other countries in Africa and the Middle East. Rather we must control more effectively the production and trade of weapons, [...] Without such transparency this treaty will quickly lose its "raison d'être". Enough of excuses and ambiguities.'*⁴⁶

HE Manuel González Sanz,
ATT First Conference of State Parties Statement
(24 August 2015)

Benefits of information exchange

Under the ATT, States Parties can cooperate in information sharing in compliance with their national law and international laws, but also consistent with their respective security interests.⁴⁷ Information exchange helps states to identify 'matters of mutual interest regarding the implementation and application' of the treaty.⁴⁸ While initial reports and annual reporting form a mandatory requirement under the ATT, there exist numerous opportunities for voluntary information exchange between all States Parties,⁴⁹ some of which are bilateral opportunities.⁵⁰

National security is supported by developing institutional transparency—which includes designating national points of contact on arms transfers, improving national control systems and developing processes for monitoring and evaluation. Transparency under the ATT can also reduce the risk of misunderstanding and miscalculation through voluntary information exchange. One benefit of transparency is to be able to communicate mutual interests, while another is to have access to a forum in which information on exports and imports can reduce scepticism about a state's intent and capability.⁵¹

States can voluntarily communicate through their national point of contact established under the ATT or through their respective national transfer control authorities. Transparent reporting under the treaty provides accurate, up to date information on the quantity and condition of arms transferred, their destination and end-use or end-user, while building trust and avoiding misunderstandings between States Parties.⁵²

Summary

As indicated in this section, transparency is promoted through the ATT by initial and annual reporting and voluntary information exchange.

The ATT acknowledges that some information requires secrecy in consideration of national security. Therefore, the options exist for each State Party to exclude information in their reporting, or to choose to have it kept private by the Secretariat, because of security concerns.

The initial reports should include measures undertaken to implement the treaty, whereas the annual reports should report on actual transfers.

Transparency, however, offers States Parties the opportunity to open channels of communication at both the bilateral and the multilateral level in order to identify issues of mutual interest and to collaborate in strengthening trade standards.



UN Photo: Eskinder Debebe

SECTION 4

THE ARMS TRADE TREATY, PEACE AND SECURITY



SECTION 4

THE ARMS TRADE TREATY, PEACE AND SECURITY

Irresponsible transfers and illicit diversions of weapons and ammunition can pose serious threats to public safety, peace and sustainable development.¹ As armed violence moves increasingly from conventional inter-state wars to internal asymmetrical conflicts,² small arms and light weapons are used to force even larger numbers of people, or whole communities, from their homes.³ Poorly regulated and readily available light-weight firearms make possible the recruitment of child soldiers.⁴ Outside conflict zones, armed violence is also used to pursue individual and group grievances, political goals and profit.⁵ In 2016, 77 states recorded an increased impact of terrorism.⁶ Where law and order fall away, the ready availability of firearms can exacerbate sexual and gender-based violence.⁷

As outlined in *Section 2*, irresponsible arms transfers and diversions can facilitate the accumulation and unregulated circulation of arms, which has an impact on the lives and livelihoods of whole communities or even nations. The proliferation of illicit weapons commonly diminishes security and stability at the state, regional and international levels.

There is no single definition of security that encompasses human, national and regional security. But they are not mutually exclusive, as violence in one state can affect neighbouring countries or entire regions. Security is important in both conflict and peace. It influences all aspects of daily life, affecting health delivery, public safety, the economy and school attendance.⁸ Violence and fragility impede development and were the largest obstacles for many states attempting to reach Millennium Development Goals⁹ (see *Section 6*).

For the security sector there is also no model for maintaining security.¹⁰ But whereas each state establishes its sector differently, there are nevertheless some commonalities. According to the UN, these commonalities include all the 'structures, institutions and personnel responsible for the management, provision and oversight of security'.¹¹ They include, but are not limited to, defence, correctional services, customs and border control, police, law-enforcers and the judicial sector.¹² Every aspect of this security sector plays a role in the development and implementation of the ATT. In turn, the treaty helps the security sector with its job of creating safer, more secure environments.

To explore the broader benefits of the ATT to overall security, this section breaks the topic into three parts: human security, national security and regional security. It begins by exploring the importance of engaging with human security and how the ATT contributes to this. By way of example, it then discusses the contribution of the ATT to preventing crimes of atrocity and gender-based violence, and to reducing the drivers of refugee flows. Finally, it looks at how the ATT strengthens international humanitarian law (IHL).

The section then moves from a focus on human security to the benefits of the ATT to states. It examines the broader benefits to national security and national interests, counter-terrorism and, finally, regional security.

THE BROADER BENEFITS: HUMAN SECURITY

Human security is predicated on an essential human desire for freedom from fear and want, and for a life with dignity.¹³

The UN's conception of human security is to provide the best conditions for human beings to realise their potential.¹⁴

This concept was developed in response to new, interrelated and complex security threats that are linked to other aspects of daily life.¹⁵

The concept is multidimensional and context-specific. It broadly incorporates threats to security that include food security, water scarcity and the effects of climate change.¹⁶

Human security: How it links to the ATT?

In the context of this section—how the ATT can strengthen human security—the focus is on freedom from fear, from the threat of armed violence or from the threat of physical harm or death from the misuse of small arms. At the state level, armed violence has adverse effects on good governance, law and order, access to education, healthcare, justice and other civil rights.¹⁷ This is where the ATT, human security and development intersect.

'Human security, in its broadest sense, embraces far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfil his or her potential. Every step in this direction is also a step towards reducing poverty, achieving economic growth and preventing conflict ... these are the interrelated building blocks of human—and therefore national—security.'¹⁸

UN Secretary-General Kofi Annan (2000)

The benefit of engaging with a human security approach is that it decompartmentalises issues that are interlinked in complex ways. For example, human security addresses the need for good governance, which in part is the provision of robust social, political and legal institutions.¹⁹ The ATT deals with the impacts of irresponsible and illicit transfers of conventional arms which can put socio-political structures under stress and create the conditions for violations of human rights and IHL.²⁰

Good governance requires security to be provided in order to enable citizens to live productive human lifestyles free from fear of armed violence, and the ATT is an international framework that contributes to that security.



UN Photo: Mark Garten

How do human rights protections differ from human security?

Although international human rights law (IHRL) is discussed later in this brief, it is useful to acknowledge the relationship between the ATT and human security in order to consider how human rights protections differ. Human security is created, in part, by such assets as human rights and human security are indivisible.²¹ It is possible to see IHRL as a mechanism for balancing social and national security interests—all actions that are both necessary and proportionate—and rights fundamental to achieving necessary freedoms as conceived in human security. Human rights law is a mechanism that, in part, contributes to overall human security.

The accumulation and circulation of illicit arms and ammunition can prolong armed conflict and continue to threaten civilians long into the post-conflict period.²² Illicit weapons can also foster and extend conditions that give rise to starvation and disease.²³ They continue to break down social and political structures, weaken economies and deny citizens access to livelihoods, education and healthcare.²⁴ The ready availability of illicit weapons can raise levels of armed violence, which in turn hinders the efforts of states or UN Peacekeeping Missions aimed at reintegration, reconstruction and reconciliation.²⁵

Concerns over the threats that arms accumulation and illicit circulation pose to peace and security are repeatedly expressed. These often take the form of UN Security Council Resolutions regarding illicit arms and ammunition transfers, their uncontrolled accumulation and end-user misuse of conventional arms.²⁶ They can also express concern at the security situation in a region such as sub-Saharan Africa, where illicit arms have intensified and prolonged armed conflicts.²⁷ Some illicit conventional arms pose a serious international threat to civilian aviation: for example, the loss of military technology such as Man-Portable Air Defence Systems (MANPADS).²⁸

The link between human security and illicit arms: Non-conflict zones

Type of human security ²⁹	Link to illicit arms
Economic security	<ul style="list-style-type: none"> • Armed violence can cause the flight of capital. • Pervasive armed violence demonstrably dissuades international investment. • Accumulations of illicit arms can contribute to the disruption or closure of industries.
Food security	<ul style="list-style-type: none"> • Armed violence can inhibit access to farming, markets and other necessary infrastructure. • Armed violence can prevent humanitarian relief from reaching targeted destinations.
Political security	<ul style="list-style-type: none"> • Politically motivated violence is enhanced when arms are available. Armed violence can undermine democratic practices by disrupting and preventing elections. • Insecure arms circulation and accumulation contribute to <i>coups d'état</i> and other political insecurity.
Health security	<ul style="list-style-type: none"> • Pervasive armed violence can prolong conditions that give rise to disease and epidemics. • Armed violence can prevent people from accessing healthcare centres. • Arms-related injuries can overburden healthcare infrastructure.
Personal security	<ul style="list-style-type: none"> • In many regions, the pervasiveness of arms has corresponded with the increase in interpersonal armed violence and homicide. • Arms contributing to a decrease in law and order can facilitate a sense of impunity that contributes to sexual violence.
Community security	<ul style="list-style-type: none"> • Armed gangs threaten public safety. • Arms contribute to inciting tribal or gang-related violence.

In a non-conflict or post-conflict setting, threats to civilians from armed violence are often indirect. For instance, armed actors can inhibit access to livelihoods, healthcare, education and electoral choice.³⁰ Unregulated arms accumulation and circulation can inhibit law and order or, in post-conflict contexts, can obstruct efforts to disarm, demobilise and reintegrate armed actors.³¹ Post-conflict environments can also attract a proliferation of small arms intended for self-protection which, when misused, often complicate and undermine international peacebuilding efforts.³² Politically motivated violence in civil conflicts frequently gives way to criminally motivated armed violence,³³ damaging state legitimacy and the efficacy of political institutions as a result.³⁴

The ATT contributes to human security by keeping arms from end-users who might misuse them to commit violations of international law or war crimes which affect citizens' freedom from fear—a necessary condition of human security.³⁵ Articles 6 and 7 of the ATT establish the framework for a risk-assessment process (see *Section 2*) through which States Parties must consider the possible adverse effects of a particular arms transfer on peace and security.

Other important obligations established under the treaty oblige States Parties to adopt measures to prevent the diversion of arms and ammunition.³⁶ Each state is to 'take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty'.³⁷ This obliges states to 'maintain a national control system, including a national control list',³⁸ put in place adequate stockpile management, and have effective export, import and border controls.³⁹ Strong international efforts to regulate arms trade begin with comprehensive systems that include legislation, regulations and procedures at the domestic level.



UN Photo: Sylvain Liechti

THE ARMS TRADE TREATY, PEACE AND SECURITY

NATIONAL SECURITY AND INTERNATIONAL COOPERATION IN ACTION

AFP and US agencies stop shipment of 5000 guns organised by bikies for Australia.

The largest-ever shipment of guns organised by bikies and bound for Australia has been stopped in the US and seized by police ...

The almost 5000-strong shipment of handguns and automatic rifles was nabbed late last year before reaching Australian shores as part of a joint investigation between federal, state and international policing agencies ...

The haul included handgun frames that had been illegally smuggled into the US and 136 AR-15 assault rifles, and receivers, that had not been stamped ...

Officers from the Australian Federal Police's National Anti-Gang Squad, the United States Bureau of Alcohol Tobacco and Firearms and the United States Department of Homeland Security Investigations as well as local state police were involved in the sting ...

Lanai Scarr, News Corp Australia Network
(16 March 2017)⁴⁰

The ATT requires each State Party to institute 'appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment (of arms) under its jurisdiction'⁴¹ and to adopt measures to regulate brokering within its jurisdiction of arms covered under the treaty.⁴² National controls may also require import systems such as providing 'end use or end user documentation'.⁴³ Information exchange enables States Parties to coordinate the upholding of international law and to prevent the arms trade from being subject to corrupt practices.⁴⁴

The aims of the ATT are interlinked and mutually reinforce human security.⁴⁵ The treaty contributes to peace, stability and security by requiring states to cooperate, and where necessary to assist other States Parties and signatories, to enable and reinforce this responsible regulatory framework. This can reduce the scope for corruption, arms accumulation and illicit circulation of weapons, which contribute to human suffering.⁴⁶

The treaty has a part to play in ensuring that available arms remain in the possession of responsible end-users and to diminish the supply of arms to criminal organisations that threaten public health and safety.⁴⁷ Additional benefits include cutting arms and ammunition supplies to remote areas of, for example, Papua New Guinea, where the deadly nature of traditional inter-group conflict has been heightened by the arrival of more lethal weapons.⁴⁸

*'In a world awash with small arms, a quarter of the estimated \$4 billion annual global gun trade is believed to be illicit. Small arms are easy to buy, easy to use, easy to transport and easy to conceal. Their continued proliferation exacerbates conflict, sparks refugee flows, undermines the rule of law and spawns a culture of violence and impunity.'*⁴⁹

Kofi Annan, former UN Secretary-General (2006)

Human suffering, refugees and internally displaced persons

In many regions of the world arms accumulation and misuse add to human suffering by forcing people from their homes and livelihoods. In 2016, refugee flows were at a 60-year high, having doubled from 2007 to 2015.⁵⁰ There are approximately 60 million refugees worldwide, a significant number of whom were displaced as a result of armed violence.⁵¹ Roughly 60% of the population of Syria has been displaced, whereas some sub-Saharan countries affected by armed violence and conflict have seen 20% of their citizens become refugees.⁵²

Unregulated arms flows, violence and conflict often cause displacement. This adds to human suffering generally, but it also has massive impacts transregionally. North African and Middle Eastern armed violence and conflicts have triggered the so-called 'European refugee crisis'.⁵³ Another consideration is the economic cost imposed on countries that process applications for refugee status and grant asylum to refugees. Even states far from the conflict feel bound to contribute to the international community's investment in protecting such people.

The ATT helps to stem the flow of arms that cause displacement. People become displaced by armed violence because they are unsafe in their homes or because their livelihoods, food sources and essential civilian infrastructure have been destroyed. Civilians may be threatened either directly or unintentionally by armed violence. The ATT's risk assessment requires the potential impact of any arms and ammunition transfer on civilians and infrastructure to be considered.⁵⁴ Any risk that transferred arms might target civilians or that they could be used to undermine peace and security would need to be mitigated in order to become less than an 'overriding risk' before any arms transfer is allowed to proceed.

THE ATT AND ENHANCING ATROCITY PREVENTION⁽ⁱ⁾

Each state has a responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity.⁵⁵ Anyone accumulating and circulating illicit conventional arms is capable of challenging a state's security sector and the ability of armed forces and law-enforcement personnel to provide effective domestic security. The presence of illicit arms can also challenge a state's troops as part of international peacekeeping operations.

Secure and responsibly traded and used conventional arms are not the issue here. Globally, armed violence accounts for '90 per cent of all deaths during armed conflict and 60 per cent of all violent deaths outside armed conflict'.⁵⁶ Finance and arms are necessary to enable perpetrators to commit crimes of atrocity.⁵⁷ Being vigilant against such crimes requires noting early-warning factors that often become apparent in the context of conflict.⁵⁸ Therefore, identifying unusually high accumulations and circulation of illicit arms early is beneficial to preventing atrocities.⁵⁹

(i) Laura Spano 'Linking the Arms Trade to Atrocity Prevention: How the ATT and the Responsibility to Protect Can Work Together' (In Press).



Snapshot: The UN's Framework of Analysis for Atrocity Crimes: Linking arms and crimes of atrocity

Risk factors for crimes of atrocity	Indicator(s) involving small arms and light weapons
Risk factor 1 Situation of armed conflict or other forms of instability	1.2 Security crisis caused by, among other factors, defection from peace agreements, armed conflict in neighbouring countries, threat of external interventions or acts of terrorism.
Risk factor 3 Weakness of state structures	3.1 National legal framework that does not offer ample and effective protection, including through ratification and domestication of relevant international human rights and humanitarian law treaties. 3.7 Lack of awareness of and training in international human rights and humanitarian law among military forces, irregular forces and non-state armed groups or other relevant actors. 3.8 Lack of capacity to ensure that means and methods of warfare comply with IHL standards.
Risk factor 4 Motives or incentives	4.6 Real or perceived membership of or support for armed opposition groups by protected groups, populations or individuals.
Risk factor 5 Capacity to commit atrocity crimes	5.1 Availability of personnel and of arms and ammunition, or of the financial resources, public or private, for their procurement. 5.2 Capacity to transport and deploy personnel and to transport and distribute arms and ammunition.
Risk factor 7 Enabling circumstance or preparatory action	7.4 Acquisition of large quantities of arms and ammunition or other objects that could be used to inflict harm.
Risk factor 8 Triggering factors	8.2 Spill-over of armed conflict or serious tensions in neighbouring countries.
Risk factor 11 (crimes against humanity) —Signs of a widespread or systematic attack against any civilian population	11.3 Increase in the level of organisation or coordination of violent acts and weapons used against a civilian population.
Risk factor 12 (crimes against humanity) —Signs of a plan or policy to attack any civilian population	12.6 Access to and use of weaponry or other instruments not easily obtained inside the country. 12.7 Preparation or mobilisation of armed forces <i>en masse</i> against civilian populations.
Risk factor 13 (war crimes)—Serious threat to those protected under IHL	13.10 Evidence of conduct related to the planning, development, production, storage, acquisition, availability or threat of use of weapons, projectiles, materials or substances which are by their nature indiscriminate or cause superfluous injury or unnecessary suffering to people, or that can cause widespread, long-term or severe damage to the natural environment.

Relevant risk factors selected from UN Framework of Analysis for Atrocity Crimes⁶⁰

The ATT's risk-assessment process for states considers early-warning factors of crimes of atrocity such as arms accumulations, insecure stockpiles and arms diversions. A risk assessment is mandatory for States Parties before they authorise the transfer of conventional arms, ammunition, parts and components covered under the treaty.⁶¹ The ATT also requires importing⁶² and transit or transshipment⁶³ states to implement procedures to prevent the diversion of arms.⁶⁴ This includes adequate record-keeping and reporting.⁶⁵ Such an approach is important in order to close any gaps in the transfer system where diversion might occur.

The treaty requires that each exporter must perform a risk assessment to check that a transfer of any of the listed items will not contribute to serious violations of international law.⁶⁶ The ATT provides an important legal framework which identifies risk criteria and standardises diverse trade practices and standards.⁶⁷ Increased adoption of the ATT normalises risk assessments as standard practice in the conventional arms and ammunition trade.

States also have pre-existing obligations as UN members to prohibit transfers where a UNSC arms embargo is in place.⁶⁸ The ATT reinforces the implementation of these embargoes.⁶⁹ It is a platform where States Parties can discuss what constitutes effective best practice during export, transit and import for the highest possible common standards in conventional arms transfers. The aim is to prevent crimes of atrocity to avoid early-warning conditions being undermined.

The ATT will establish guiding norms for reciprocal expectations and predictability.⁷⁰ Committing to the highest possible trade standards can help prevent conventional arms being diverted or illicitly accumulated and circulated.⁷¹ As a regulatory framework, the treaty will reduce the quantity of arms being diverted to the illicit market or for the purposes of misuse by end-users who might commission or commit crimes of atrocity. By denying them access to quality high-powered arms, the framework seeks to diminish the capacity and lethality of those committing such crimes.



UN Photo: Jean-Marc Ferré

THE ATT AND COMBATING GENDER-BASED VIOLENCE

The link between conventional arms accumulation, illicit circulation and gender-based violence as a tactic in conflict remains a major problem in fragile and conflict-affected countries.⁷² Most contemporary armed conflicts involve mobile, lightly armed forces that avoid major military engagements.⁷³ These 'low-intensity' conflicts frequently target civilians as the breakdown of law and order increases the impunity of the perpetrators.⁷⁴ Young males usually bear the direct effects of gender-based violence in the form of death in battle and targeted massacres.⁷⁵ Women and children often bear the indirect effects of conflict and armed violence, accounting for 80% of internally displaced persons and refugees.⁷⁶

Armed conflict and pervasive armed violence facilitate gender-based violence of a specifically sexual nature that is often directed at women. This violence may include rape, sexual humiliation, forced prostitution, forced sterilisation, forced impregnation, human trafficking and sexual slavery.⁷⁷ Armed violence can also create environments of lawlessness that encourage harmful customary or traditional practices such as female genital mutilation, forced marriages, forced abortions or 'honour crimes'.⁷⁸ The indirect effects of gender-based violence that are sometimes less obvious include targeting defenceless people, usually women and the elderly, by destroying or stealing property—including property used for subsistence and livelihood.⁷⁹

*'Ending sexual violence in conflict is central to peace building, conflict prevention and reconciliation.'*⁸⁰

HE Matthew Rycroft,
UK Permanent Representative to the United Nations
(15 May 2017)

Gender-based violence in conflict and post-conflict

Threatening and perpetrating sexual and physical harm to women and children can be considered a systematic 'weapon of war'.⁸¹ For example, in one atrocity alone 250,000 rapes took place, later to be interpreted as a tool of genocide.⁸² In 2000 the UN Security Council Resolution 1325 on Women, Peace and Security stated that in 'order to respond to the specific needs of men and women in conflict and post-conflict situations', gender perspectives should be incorporated into understanding the different impacts of armed violence on men and women.⁸³ Resolution 1325 acknowledged for the first time the particular, disproportionate and unique impact of conflict on women.⁸⁴

In the context of armed conflict, systemic sexual violence is recognised as an international crime.⁸⁵ In this regard, various international courts and tribunals have defined gender-based violence of a specifically sexual nature as a crime against humanity,⁸⁶ and precedents set in international courts and tribunals have expanded the definitions of rape and sexual assault so that in particular contexts they may be considered acts of genocide.⁸⁷

Courts and tribunals of note include:

- International Criminal Tribunal for the former Yugoslavia (1993)—established the systematic tactic of rape in conflict, alongside torture, as a crime against humanity.⁸⁸
- International Criminal Tribunal for Rwanda (1994)—established rape with intent to destroy an ethnic group as a crime of genocide.⁸⁹
- International Criminal Court (in force since July 2002) established systematic rape, sexual slavery, forced prostitution, forced pregnancy and forced sterilisation as crimes against humanity.⁹⁰

The International Criminal Court recognises rape as a war crime

The court's guilty verdict against a former Congolese commander marks a milestone

For the first time since it started to function in 2002, the International Criminal Court at The Hague has passed a guilty verdict on a warlord for perpetrating, among other things, rape as an act of war. It is also the first time that the court has secured a conviction for 'command responsibility', meaning that a commander can be found guilty even if he did not himself take direct part in such crimes as rape, murder and pillage but allowed them to be committed.⁹¹

The Economist (22 March 2016)

Non-conflict gender-based violence

The accumulation of arms can have a unique impact on gender roles in non-conflict situations. In some cultures, men carry guns as part of their constructed role as protectors.⁹² Overwhelmingly, men are involved in most direct incidents of armed violence. Male victims account for 79% of approximately 500 daily homicides around the world, make up 95% of perpetrators and account for 90% of missing persons.⁹³ Of the estimated 875 million small arms and light weapons held globally, 650 million are privately owned.⁹⁴ Firearms are used in an average 41% of homicides, while this figure jumps to 66% in the Americas.⁹⁵ Approximately two million people worldwide live with firearm injuries sustained in non-conflict settings.⁹⁶ Participants in the arms trade—buyers, sellers, end-users and misusers—are also overwhelmingly men.⁹⁷

Women are often both directly and indirectly affected by arms accumulation as this facilitates domestic violence:⁹⁸ weapons are frequently used to threaten and intimidate women in their homes and communities.⁹⁹ This violence may either be interpersonal or intended to inhibit women's participation in social or political activity. Conventional arms accumulation and misuse obstruct economic and social development, including through the loss of livelihood¹⁰⁰ and a range of other violations that interfere with human, civic, cultural and political rights.¹⁰¹ Conventional arms are also an enabler of criminal activity that targets women in trafficking, forced prostitution and sexual violence.¹⁰²

A firm link between the ATT and domestic armed violence has not been substantiated, but effective treaty observance together with implementation and enforcement of the UNPoA may reduce the incidence of armed violence between victims and perpetrators who know each other well.

How the ATT reinforces the reduction of armed gender-based violence

The ATT is the first multilateral treaty to link irresponsible international arms trade, the illicit arms trade and gender-based violence.¹⁰³ Article 7(4) of the treaty requires that the exporting State Party, in making its risk assessment, 'shall take into account the risk of the conventional arms ... being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.'¹⁰⁴

Gender-based violence in this context is not merely a proxy for 'violence against women'. 'Gender-based violence' and 'violence against women' are both specified because gender perspectives may include violence targeting males—for example, massacres of males of fighting age—while, as mentioned above, women may be targeted in a specifically sexual way.

*'Iceland would like to thank the 100 delegations that supported the initiative to make gender-based violence a binding criterion for arms export in the Arms Trade Treaty ... Where gender-based violence is not covered by international human rights or humanitarian law, it must still be taken into account. Having the explicit, binding criterion on preventing gender-based violence in paragraph 4 of article 7 requires a State to act with due diligence to ensure that an arms transfer would not be directed or diverted to a non-State actor, such as a militia that commits acts of gender-based violence.'*¹⁰⁵

Ms Gunnarsdóttir (Iceland)
General Assembly Sixty-seventh session 72nd plenary meeting
(2013)

As demonstrated, conventional arms accumulation and misuse violently intersect with gender at many levels—in criminal activity, interpersonal violence and homicide and socio-political violence. Males generally are affected by the direct application of violence: during conflict, they may be targeted as combatants or even as non-combatants. In peacetime too, males are targeted in homicides, whereas women are targeted in domestic, criminal, sexual and socio-cultural violence.

For these reasons, if an ATT State Party has knowledge at the time of authorising an arms transfer that the end-user or end-use could violate Article 7(4), the risk must first be mitigated to enable the transfer. If the risk cannot be mitigated beneath the level of an 'overriding risk', then the transfer should not be authorised.



UN Photo: Kim Haughton

THE ATT AND PROMOTING INTERNATIONAL HUMANITARIAN LAW

The Geneva Conventions and Additional Protocols form the core element of IHL.¹⁰⁶ The Geneva Conventions have been ratified by 196 states,¹⁰⁷ whereas IHL is universal in the sense that both government and non-government combatants are required to adhere to its provisions.¹⁰⁸

This means that IHL applies to conflict between two or more states, a state or a coalition against one or more non-state armed groups, or between non-state groups only.¹⁰⁹ IHL applies only in war and armed conflict.¹¹⁰ The express purpose of the ATT is to reduce human suffering through the highest possible common standards of arms regulation.¹¹¹ This complements IHL, which regulates the rules of war to minimise human suffering and to conduct warfare humanely.¹¹² IHL does this in two ways:

- by restricting the means and methods by which parties to an international conflict or a conflict not of an international nature can attack their enemy, and
- by providing protection to those not participating in conflict.¹¹³

There are three links between IHL and the ATT:

- First, the accumulation and circulation of illicit arms can facilitate tensions that bring about armed conflict. The Geneva Conventions, and therefore IHL, are initiated once there is an armed conflict, either in the form of an international armed conflict¹¹⁴ or as a non-international armed conflict.¹¹⁵
- Second, IHL regulates who can be targeted for attack, and how. One of the principal rules of IHL is that civilians cannot be the object of attack.¹¹⁶ This is the case with all weapons, conventional or otherwise. Despite this, conventional arms have been used in conflict to attack civilians directly.¹¹⁷
- Third, IHL attempts to minimise human suffering and to provide humanitarian assistance in armed conflict by protecting those who are not taking direct part in hostilities.¹¹⁸ However, the availability of illicit arms can impede attempts to provide such protection. In conflict situations, armed violence targeting non-combatants can endanger those who attempt to deliver medical and humanitarian assistance.¹¹⁹

Part of an effective humanitarian reconciliation and reconstruction response involves collecting weapons and stemming the inflow of more arms through responsible regulation.¹²⁰ Imperative to humanitarian responses, responsible regulation aims to restrict the availability of arms and ammunition to those who commit criminal offences or crimes of vengeance or atrocity in violent or post-conflict contexts.¹²¹

HOW THE ATT REINFORCES IHL

The ATT is a complementary instrument to IHL in that it can help stem the flow of arms into areas where violations of IHL are occurring. The treaty also supports humanitarian responses by contributing to secure environments where medical and humanitarian assistance can be delivered unhindered.¹²² The ATT does this by strengthening compliance with both IHL and IHRL.¹²³ States Parties must act in good faith in interpreting and implementing the ATT within its humanitarian purpose.¹²⁴ The ATT Preamble calls on States Parties to act in accordance with pre-existing obligations under international law.¹²⁵

Article 6 of the treaty strictly outlines the protection of humanitarian principles through context-specific prohibitions. Under this article it is incumbent on a State Party not to export conventional arms where it has knowledge at the time of authorisation that the arms 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'.¹²⁶ Such international agreements include existing obligations such as the Charter of the United Nations for Member States, the Geneva Declaration and the Universal Declaration of Human Rights.¹²⁷

In short, many of the international agreements under Article 6 are treaties that establish IHL. 'Attacks directed against civilian objects'¹²⁸ as stipulated under Article 6, would include civilian buildings and infrastructure such as hospitals.¹²⁹

Other provisions covered under Article 6 may include supplying conventional arms used to target internally displaced persons or wounded, sick or captured combatants protected under IHL.¹³⁰

The export assessment under Article 7 seeks to protect peace and security by assessing the potential that a transfer of conventional arms could facilitate a serious violation of either IHL or IHRL. An example may be where there is an 'overriding risk' that a transfer to a legitimate party will be diverted to non-state actors targeting civilians.¹³¹ Whereas Article 7 of the treaty explicitly mentions IHL and IHRL,¹³² Article 6 on Prohibitions uses a higher degree of qualifying language: '... would be used in the commission of ...'. It is important to note that Article 7 stipulates that States Parties must take into account the potential that the conventional arms:

- would contribute to or undermine peace and security;
- could be used to commit or facilitate a serious violation of IHL or IHRL.¹³³

The use of 'potential', 'could' and 'facilitate' may indicate a lesser threshold for halting authorisation while investigation and mitigation processes take place under Article 7.¹³⁴ Within Article 7 itself, it may seem that an exporting State Party must establish a higher degree of potential that transfers of conventional arms would contribute to undermining peace and security.

Violation of IHL or IHRL seems to have a lower threshold for triggering a risk assessment and mitigation process.¹³⁵ For example, if the exporting state suspected that an end-user may be committing IHL abuses, Article 7 suggests that the exporting state may wish to investigate the situation further and attempt to mitigate the concern to beneath the level of an 'overriding risk' before authorising the transfer.

The ATT is a legal framework that promotes adherence to IHL by requiring States Parties to assess whether conventional arms transfers encourage or enable end-users, in both conflict and non-conflict contexts, in the commission of IHL violations.¹³⁶ Therefore, the ATT reinforces IHL by incorporating IHL compliance as a necessary consideration when authorising a transfer.

THE BROADER BENEFITS: NATIONAL SECURITY

Illicit cross-border arms flows threaten the security of political and social institutions, whereas arms can also be used to damage or destroy infrastructure and threaten civilian safety. Trade in illicit arms takes place in all regions to varying degrees, and across all borders.¹³⁷ Illicit arms enable criminal gangs and terrorists to threaten security-sector personnel, political and diplomatic staff, and the public at large.¹³⁸ One terrorist attack in India demonstrated the lethality of a small group of attackers armed with high-powered firearms and grenades when in 2008 a group of 10 assailants managed to kill 164 people.¹³⁹

Organised crime groups can also have a large-scale impact through politically motivated violence to alter operational environments.¹⁴⁰ One of the most violent countries in the world outside a conflict zone¹⁴¹ El Salvador, has seen a ratio of 64 violent casualties per 100,000 per annum (2014).¹⁴² In Honduras, in some 81% of homicides firearms were used (2009) and they were often gang-related in support of the drug trade.¹⁴³ This rate of death and injury is estimated to have cost 3% of national GDP in 2013.¹⁴⁴ These cases indicate that even with legal domestic arms being available—which can be stolen for use in criminal activity—demand-driven cross-border arms flows continue.¹⁴⁵ INTERPOL's iARMS system reveals that illicit firearms are smuggled widely, sometimes from across the world.¹⁴⁶

How the ATT offers a benefit to national security

The ATT is an important international legal framework for helping to strengthen national control systems. In a security-sector review, treaty compliance can help to highlight gaps in existing systems. Many States Parties have already undertaken a gap analysis assessment when compiling their compulsory initial, or baseline, report.¹⁴⁷ Both signatories and non-signatories have used tools such as the ATT Baseline Assessment Survey and Initial Report template to assess their current arms control systems, which indicate both improvements in compliance and potential gaps.¹⁴⁸ This has led to the development of comprehensive programmes to fill these gaps.

For example, an assessment of the current arms control system in Fiji indicated a gap in brokering legislation, a requirement under Article 10 of the treaty.¹⁴⁹ Similar positive steps are being taken in New Zealand.¹⁵⁰

The process of reviewing current systems, inspired by the adoption of the treaty, has led and will lead to other positive changes. For example, a gap analysis conducted prior to ratification may indicate a need for increased stockpile security, increased numbers of law-enforcement personnel and resources, or changes in enforcement policy.¹⁵¹ Increased enforcement capacity can then provide data and other forms of information for international exchange to identify illicit brokering, smuggling corridors, methods of concealment and corrupt practices.¹⁵²

In Samoa, the process of compiling the ATT Annual Report highlighted the challenges inherent in their record-keeping system—manual and decentralised, with consequent difficulties in collecting data. Without such data, it is difficult to quantify the current presence of lawfully held arms in the country, let alone to trace and detect illicit arms. Samoa now plans to implement a centralised database system using a grant from the ATT's Voluntary Trust Fund.¹⁵³

Developing a comprehensive national system may require cooperation with other jurisdictions whose territories are being used in illicit supply chains. One benefit of a treaty compliance review is the opportunity to develop procedures and amend legislation to empower enforcement agencies and prevent gaps that are exploited by criminal activity.¹⁵⁴ The ATT helps the international community to combat unregulated international arms flows that might have adverse effects on national security.

Effective ATT implementation requires collaboration, with international assistance where necessary, so that States Parties can review and develop domestic material infrastructure, regulations and administrative measures. With a strong domestic base, capable States Parties contribute to 'the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms'.¹⁵⁵

The ATT and counter-terrorism

Terrorism is at an all-time historical high. Deaths from terrorism have risen 286% since 2008.¹⁵⁶

In 2015 France saw multiple terrorist incidents committed with high-powered assault rifles.¹⁵⁷ The 13 November attacks in Paris saw 130 dead and 350 injured. It was not explosives that caused most of the casualties but access to military-grade firearms that are illegal under French law.¹⁵⁸ Arms used in terrorist attacks in Western Europe, a region with restrictive firearm laws, often originate from the 1990s Balkan conflicts.¹⁵⁹

It is estimated that between three and six million firearms are in circulation in the Balkans region.¹⁶⁰ These weapons are easily concealed and easy to move across borders.¹⁶¹ Arms transferred to irresponsible end-users, or end-users with weak stockpile security, may either quickly or eventually enter the illicit market. These arms become unaccounted for, are not easily detected and can have unforeseen adverse effects for decades to come.

The rise of the individual terrorist or the small terrorist group intent on suicide creates relative autonomy.¹⁶² This makes them difficult to locate and partly explains a recent shift in tactics, from coordinated attacks using explosives to firearms readily available from the civilian market or the black market. These can be concealable, as lethal as military weapons and can require less expertise to use.¹⁶³

How the ATT can combat terrorism

The ATT supports counter-terrorism by attempting to diminish the lethality of terrorists. Treaty compliance will combat unregulated transfers, and therefore inhibit access to high-powered conventional arms. The treaty does this in two ways:

- by identifying the capabilities of the import systems of the receiving end-user;¹⁶⁴
- by obliging exporting States Parties to consider whether the transferred conventional arms could be used to commit or facilitate an act constituting a terrorist offence under international conventions or protocols to which the exporter is a State Party.¹⁶⁵

The difference between these two is that the former might oblige the exporter to consider whether the import destination has capable import systems, such as post delivery monitoring programs,¹⁶⁶ and stockpile security sufficiently adequate to receive the transfer safely.¹⁶⁷ An example of the second might include an obligation on the exporter to consider whether the transferred conventional arms could be diverted because the end-user has a record of allowing conventional arms to 'leak'.¹⁶⁸ If these risk factors can be mitigated to a level below an 'overriding risk', the transfer can be authorised.



UN Photo: Stuart Price

THE ATT AND NATIONAL DEFENCE

Because the ATT does not inhibit trade in conventional arms for the purpose of national defence,¹⁶⁹ it is compatible with Article 51 of the Charter of the United Nations, which recognises that every state has a sovereign right to self-defence.¹⁷⁰ The ATT Preamble states that the trade in conventional arms is a legitimate practice because of the political and security interests of states.¹⁷¹ Trade in conventional arms may be particularly important for non-manufacturing states to equip security-sector and armed forces so that they can fulfil their duty to protect and to provide security and stability. For example, non-manufacturing states that contribute to peacekeeping missions require modern arms to ensure they are well equipped to fulfil their UN mandate by protecting civilians.¹⁷²

ATT Article 2 explores the scope of conventional arms under the treaty.¹⁷³ This article also clearly states that the 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'.¹⁷⁴ This provision applies to deployed security and armed forces.

In this regard, transferring equipment to deployed troops does not constitute a 'transfer' under the treaty and does not require an Article 6 or 7 risk-assessment process, provided armed forces do not retransfer equipment to or equip other actors or are not negligent in leaving viable equipment in the field of operation.¹⁷⁵ Deployed equipment must remain under state forces' ownership and control.

Committing itself to regulating international trade in conventional arms under the ATT does not infringe upon the 'sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system ...'.¹⁷⁶ It does this in a regulated manner to prevent the diversion of arms into the illicit market. The treaty also seeks to reinforce domestic security agencies and laws by strengthening the transfer chain in order to prevent the diversion of stockpiles that could otherwise end up in the hands of those committing acts of terrorism and organised crime.

The ATT requires States Parties to establish a national control system.¹⁷⁷ It is at the discretion of the state to determine the regulatory structures and legislative foundation of its national control system so long as

it has designated competent national authorities to coordinate the effective implementation of the treaty.¹⁷⁸ For example, a small importing state is not required to develop a comprehensive export control system. Instead, it might simply use legislation to prohibit manufacturing or exporting and build a strong importing and transit system. Likewise, a large exporting state should develop a comprehensive risk-assessment system to ensure due diligence for each transfer it conducts.

One point of emphasis of national control systems is to provide a strengthened domestic front that prevents the diversion of arms from state control to the illicit market. A national control system is important for preventing diversions and implementing Article 14 on enforcement—taking ‘appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty’ as its object.¹⁷⁹ If States Parties determine that an intervention or policing activity is necessary, appropriate and feasible, then enforcement agencies must have the material, regulatory and legislative resources to act effectively.¹⁸⁰ Developing these systems enables enforcement agencies to take appropriate measures to enforce national laws and regulations when required.

This will contribute to national defence by closing gaps where corruption and unregulated arms transfers operate.

A State Party must have a national control list, at a minimum, that covers conventional arms within the scope of the treaty.¹⁸¹ This will record what can and cannot be imported into a jurisdiction. Linked to this, a national point of contact must be established to coordinate international cooperation in information exchange and on matters related to the implementation of the treaty.¹⁸²

This contact person will be responsible for coordinating national arms control efforts and identifying issues of mutual interest with other States Parties.¹⁸³

THE ATT AND NATIONAL INTERESTS

A poorly regulated conventional arms trade can contribute to state fragility: it is usually within fragile states or regions that terrorist organisations seek refuge.¹⁸⁵ The availability of military-grade technologies enables terrorist organisations, militias or armed groups to have greater impact.¹⁸⁶ For example, there is a suspicion that illicit brokering in high-powered conventional arms enables insurgents fighting against US, NATO and allied troops abroad.¹⁸⁷ The heavy accumulation of arms in a post-conflict state can threaten the security of another state. Criminals find new markets and exploit poor border controls to find new customers for otherwise discarded weaponry. This can raise tensions already existing in the region. States have a vested interest in preventing such illicit flows that hinder their ability to provide security.

ILLICIT TRADE, REGIONAL SECURITY AND NATIONAL INTERESTS COALESCE

In 2010 an Italian arms broker was arrested after Romanian customs officials forwarded a tipoff to Italian officials about an illicit arms deal.¹⁸⁸ The individual was implicated in a complex Iranian arms procurement network that violated a 2007 UNSC arms embargo against Iran.

The Milan-based arms brokering and smuggling network had operated undetected for at least three years. Prosecutors claimed that the network provided sniper scopes, various types of munitions, explosive chemicals, helicopters, parachutes, helmets and scuba gear to Iran.¹⁸⁹ The network started to unravel when sniper scopes manufactured in Germany were recovered from Taliban militants fighting NATO troops in Afghanistan. A serial number trace established that the individual's network had supplied these scopes to Iran.¹⁹⁰

The NATO troops being attacked by Taliban militants were German soldiers. This incident ran contrary to German support for UNSC arms embargoes and the country's commitment to peace and stability in Afghanistan.¹⁹¹ This case demonstrates how each state has a national interest in regulating international trade in conventional arms to prevent diversions.

Link with economic interests

At the state level, the accumulation and circulation of firearms can damage or destroy infrastructure, destabilise communities and threaten national projects that underpin growth and prosperity. An example of this is in Papua New Guinea, where the accumulation of high-powered firearms by landowners seeking royalties,¹⁹¹ dividends and development levies destabilised operations at the country's largest resource project run by the providers of natural gas.¹⁹³ The landowners blockaded the site with repeated incursions. They claimed to have accumulated high-powered firearms and threatened to attack the natural gas plant if a more favourable royalties deal was not brokered.¹⁹⁴

The World Bank has found that the socioeconomic costs of crime and violence in Papua New Guinea (PNG) inhibit investment and national growth.¹⁹⁵

- 81% of businesses reported that decisions about further investment or expansion were affected by the law-and-order situation.
- 67% of firms identified crime as a constraint—four times the regional average of 16% in East Asia and the Pacific.
- 84% of companies pay for security. This is more than 30% higher than the average in East Asia and the wider Pacific region.
- The cost of private security is significant and the average cost in PNG is 5% of annual expenses compared to 3.2% in East Asia.¹⁹⁶

The PNG case shows how the presence of unregulated arms can damage investment prospects, private-sector expansion and economic growth.

Sometimes the human costs of armed violence are

quantifiable—casualty figures, injury, disability and displacement—whereas the economic impacts can be harder to estimate. Some examples of the costs of arms accumulation and illicit trade which remain difficult to tally include:

- loss of social capital and institutional trust;
- lost opportunity to reinvest capital expended in high prevention costs;
- foregone productivity following the disruption of education and livelihoods;
- lost opportunities for tourism, investment and trade.¹⁹⁷

Increasingly insecure investment environments run contrary to national economic interests when a lack of security brings with it major obstacles to investment and development.¹⁹⁸ It is difficult to extrapolate the financial costs associated with lost opportunities, but investment in armed violence containment might otherwise be invested in productive activities.¹⁹⁹ (see *Section 6*).

In insecure environments, resources are diverted from productive civilian activity to containing increased violence.²⁰⁰ During an average civil conflict, the expenditure on armed forces increases to 5% of GDP, reflecting a subsequent decrease in opportunity to invest in social services, infrastructure or other productive activity.²⁰¹ The typical civil conflict lasts seven years, during which period income loss for the civilian population can average 15%.²⁰² An average civil armed conflict can have a notable impact on growth, costing an equivalent of 30 years of GDP growth in a medium-sized country.²⁰³ During an average-length civil conflict, the loss of state income can total as much as 60% of annual GDP.²⁰⁴

The losses sustained from armed violence particularly strain developing states coping with protracted conflict. Arms transfers to developing states cost US\$71.5 billion in 2011,²⁰⁵ whereas in the same states poverty reduction lagged by more than 20%.²⁰⁶ The Institute for Economics and Peace calculates

that global internal security expenditure in 2015 was approximately US\$3,533 billion.²⁰⁷ It is worth noting that violence and state fragility was the main constraint on progress across all Millennium Development Goals.²⁰⁸ (see *Section 6*).

These figures indicate that the unregulated accumulation and illicit circulation of conventional arms can have serious social, political and economic impacts on individual states. Where the costs are not direct, they can hurt national interests by threatening investment or the operations of national and multinational corporations. Unregulated conventional arms also threaten the state by enabling organised crime, terrorist organisations and armed groups to operate.

The spill-over effect is also costly for the international community as conventional arms destabilise states and regions, causing disruption to resource extraction and trade, while population displacement demands costly international responses. In such circumstances, States Parties are encouraged to consult and cooperate with each other, consistent with their respective security interests and national laws.²⁰⁹ As demonstrated in this section, the ATT can assist with securing national interests by:

- facilitating a domestic security-sector review;
- strengthening regulations;
- sharing information;²¹⁰ and
- assisting in investigations, prosecutions and judicial proceedings.²¹¹

A robust domestic national control system under the treaty, with the addition of international assistance and cooperation outlined under Article 15, enables States Parties to restrict access to conventional arms that can destabilise states or regions and empower criminal and terrorist organisations.

THE ATT AND CIVILIAN ARMS OWNERSHIP

Lawful civilian possession of firearms is outside the scope of the ATT. The treaty reaffirms ‘the sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system’.²¹² In this regard, the lawful ownership of firearms does not conflict with the objective and purpose of the treaty, which is simply to ensure a standardised and secure international arms trade.

There are many cultural, commercial and legal interests that result in a state’s deeming civilian firearm ownership both legitimate and necessary. For example:

- pest control in farming, including the humane destruction of livestock;
- protection against dangerous animals;
- sports shooting;
- recreational or subsistence hunting;
- self-defence.

The ATT interferes with none of these.



UN Photo: Nektarios Markogiannis

THE BROADER BENEFITS: REGIONAL SECURITY

Increases in security-sector expenditure can result in lower state investment in other basic services.²¹³ An estimated 1.5 billion people live in areas affected by fragility, conflict or large-scale organised criminal violence. Such environments not only directly affect the day-to-day lives of citizens, but also the development outcomes pursued by the state. On average, fragile or conflict-affected states lagged 40—60% behind other low-and middle-income states in achieving the Millennium Development Goals.²¹⁴

Firearm misuse has a range of regional social and economic impacts. For example, the Caribbean has a long history of smuggling and illicit trade. The persistent and growing availability of high-powered firearms continues to fuel organised crime, injury and lethal violence.²¹⁵ According to UN reports, a major contributing factor to ‘the surge of gun-related criminality in the region is the trafficking of narcotics, which has facilitated the availability of firearms’.²¹⁶ The region has become a violently protected corridor for illicit trade.

Pervasive crime and violence in the Caribbean not only affects state-sponsored development, but also threatens individual lives and livelihoods. One regional state has seen a rise in firearm use in homicide jump from less than one-third before 2000 to 74% by 2006.²¹⁷ If the two Caribbean states worst affected by firearm violence reduced their homicide rate from 34 per 100,000 population to 8.1, which is the lowest rate in the same region, these countries would increase their per capita growth rate by 5.4% annually.²¹⁸

Sub-Saharan Africa provides a well-known illustration of regional instability exacerbated by the proliferation of firearms and the illicit weapon trade. Armed violence and conflict costs the African continent approximately US\$18 billion a year.²¹⁹ The most commonly used conventional arms are not manufactured on the continent but imported from elsewhere.²²⁰ While strong demand factors continue in affected regions of Africa, the international community can improve regional security by restricting the illicit and irresponsible arms flow that fuels and prolongs these conflicts.²²¹

Many African governments, acknowledging the globalised nature of the conventional arms trade, see regional regulations as part of the solution, while stronger common international standards will also be necessary to overcome armed violence.²²² Exporting States Parties therefore have a responsibility to ensure that the quantity and level of sophistication of transferred arms do not contribute to instability or exacerbate existing regional conflicts by creating uncertainty or by contributing to arms races.²²³

There are many examples of conventional arms accumulations entering the illicit market and enabling terrorist organisations to commit atrocities and political violence. In Libya (post-2011) the loss of control of state stockpiles enabled armed violence in Niger and Mali, by al-Shabab in Somalia, Palestinian groups in Gaza, and during the Syrian civil war.

Thirty portable air defence systems from Libya have resurfaced in Chad, while al-Qaeda-linked militants, supplied with arms from former Libyan state stockpiles, attacked an oil facility in Algeria and killed scores of hostages.²²⁴ State fragility in Iraq (post-2003) saw the so-called Islamic State (IS) loot armouries of weapons, which were then used to commit terrorism, alleged war crimes and crimes against humanity on a region-wide scale.²²⁵

Irresponsible transfers, arms accumulation and illicit trade inhibit the United Nations in effectively discharging its mandate. Between 2013 and 2014, UN Peacekeeping efforts cost approximately US\$7.83 billion,²²⁶ with Member States shouldering the financial burden of these missions. Stemming the flow of arms into regions of conflict and post-conflict could save the United Nations and donor states significant resources. Furthermore, the availability of conventional arms puts UN, NGO, regional and civil-society personnel at risk.²²⁷

The presence of unregulated arms is one of the major causes of the non-delivery of humanitarian aid.²³⁸ The ATT will assist the United Nations, international NGOs, and regional and local civil society groups by creating a more secure operational environment to:

- promote social and economic development;
- support peacekeeping operations;
- fund peacebuilding efforts;
- monitor sanctions and arms embargoes;
- deliver food aid;
- protect civilians (in particular children);
- promote gender equality;
- foster the rule of law.²²⁹

Serious challenges and setbacks are commonly traced to security environments adversely affected by an unregulated or a poorly regulated arms trade.²³⁰ Irresponsible transfers of conventional arms and ammunition intensify and prolong many conflicts that lead to such regional instability and consequently hinder social and economic development.²³¹

In the Caribbean and sub-Saharan Africa, armed violence brings with it some of the regions' most severe human and economic costs. The firearms involved were not manufactured domestically, but imported from elsewhere.²³² Many of the governments involved see the proliferation of small arms and their illicit circulation as empowering terrorists and militants, who then contribute to regional instability. This threatens the human security of the citizens in these regions, and in an increasingly globalised world this cannot remain a contained issue. Organised transnational criminals and terrorist organisations have a global reach. The ATT sets out the steps all nations should take to curb the proliferation of illicit weapons.

The ATT builds confidence among States Parties

One purpose of the ATT is to promote cooperation, transparency and responsible joint action that builds confidence among States Parties, and so contributes to regional peace, security and stability.²³³ The ATT provides a framework for strengthening existing regional networks (see *Section 8*) and can assist in establishing new networks to combat diversion and illicit arms flows.

The ATT increases collaboration by communicating trends in regional illicit arms flows, providing information about potential illicit activity, and assisting those who do not have sufficient resources to prevent arms proliferation. The ATT encourages assistance through the Voluntary Trust Fund, partnering in training and technology exchange to develop national control systems. This enhances the ability of States Parties with limited capacity to participate better in collaborative efforts to secure the international arms trade, prevent diversions and combat corruption and illicit trade. As a result, a region with developed national control systems across all states is better able to control the cross-border movement of illicit trade and provide region-wide stability. In turn, secure regions contribute to combating the worldwide illicit trade in conventional arms.

The process of becoming treaty compliant includes amending legislation and strengthening procedures for managing stockpile security.²³⁴ This restricts cross-border stockpile leakage and prevents regions becoming havens for armed groups.²³⁵ It also contributes to regional confidence that neighbouring stockpiles will not fuel domestic criminal or political armed violence. In addition, effective stockpile management can increase confidence among exporters that deliveries will be made in a reliable, secure way. This enhances the reputation of traders as reliable stakeholders in the international arms industry, which in turn increases confidence among international trading partners (see *Section 7*).

The ATT can also contribute to confidence-building by easing tensions and exercising transparency to prevent misunderstandings and miscalculations. As detailed in *Section 3*, the ATT provides a forum to communicate voluntarily additional information on transfers, perhaps reducing scepticism regarding a state's intent and capability.²³⁶ This can help avoid an arms race and even reduce national stockpiles, and therefore aid international control efforts.²³⁷ To this end, the ATT also encourages States Parties to identify 'matters of mutual interest regarding the implementation and application' of the treaty.²³⁸ The ATT can generate transparent documentation of arms flows and accumulation. This can highlight abnormal accumulation, act as a potential indicator of conflict prevention and contribute to confidence in peacekeeping (see *Section 3*).²³⁹ As a result, the ATT builds confidence among States Parties by:

- increasing collaboration among regional networks to combat diversion and illicit trade;
- providing assistance for capacity-building to develop national control systems;
- encouraging stringent stockpile management as part of national control systems, which increases confidence:
 - that regional stockpiles will not contribute to illicit arms supplies through leakage;
 - among trading partners that transfers can be received in a reliable and secure way.

By maintaining transparency through ATT reporting, states can ease tension by disclosing the capacity of their weapons systems and declaring their intent to avoid an arms race.

Summary

To better understand the contribution the ATT can make to security, this section has separated the topic into themes. This is not to suggest that each security concern originates or operates in isolation. Some issues may affect some countries or regions more than others, yet each is interlinked. Just as trade in conventional arms is global in scope, globalisation has also caused domestic and regional security issues to have a worldwide impact. This is because the effects of irresponsible or illicit arms trade are no longer domestically or regionally contained. Furthermore, unregulated conventional arms can have adverse effects on the international community's effort at peacekeeping and humanitarian relief.²⁴⁰

At a localised or individual level the unregulated accumulation and circulation of conventional arms threatens lives and livelihoods. Human security requires freedom from violence, plus freedom from the fear or threat of violence.²⁴¹ However, the full benefits of the ATT to human security are much broader. The treaty contributes to building the kind of world we want to live in, one in which children are safe to attend schools and citizens can access healthcare without the threat of armed violence. Where people can earn a living without armed violence destroying their crops, homes or services, or the infrastructure on which their livelihood relies. Productive and safe communities contribute much more to national economic development (see *Section 5*).

The ATT will not solve all security challenges. However, an investment in the ATT will strengthen the international system that prevents the diversion of arms into the illicit market or arms transfers to irresponsible end-users. This will diminish the availability of arms to those who commission or commit crimes of atrocity. The ATT will positively affect security at national, regional and global levels, creating safer and more secure environments for all.

This section has demonstrated that the ATT provides broader security benefits in the following ways:

- It contributes to safe local, regional and international environments that ensure people are free from violence and free from the fear of violence.
- It minimises access to conventional arms and ammunition for those commissioning or committing crimes of atrocity, particularly irresponsible end-users and non-state actors.
- It reduces access to illicit conventional arms used by organised crime and terrorist groups.
- It strengthens the IHL framework by supporting the protection of non-combatants in armed conflict.
- It helps the security sector perform its essential role of protecting civilians.
- It ensures access to conventional arms and ammunition to equip armed forces for defence against security threats, or to perform peacekeeping or humanitarian duties.
- It contributes to the prevention of cross-border illicit arms and ammunition flows, which in turn reduces the destabilising effect conventional arms can have on regional security.

Although this is not an exhaustive list, this section applies the object and purpose of the treaty to security. As demonstrated, the ATT will be an invaluable part of the international community's work to provide a safe and secure world.

SECTION 5

THE ARMS TRADE TREATY AND HUMAN RIGHTS



SECTION 5

THE ARMS TRADE TREATY AND HUMAN RIGHTS

This section outlines the broader benefits of the ATT to international human rights law (IHRL). It examines how the ATT complements regional treaties and UN declarations and resolutions that, in part, form IHRL. It then considers how the ATT risk assessment can be guided by concerns outlined in various declarations and resolutions. First, however, this section begins by examining how the ATT defines human rights violations for use in the risk-assessment process.

In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights. This defined the concept of 'basic civil, political, economic, social and cultural rights that all human beings should enjoy'¹ and is considered to be the founding mechanism for IHRL.² Since the Universal Declaration of Human Rights, a series of legally binding international treaties and other instruments have been adopted, establishing the body of international human rights.³ The Universal Declaration of Human Rights together with the focused and specialised Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) form the so-called International Bill of Rights.⁴

With the subsequent addition of a large number of regional human rights conventions, there are now more than 80 international human rights treaties and declarations in place.⁵ Human rights are strengthened as legal commitments through treaties, customary international legal norms, general principles and regional agreements that are translated into domestic law.⁶

The ATT contributes to the protection of people by prohibiting the authorisation of arms or items that:

'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'.⁷

The ATT risk-assessment approach also prospectively seeks to protect people by making it incumbent upon exporting States Parties to assess the potential that a transfer could be used to 'commit or facilitate a serious violation of international human rights law'.⁸ The ATT therefore reinforces international law and enhances it by bringing it into the risk-assessment process throughout the conventional arms trade.



UN Photo: Nektarios Markogiannis

THE BROADER BENEFITS: HUMAN RIGHTS

Human rights protections contribute to human security. People have a right to live free from violence and free from the threat or fear of violence. Conflict zones can witness uniformed, pro-government and opposition militias and armed groups committing violence that violates peoples' individual rights and terrorises populations, creating fractures within and between communities.⁹ Attacks on civilians can take 'place any time civilians come into close proximity with armed actors'.¹⁰ This can have a long-term effect on individuals, causing physical and psychological injury.¹¹ At the community and state levels, armed violence can fuel continued cycles of abuse by contributing to inter-ethnic animosity.¹²

*'Our lives are connected to one another. Actions and decisions in one country affect many other States; they shake the lives of many people, no less important and no less human than you and I. When the fundamental principles of human rights are not protected, the centre of our institution no longer holds. It is they that promote development that is sustainable; peace that is secure; and lives of dignity.'*¹³

UN High Commissioner for Human Rights
Zeid Ra'ad Al Hussein (2015)

One case study exemplifies how IHRL gives protection and redress during a breakdown of law and order. In one ongoing non-international armed conflict uniformed and opposition forces stand accused of having committed war crimes and other serious human rights violations and abuses.¹⁴ The factors exacerbating this conflict include the general militarisation of society and the increased availability of weapons, resulting in a culture of lawlessness.¹⁵ Accusations of violations of IHRL and international humanitarian law (IHL) include:

*'rape and gang rape, sexual slavery, sexual mutilation including castration, forced pregnancy, and forced abortion [...] deliberate killing of civilians, often based on ethnicity; destruction and looting of hospitals, schools, civilian homes and means of livelihood; attacks on humanitarian personnel and assets; recruitment of child soldiers; arbitrary detention; and the killing of captured soldiers.'*¹⁶

The country in question does not criminalise or adequately define as crimes rape and other varied forms of sexual violence, torture, crimes against humanity or genocide.¹⁷



UN Photo: Mark Garten

This country has, however, acceded to the African Charter on Human and People's Rights, the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). It also acceded to the Geneva Conventions of 1949 and their Additional Protocols.¹⁸ Inadequate domestic legal protections will not provide impunity in serious violations of IHRL, though.

Violations of IHRL will apply to this conflict through a planned Hybrid Court. This court will have a mandate 'to investigate and prosecute individuals bearing criminal responsibility for violations of international law'.¹⁹ Many of the legal mechanisms listed above regarding the mandate of the Hybrid Court will be retrospectively applied to redress human rights violations.

Where the ATT approach differs in situations such as this is that it seeks to form a process that can help prevent serious violations of IHRL by diminishing the supply of arms, ammunition, parts and component that fuel conflict.

Human rights relevant to ATT risk assessment

The most directly relevant provisions of the Universal Declaration of Human Rights, regarding arms misuse, is that everyone has the right to life, liberty and security of person.²⁰ As examined in *Section 4*, irresponsible transfers, diversions and illicit trade in conventional arms contribute to these violations.



UN Photo: Harandane Dicko

Life and personal security can be jeopardised in both conflict and non-conflict situations, for example:

**THE RIGHT TO LIVE FREE FROM VIOLENCE AND FREE FROM THREAT OR FEAR OF VIOLENCE:
THE IMPACT OF CONVENTIONAL ARMS IS NOT ONLY AN ISSUE IN CONFLICT**

Approximately 60% of human rights violations documented by Amnesty International (2010) 'have involved the use of small arms and light weapons'.²¹

Non-Conflict

- During 2010–2015, 83% of the victims of violent death were outside conflict zones.²²
- On average, firearms were used in an estimated 50% of homicides between 2010–2015.²³
- 396,000 intentional homicides occur every year.²⁴
- Approximately 2 million people globally are living with firearm injuries sustained in non-conflict situations over the past decade.²⁵
- Between 1999–2003 almost ½ of traded conventional arms were transferred to states with poor human rights standards.²⁶

Conflict

- During 2010–2015, 17% of violent deaths were conflict casualties.²⁷
- One in ten of all reported violent deaths worldwide occur in conflicts or during terrorist activities (2011).²⁸
- In one recent conflict rockets, mortars, tank shells and air-dropped bombs accounted for 90% of civilian deaths.²⁹
- Large-scale diversions of weapons can exacerbate conflicts and violations of human rights. Diversions can also facilitate the collapse of the rule of law.³⁰
- Irresponsible arms transfers can prolong conflict, destabilise fragmenting countries, hinder post-conflict reconstruction and make local people's lives more dangerous.³¹

In addition to the Universal Declaration of Human Rights, violations of socio-political and cultural rights may also be affected by irresponsible arms transfers, diversions and illicit trade. Violations of international law established through these conventions might also be considered in a State Party's ATT risk-assessment process:

- International Covenant on Economic, Social and Cultural Rights (1976)
- International Covenant on Civil and Political Rights (1966).

As will be seen in *Section 6* on Sustainable Development, armed violence arrests both social development and human development indicators:³² armed violence can have significant adverse impacts on access to education, livelihood and healthcare, and can cause displacement and poverty.

These are protected under the Universal Declaration of Human Rights and the Declaration on the Right to Development (1986).³³ This indicates that the ATT risk-assessment process might also consider that people have a right to:

- education;³⁴
- a standard of living adequate for the health and well-being of the individual and family, including:
 - food;
 - housing;
 - medical care;
 - necessary social services.³⁵

These basic public goods and services are demonstrated in *Section 6* to be adversely affected by armed violence. Armed violence in conflict and non-conflict situations also:

- inhibits access to markets;
- can cause displacement;
- diminishes access to healthcare, or
- restricts government's ability to adequately resource healthcare.

Armed violence has also been demonstrated to damage civilian infrastructure, diminishing the quality of life for local people. The ATT can help to prevent the arming of groups that target civilians or damage government provision of public services.³⁶ In this way, the ATT can contribute to adequate safe and secure standards of living.

The ATT, Gender and Community Participation

Armed violence can also have an impact on people's ability to participate freely in the social sphere of a community. For example, this may particularly affect women and children in situations characterised by high levels of sexual violence by armed groups.³⁷ The Universal Declaration of Human Rights requires that everyone 'has the right freely to participate in the cultural life of the community ...'.³⁸

The UN's Committee on the Elimination of Discrimination Against Women recommends that Parties to the Convention should accede or ratify the ATT as one of the 'international instruments relevant to the protection of women's rights in conflict prevention, conflict and post-conflict ...'.³⁹

The ATT reiterates that States Parties are guided by considerations of the adverse effects of armed conflict and armed violence on women and children.⁴⁰ This principle is explicitly highlighted as a risk-assessment criterion in the treaty text.⁴¹ An exporting state must consider the risk of the conventional arms transfer being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.⁴² There is therefore duplicate protection: serious violations of this nature that disproportionately affect women and children are already covered under serious violations of IHRL.⁴³

In assessing the gender impact of a transfer, a state may consider how a transfer would have an impact on international norm-building mechanisms such as:

- Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974);
- Convention on the Rights of the Child (1989).

Light-weight weapons, children associated with armed forces and armed groups and the ATT

*'The proliferation of inexpensive and light-weight small arms and light weapons in conflict regions contributed to the recruitment of children as combatants.'*⁴⁴

Children associated with armed forces and armed groups (CAAFAG), particularly those used in armed violence, are at high risk of being killed or maimed. CAAFAGs also suffering serious psychological and reintegration problems.⁴⁵ Children are often exposed to killing and sexual exploitation that can cause physical injuries, reproductive difficulties and mental health problems.⁴⁶ Military training is designed to alter psychology until a soldier will obey commands without question. This can damage children's long-term personality and educational development.⁴⁷ CAAFAGs may also be disproportionately recruited from disadvantaged communities and troubled family backgrounds.⁴⁸

An increasing number of international legal instruments protecting children can be assisted by the ATT:

- Additional Protocol I and II to the Geneva Conventions 1949 (1977)—prevents children under 15 years from participating in hostilities.⁴⁹
- Rome Statute of the International Criminal Court (2002)—establishes the recruitment of children under 15 years as a war crime. This applies to both government-controlled armed forces and non-state armed groups.⁵⁰
- Convention on the Rights of the Child (1989)—prohibits recruiting children under 15 years to take part in hostilities. This Convention specifies for the first time that a 'child' is a person under 18 years of age.⁵¹
- International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)—in part, prohibits forced or compulsory recruitment of children for use in armed conflict.⁵²

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)⁵³—This protocol allows state armed forces to recruit from 16 years of age, but prohibits the compulsory recruitment of children and children under 18 years old from participating in hostilities.⁵⁴

The ATT risk assessment can prevent 'light-weight' arms from being transferred to end-users engaged in the recruitment and use of CAAFAGs. Considering that use of children in conflict is a war crime, the ATT can prohibit transfers where the exporter has knowledge at the time of authorisation, that the arms would be used in grave breaches of the Geneva Conventions of 1949.⁵⁵ The obligations of States Parties also apply to other war crimes as defined by international agreements to which the exporting state is a Party.⁵⁶

The exporting State Party would also be required to 'assess the potential that the conventional arms or items could be used to commit or facilitate a serious violation of international human rights law'.⁵⁷ This would apply specifically when the arms could be used to commit or facilitate serious acts of violence against women and children.⁵⁸ The exporting Party may also consider where there is knowledge of diversions equipping unauthorised end-users, such as organised criminal or terrorist groups, that recruit and use children in their operations.⁵⁹ In this way the ATT can assist in preventing the use of children by inhibiting supply of specifically light-weight small arms and light weapons that enable their recruitment, training and deployment.

Establishing the seriousness of a human rights violation

There are many mechanisms in place for the protection of human rights, with the ATT being a comparatively new addition. The ATT is a legally binding mechanism that complements existing IHRL and expands legal protections into the field of arms trade. It does this by explicitly seeking to establish IHRL as a criterion that State Parties should consider in the risk-assessment process for transfer authorisation.⁶⁰

In evaluating how the ATT contributes to IHRL, we must also establish how the treaty refers to human rights principally and explicitly in the text. The ATT Preamble assumes that States Parties are guided by a desire to ensure 'respect for human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights'.⁶¹ This requires that the intent and objectives of the treaty provisions are actioned in good faith.

The treaty text refers to human rights again as an explicit criterion under the ATT risk-assessment process. Article 7 requires states to:

'assess the potential that the conventional arms or items could be used to commit or facilitate a serious violation of international human rights law'.⁶²

However, the ATT does not define how the concept of the seriousness of a violation ought to be established, leaving the definition to be established through practice by States Parties.⁶³ This raises the question: What constitutes a 'serious violation'?

While there is no consistent definition of 'serious' in the application of international law, the Geneva Academy⁶⁴ has sought to provide guidance on consistent themes that States Parties could consider. Establishing the seriousness of violations may commonly involve considering:

- the number of persons that the violations affect;
- the number of breaches that have occurred;
- whether violations are potentially spread over a period of time;

- whether an 'element of planning or of sustained will on the part of the perpetrator' is present;
- whether according to a qualitative test, the violation must inherently have an 'inhuman and degrading character'.⁶⁵

States Parties may note that establishing what constitutes a 'serious violation' would require investigating both the volume or scale of the violation and the level of planning or intent by perpetrators.⁶⁶ The Geneva Academy cautions that in international practice violations do not necessarily need to be 'systematic' in order to be considered serious.⁶⁷

The significance of the ATT for IHRL is that the treaty requires the exporting states to assess the likely consequences of an arms transfer in relation to human rights before it is authorised.⁶⁸ This includes doing due diligence by exchanging information, initiating investigations and mitigation programmes, including with the importing state, when suspicion arises that a serious violation of IHRL could occur.⁶⁹ Therefore, serious human rights violations include customary international law such as peremptory norms to prevent torture, but also arguably some socio-economic and political rights.⁷⁰

To assist with ascertaining risk prior to transfer authorisation, an exporter may use Human Rights Council Resolutions and the Universal Periodic Review to assess importing states' human rights records and efforts at addressing human rights violations.⁷¹ If there is 'overriding risk' that an IHRL violation could occur, then mitigation measures must be undertaken.⁷² If the risk factors can be mitigated to below an 'overriding risk', then authorisation can proceed at the state's discretion. This process will help to enhance human rights protections by not allowing arms transfers to end-users who commit or facilitate serious human rights abuses.

Summary

There are many conventions and declarations that form IHRL. Some, but not all, have been identified in this section. The relationship between these human rights mechanisms and the ATT is mutually reinforcing, coalescing as they do around building security and human rights protections. While some of these mechanisms can provide guidance in the ATT risk-assessment process, the ATT is a legally binding treaty that will extend human rights protections into the trade in conventional arms.

This section has demonstrated that the ATT provides broader benefits to human rights protections in the following ways:

- It principally supports human rights through the Universal Declaration of Human Rights.
- It recognises 'the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms ... Bearing in mind that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence.'⁷³
- It extends human rights protections into the trade in conventional arms by requiring States Parties to assess the risk of potential serious IHRL violations before authorising a transfer.⁷⁴
- Where there is an 'overriding risk' that a serious IHRL violation could occur, the exporting state, potentially in collaboration with the importing state, must take measures to mitigate those risks.⁷⁵

This has the potential to prevent transfers to end-users engaged in serious human rights abuses through misusing conventional arms. The ATT, as an international legally binding instrument, helps to ensure that international human rights standards are respected, implemented and enforced in the conventional arms trade.



UN Photo: JC McIlwaine

SECTION 6

THE ARMS TRADE TREATY AND SUSTAINABLE DEVELOPMENT



The 2002 Millennium Development Goals (MDGs) sought to provide policy and programmatic guidance to tackle:

- extreme poverty and hunger;
- the lack of universal primary education;
- gender inequality;
- high child mortality rates;
- the lack of access to healthcare, and
- environmental sustainability.¹

Armed violence had a notable impact on achieving the MDGs:² the adverse effects of arms misuse were pervasive in all the fields the MDGs sought to improve.

For this reason, this section deals with the inhibiting effect of armed violence on national and human development. It does this by briefly examining the pervasive effect that armed violence and conflict has on many sectors important to development and poverty reduction—from developing tourism opportunities to education, healthcare, investment and poverty reduction.

The sectors of development opportunities this section explores are not intended to be an exhaustive list. However, they do serve to open up the conversation on the broad benefit of the Arms Trade Treaty (ATT) for development.

This section begins by looking at the impact armed violence had on failure to achieve the MDGs. This highlights the reason why the successor to the MDGs, the Sustainable Development Goals (SDGs), include armed violence and the flow of illicit arms and ammunition as a development challenge.

THE BROADER BENEFITS: FROM MDGS TO SDGS

The MDGs were a time-bound set of goals, targets and indicators that formed a framework informing development policy for the international community. The MDG targets were to be completed by 2015.³ The MDGs tackled numerous issues hampering development progress: they monitored progress in the areas of extreme poverty and hunger, universal primary education, gender equality, child mortality rates, health, environmental sustainability and global partnerships in development initiatives.⁴

Progress towards attaining the MDGs saved millions of lives and improved the lives of countless more.⁵ However, progress was uneven, with notable shortfalls in many areas. By the time the MDGs were to be evaluated in 2015, the negative impact of insecurity and conflicts on achieving human and economic development was seen across all of the MDGs⁶ and, as one final MDG report noted, conflicts ‘remain the biggest threat to human development’.⁷ While peace and security were mentioned in the Preamble to the MDGs, no explicit security goal was included to contribute to development outcomes.⁸

THE ARMS TRADE TREATY AND SUSTAINABLE DEVELOPMENT

MDGs to SGDs: Why the inclusion of arms flows?

Not a single low-income fragile or conflict-affected country achieved an MDG.⁹ In fact, during 2000–2015, so far as attaining positive MDG outcomes was concerned, the gap increased between conflict-affected developing states and peaceful developing countries.¹⁰ It is expected that by 2030, '75% of people in extreme poverty will be living in countries at risk from high levels of violence'.¹¹

During the 1990s, of the 49 major conflicts worldwide, 'small arms were the key weapons in 47 of them'.¹² The availability, excessive accumulation and circulation of arms and ammunition as a contributor to armed violence proved to be a serious impediment to achieving the MDGs.¹³ Unregulated flows of arms can exacerbate the duration, lethality and intensity of conflicts.¹⁴ It was clear that poverty would not be eradicated without addressing violence and its drivers; on the other hand, socio-economic underdevelopment can be a breeding ground for conflict.¹⁵

The MDG framework provided robust and reliable data for evidence-based decision-making when designing its post-2015 successor.¹⁶ The 'trend towards multidimensional violence has coincided with a broadening of the concept of development':¹⁷ development theories had broadened to include approaches to capturing the lived experience of millions of people in developing countries. But the aim of the MDGs was limited because it took 'too narrow a view on development and ignores the interrelations among various aspects of development'.¹⁸

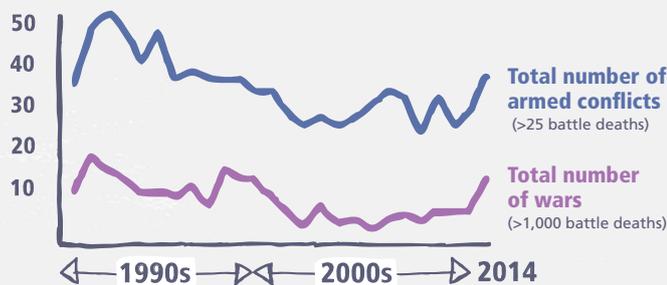
The 'universality of Goal 16—peaceful and capable institutions, may apply to all countries at different stages of development, but for the 1.5 billion people living in conflict-affected situations around the globe, the premium on Peace, Justice and Strong Institutions is real-time worthy'.¹⁹

The g7+ Global perspectives on the sustainable development goals (2015)

TODAY'S WORLD...

RECENT INCREASES IN ARMED CONFLICT ARE PUTTING LONGER-TERM ADVANCES IN GLOBAL PEACE AT RISK

Progress in reducing conflict, which peaked following the Cold War, was made in the 1990s and 2000s. However, in recent years the incidence of armed conflicts – including outright wars – has increased sharply.¹



Meanwhile, the number of direct fatalities from armed conflict has risen dramatically.²



DISPLACEMENT OF PEOPLE IS RISING AS A CONSEQUENCE OF CONFLICT AND VIOLENCE

The number of people forcibly displaced at the end of 2014 had risen to a staggering 59.5 million compared to 37.5 million a decade ago.³ Globally, one in every 122 humans is now either a refugee, internally displaced, or seeking asylum.

Design: Saferworld 'From agreement to action: Building peaceful, just and inclusive societies through the 2030 Agenda', September 2015, 6.

The SDGs, which replaced the MDGs in 2015,²⁰ are a set of 17 aspirational Global Goals with 169 targets, to be achieved by 2030. They encompass a universal call to 'end poverty, protect the planet and ensure that all people enjoy peace and prosperity'.²¹ As an outcome of strong negotiation from key states and civil society, the SDGs are broader in scope than the MDGs and seek to deal with the root causes of development issues.²² It was argued that fostering peaceful societies and resolving conflict established security that built the foundations on which to generate employment and improved livelihoods.²³ Therefore, unlike the MDGs, the SDGs explicitly addressed arms flows as a development issue:²⁴ SDG 16.3 promotes a well-defined target to 'significantly reduce illicit financial and arms flows' by 2030.²⁵ SDG 5.2 aims to eliminate all forms of violence against all women and girls.²⁶

The ATT also has a role in achieving SDG 11, which aims to make cities safe, inclusive, resilient and sustainable, and SDG 11.4, which aims to strengthen efforts to protect and safeguard the world's cultural and natural heritage.²⁷ These links are explored in more detail below.

If the total number of people displaced were the population of a country, it would be the world's 24th biggest.



WIDESPREAD CONFLICT AND VIOLENCE MEANS DEVELOPMENT IN REVERSE

In 2013, half of all out-of-school children lived in countries affected by conflict, representing almost 29 million children.⁴



MDG 2

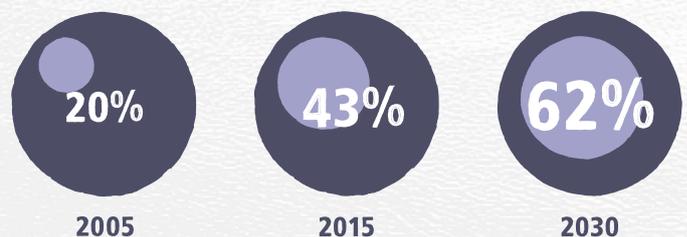
The reduction in infant mortality in conflict-affected countries is half of what it is in other countries.⁵



MDG 5

EXTREME POVERTY WILL INCREASINGLY BE CONCENTRATED IN COUNTRIES AT RISK OF HIGH LEVELS OF CONFLICT

In 2005, 20% of the world's population living in absolute poverty resided in conflict-affected and fragile states – by 2015, this number had more than doubled to 43%. By 2030, even under the best-case scenario, 62% of the global poor will be located in conflict-affected and fragile states.⁶



...NEEDS PEACE

<https://www.saferworld.org.uk/downloads/pubdocs/agreement-to-action.pdf>

SUSTAINABLE DEVELOPMENT GOALS



UN Photo: Eskinder Debebe

What are the effects of armed violence on development outcomes?

The inclusion of finance and arms flows necessitates examining how arms flows affect development outcomes within the broader economic and human security framework.

FRAMING THE DEVELOPMENT CHALLENGE IN FRAGILE CONFLICT OR VIOLENCE AFFECTED COUNTRIES	
<p>People in fragile conflict- and violence-affected states account for 47% of the total populations of developing countries. This means that '1.5 billion people live in countries affected by fragility, conflict or violence'.²⁸</p>	
The accumulation and circulation of illicit arms:	The short- and long-term effects of living in fragile or violence-affected countries include:
hinders poverty reduction	<ul style="list-style-type: none"> • Countries affected by fragility, conflict or violence contain 61% of the world's impoverished.²⁹ • A country affected by major violence during 1981–2005 had an average poverty rate 21 percentage points higher than a country without violence.³⁰ • 'Poverty reduction lags by 2.7 percentage points for every three years a country is affected by major violence.'³¹
results in death	<ul style="list-style-type: none"> • Armed violence is among the leading causes of death for persons between the ages of 15 and 44.³² • In one middle-income state 'more adolescents die from violence than do children under 5 from disease and ill health'.³³ • 58 countries have a homicide rate higher than 10 per 100,000 people.³⁴ • 14 countries suffer a homicide rate higher than 30 per 100,000 people.³⁵ • Attempted and completed homicide are a huge stress on health system funding and also affect national economies through lost productivity.
destroys prospects	<p>Fragile conflict- or violence-affected states have:</p> <ul style="list-style-type: none"> • 60% of the world's undernourished. • 65% of people without access to safe water. • 70% of global infant mortalities.³⁶
causes displacement	<ul style="list-style-type: none"> • By the end of 2014, conflicts had forced almost 60 million people to abandon their homes.³⁷ • 'Every day, 42,000 people on average are forcibly displaced and compelled to seek protection due to conflicts.'³⁸ • Children accounted for half of the global refugee population.³⁹

THE ARMS TRADE TREATY AND SUSTAINABLE DEVELOPMENT

	Non-conflict	Conflict and post-conflict
damages the environment	<ul style="list-style-type: none"> The natural environment can be damaged as illicit resource extraction, poaching and trafficking are a source of finance for non-government armed groups.⁴⁰ 	<ul style="list-style-type: none"> Damaging the natural environment and scorched earth are tactics of war that have been prohibited in the Additional Protocol 1 (1977) to the Geneva Conventions.⁴¹ War can cause the: <ul style="list-style-type: none"> contamination of land; destruction of forests; plunder of natural resources; and collapse of management systems.⁴²
decreases school attendance	<ul style="list-style-type: none"> Of the children not in primary school, 77% are in countries affected by fragility, conflict or violence.⁴³ 'In countries affected by conflict, the proportion of out-of-school children increased from 30 per cent in 1999 to 36 per cent in 2012.'⁴⁴ 	
discourages investment ⁴⁵	<ul style="list-style-type: none"> Insecurity is seen to create major obstacles to investment.⁴⁶ 'Trade can take many years to recover as a result of investor perceptions of risk.'⁴⁷ 	<ul style="list-style-type: none"> Trade can drop between 12% and 25% in the first year of a civil conflict. For larger civil wars the loss of trade is around 40%. An interruption in trade can last for up to 25 years.⁴⁸

The relationship between SDG 16 and the ATT

The ATT does not explicitly require adverse developmental impacts to be considered as criteria in its risk assessment.⁴⁹ However, development is embedded in the principal purpose of the ATT. The treaty Preamble builds on the ATT's broader purpose of promoting development by:

*'Recalling Article 26 of the Charter of the United Nations which seeks to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, Acknowledging that peace and security, development and human rights are pillars of the United Nations system and foundations for collective security and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing.'*⁵⁰

Through the Preamble the ATT acknowledges the guiding influence of the UN Charter. The Preamble reiterates the importance of considering the Charter's three pillars—peace and security, development, and human rights—as the foundation of collective security. Further to this, Article 55 of the UN Charter recognises that 'higher standards of living ... and conditions of economic and social progress and development' lead to 'conditions of stability and well-being which are necessary for peaceful and friendly relations among nations'.⁵¹ The UN Charter continues that these socio-economic gains are ensured through 'universal respect for, and observance of, human rights and fundamental freedoms for all'.⁵²

*'Development, human rights and peace and security are indivisible and interrelated. Each cannot be achieved without achieving the other. They should be viewed as interrelated dimensions of one goal whether called development, well-being or human security ... Any deficit in one dimension, will have an impact on the other. Any deficit in one country, will also have an impact in other countries ... Progressive globalization keeps increasing the likelihood of these cross-border spillovers.'*⁵³

UN System Task Team (2012)

The ATT 'risk assessment'⁵⁴ (see *Section 2*) reinforces peace, security and social progress. It does this, in part, through contributing to prohibiting arms transfers to end-users engaged in war crimes and violations of international laws, including IHRL and IHL.⁵⁵

So while the treaty text does not explicitly refer to socio-economic 'development', its objectives support secure and just societies necessary for development.⁵⁶ Stable, secure and safe societies have been demonstrated to enable development policies and improve development outcomes.⁵⁷ Advocates and implementers of the SDGs have acknowledged the value of the ATT in facilitating action against irresponsible arms and ammunition transfers that will achieve the targets of the SDGs.⁵⁸ In its Preamble, the ATT acknowledges that peace and security, development and human rights are pillars of the United Nations. In recognising these rights, the treaty draws on the sentiment expressed in the UN General Assembly Declaration on the Right to Development (1986) which identifies development as an inalienable human right.

'... development, security and human rights are not only ends in themselves—they reinforce each other, and depend on each other. In our interconnected world, the human family will not enjoy development without security, it will not enjoy security without development, and it will not enjoy either without respect for human rights.'⁶⁰

UN Secretary-General
Kofi Annan (2005)

The Broader Benefits of the ATT for the SDGs

States Parties to the ATT have acknowledged the link between the ATT and the SDGs. Recently, at the third Preparatory Conference to the 3rd Conference of States Parties to the ATT, a working paper on the link between SDGs 16 and 5 was introduced.⁶¹

The table below outlines how implementing the ATT contributes to achieving the SDGs. This table is intended only as a brief overview to generate discussion. What the reader may notice is that the benefits of the ATT for the SDGs extend beyond targets directly related to arms flow and security.

Like the SDGs, the ATT is broad in scope, with beneficial flow-on effects. For example, as highlighted in this table, the ATT also has benefits for contributing to SDG targets aimed at protecting and empowering women. In this table and in the subsection on tourism we see that the ATT has benefits in protecting cultural and natural heritage from armed groups that poach, loot and traffic in such goods to finance operations. As one purpose of the ATT is to prevent diversions to unauthorised end-users, the ATT also helps SDG 11 to provide safe cities by preventing arms flows to criminal gangs and terrorist groups.

SDG 16	Non-conflict	Conflict
16.1 Significantly reduce all forms of violence and related death rates everywhere.	The ATT can help stem the flow of arms used in homicides. In one region affected by armed violence firearms are used in 69% of murders. ⁶²	The ATT can help stem flows of arms and ammunition that prolong and exacerbate conflict. ⁶³ The ATT risk assessment will help to prevent diversions of arms and transfers to irresponsible end-users that undermine peace and security and enable criminal and terrorist organisations. ⁶⁴ The ATT risk-assessment process can also highlight uncharacteristic requests or requests for excessive supplies of arms. This can help to prevent the destabilising accumulation or diversion of arms, ammunition, parts and components, where requests seem excessive for the end-user's proposed use. ⁶⁵
16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all.	The ATT will form part of international trade law that helps combat corruption and illicit trade.	As demonstrated in Section 4, the ATT contributes to IHL and IHRL by stemming arms flows and helping to provide a secure environment in which IHL can be applied. The ATT will not affect licit arms and ammunition transfers to responsible end-users. It will, however, prevent their supply to irresponsible end-users who violate human rights and international law. The ATT will enhance respect for IHL, IHRL and protection for women and children. ⁶⁶
16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime.	The objective of the ATT is to 'prevent and eradicate the illicit trade in conventional arms and prevent their diversion'. ⁶⁷ Arms are both an enabler and the product of illicit trade. The ATT explicitly seeks to combat illicit trade and prevent new arms supply in order to reduce organised crime through its required prohibitions ⁶⁸ and risk assessment. ⁶⁹	Illicit arms are an enabler of predacious armed groups in conflict that can live off communities through theft. ⁷⁰ The ATT can help diminish the supply of arms to armed groups. In the long-term, this serves to protect affected communities' property rights against such groups by implementing its prohibitions ⁷¹ and by States Parties conducting comprehensive export risk assessments. ⁷²

THE ARMS TRADE TREATY AND SUSTAINABLE DEVELOPMENT

SDG 16	Non-conflict	Conflict
<p>16.5 Substantially reduce corruption and bribery in all their forms.</p>	<p>The arms industry is viewed 'as prone to bribery and corruption'.⁷³ The ATT will standardise common trade procedures that will close gaps where corruption can occur.</p> <p>By using the ATT's export risk assessment, States Parties may also consider the possibility of the diversion of a legal transfer by means of corruption and bribery. They may then choose to decline a transfer if the risk of corruption and diversion is an 'overriding risk'.⁷⁴</p>	
<p>16.6 Develop effective, accountable and transparent institutions at all levels.</p>	<p>One purpose of the ATT is to promote 'cooperation, transparency and responsible action by States Parties in the international trade in conventional arms'.⁷⁵ The ATT requires States Parties to be transparent by reporting actual or authorised transfers.⁷⁶ It also encourages the accountability of all trade stakeholders to ensure that a transfer is legal and secure.</p>	<p>The ATT seeks to establish accountability for exporters who transfer conventional arms and ammunition despite having knowledge at the time of authorising a transfer that the end-use is either prohibited or is likely to undermine peace and security.</p>
<p>16.A Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime.⁷⁷</p>	<p>Building national control systems, including comprehensive border controls under the ATT, offers a range of measures to prevent diversions. These include developing stockpile management and restricting, limiting or denying the authorisation of trade where the risk of diversion to criminal and terrorist organisations cannot be mitigated to less than an 'overriding risk'.⁷⁸</p> <p>The treaty explicitly commits to international assistance and cooperation in capacity-building. For example, international assistance may include institutional capacity-building and technical, material or financial assistance.⁷⁹</p>	<p>The ATT can help to stem the flow of illicit arms to improve security in peacekeeping operations and humanitarian relief.⁸⁰</p> <p>In implementing the ATT, each State Party may seek assistance with stockpile management and disarmament, demobilisation and reintegration programs.⁸¹ The ATT also offers institutional capacity-building and technical, material or financial assistance.⁸² This will be provided through either a range of partners or the ATT Voluntary Trust Fund.⁸³</p>

THE ARMS TRADE TREATY AND SUSTAINABLE DEVELOPMENT

SDG 5 and 11	Non-conflict	Conflict
<p>5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.</p> <p><i>(See Section 4 for more details on the broader benefits of the ATT to reducing gender-based violence.)</i></p>	<p>The ATT risk assessment has made violence against women and children a criterion for consideration.⁸⁴</p> <p>The ATT will also prevent the diversion of arms to criminal organisations that profit from prostitution and human trafficking.⁸⁵ Gender equality, safe environments where women and girls can be empowered, and the protection of children should all be considered in an ATT risk assessment.⁸⁶</p>	<p>The ATT is the first legally binding instrument to connect arms transfers to gender-based violence. Women and children are disproportionately affected by armed violence.⁸⁷ In some conflicts children are exploited as soldiers.⁸⁸</p> <p>Many export officials, while conducting an arms transfer risk assessment, examine information from UN reports, reports of non-government organisations (NGOs) and media reports to assess gender-based and human rights violations.⁸⁹</p> <p>If there is an ‘overriding risk’ of gender-based violence, then the exporting states must mitigate the risk to below an overriding risk for authorisation to proceed.⁹⁰ Such mitigation should involve measures aimed at the importing states. This will contribute to safe environments for women and children.⁹¹</p>
<p>Goal 11 Make cities safe, inclusive, resilient and sustainable.</p>	<p>The ATT establishes measures to combat the diversion of arms.⁹² By requiring States Parties to establish and develop their national control systems,⁹³ this will help to prevent illicit trade in conventional arms and ammunition.</p> <p>The ATT risk assessment also requires States Parties to consider the impact a transfer may have on human rights, on gender-based violence and on violations of international laws.⁹⁴</p> <p>Urbanisation and inequality can drive armed violence. The ATT can act as a mechanism for helping to prevent illicit or irresponsible trade in arms. States Parties may include or promote discussion on including small arms proliferation and urban violence as part of a transfer risk assessment process.</p> <p>National control systems could help to reduce the diversion of arms flowing into cities that are otherwise misused to commit urban armed violence, and which facilitate gang and terrorist activities. This would assist police in making cities safer.⁹⁵</p>	
<p>11.4 Strengthen efforts to protect and safeguard the world’s cultural and natural heritage.</p>	<p>Criminal activity threatens cultural and natural heritage. Arms enable groups that finance their operations, in part, through illicit trafficking of poached natural resources or looting of archaeological sites and museums.⁹⁶</p> <p>The ATT can contribute to a diminishing supply of arms and ammunition to criminal or terrorist groups that profit from trafficking in cultural and natural heritage.⁹⁷</p>	<p>Archaeological sites and cultural monuments are also threatened by their military use and targeting.⁹⁸</p> <p>The ATT can contribute to strengthening efforts to restrict the supply of arms to irresponsible end-users who use or target heritage that is important for cultural identity.</p>

The ATT can enhance the effectiveness of the SDGs' framework, particularly Goal 16. Poorly regulated arms transfers fuel both conflict and non-conflict armed violence that hinders human and economic development.⁹⁹ Poorly regulated arms transfers can lead to insecure environments that destroy lives, impede new investment and damage existing infrastructure. In effect, it is development in reverse.¹⁰⁰ Vice versa, underdevelopment can promote the proliferation of illicit arms. It is at this moment that a strong and comprehensive ATT can prevent the flow of illicit arms into underdeveloped spaces in which the people are looking for alternative means of employment.

SDG indicators and the ATT

Each target has one or more indicators to measure where a state is on track to reaching its SDG targets and such goals. For example:

Target 16.4: 'By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime.'

Indicator 16.4.2: 'Proportion of seized, found or surrendered arms whose illicit origin or context has been traced or established by a competent authority in line with international instruments.'¹⁰¹

The ATT has a role to play in minimising the number of illicit arms by implementing comprehensive national control systems and ensuring responsible trade. The ATT can also be more effective if implemented in collaboration with the UN small arms Programme of Action (UNPoA), which outlines provisions on stockpile management, marking and tracing that limit the diversion of legal arms to the illicit market once they are transferred.¹⁰² Reporting on seized, found or surrendered illicit arms can contribute to tracing the origin or departure of the arms from legal possession. This could indicate a gap in the arms trade system or national control systems, or issues with the implementation of the ATT. In this way, the SDG indicators could also potentially measure the effect of the ATT.



UN Photo: Martine Perret

THE BROADER BENEFITS: TOURISM

Worldwide, recipients of international tourism earned US\$1260 billion in 2015, while the benefit for the international passenger transport industry was US\$211 billion.¹⁰³ This brings ‘the total value of tourism exports up to US\$1.5 trillion, or US\$4 billion a day on average’.¹⁰⁴ This means that international tourism represents 7% of global goods and services, ranking third in the global export category after fuels and chemicals.¹⁰⁵

Europe and North America remain the most popular tourist destinations.¹⁰⁶ However, investment in tourism is a key driver of socio-economic progress in developing countries.¹⁰⁷ ‘In many developing countries, tourism ranks as the first export sector.’¹⁰⁸ Tourism’s services-based industry can be more sustainable and stable than the comparatively more volatile resource extraction industry, upon which many emerging economies rely.¹⁰⁹ Tourism can lead to sustainable benefits in:

- job creation and enterprises: ‘Tourism is responsible for one out of 11 jobs and 10% of the world’s economic output’;¹¹⁰
- the diversification of national economies;
- export revenues;¹¹¹
- creating economic opportunities countrywide, thanks to its extensive value-chain penetration.¹¹²

In addition, there are indirect linkages that benefit:

- the food and beverage industry—agriculture and fisheries;
- infrastructure development;¹¹³
- construction and utilities, and
- telecommunications.¹¹⁴

Emerging economies in developing countries captured 45% of the market share of tourist arrivals in 2015.¹¹⁵ This figure is projected to rise to 57% by the end of the SDGs in 2030.¹¹⁶ However, clients of the tourism industry are sensitive to changes in the security situation and can easily damage a national or regional industry when they sense insecurity. In the event of widespread or targeted interpersonal violence, tourists can quickly switch to another destination with similar characteristics.¹¹⁷ One example from the South Pacific saw tourism drop by 41% due to a *coup d’état* and racial violence. This caused the state’s economy to shrink by 9.3% in the year after the *coup*.¹¹⁸

How armed violence damages the tourism industry

There is a dearth of global statistical research on the effect of armed violence on tourism. Sources tend to be individual case studies or small-sample quantitative studies. However, one authoritative study of global effects of political violence on tourism has demonstrated that ‘substantial increases in political violence lower tourism in the long run by about one-quarter’.¹¹⁹ Researchers found evidence that human rights violations, terrorist incidents and other politically motivated violent events have a significant negative impact upon tourist arrivals. The largest single adverse effect was a substantial increase in human rights violations, which could reduce tourist arrivals by up to 32%.¹²⁰

There is some evidence that political violence can even have spillover effects where instability in one country can negatively affect tourist arrivals in the region.¹²¹ An example of regional disruption is the Caribbean: the increased availability of high-powered firearms, illicit trafficking, subsequent armed violence and increased casualties are cause for concern for regional economies that are heavily reliant on tourism.¹²² Security and public safety are important factors for tourism-driven economic activity.¹²³

How the ATT helps secure tourism

THE BENEFITS OF THE ATT TO THREE TYPES OF TOURISM		
SDG 16	Impact of armed violence	Benefit of the ATT
Cultural tourism	<p>Economics and security—If a significant portion of state discretionary spending originates from tourism, armed anti-government groups can destabilise communities, cutting finance by violently reducing tourism.</p> <p>Personal safety—Tourists can be deterred by the presence of heavily armed police or armed forces deployed for state or community safety.</p> <p>Warnings—Governments can issue travel warnings for departing citizens, warning them not to visit countries affected by armed violence.¹²⁴</p>	<p>The treaty has the effect of preventing terrorist groups or organised criminals from damaging or profiting from looted cultural heritage artefacts or poached natural assets. Such criminal activity can damage cultural sites or natural assets that attract international visitors. Insecure environments can also act as a disincentive to tourists. The ATT requires States Parties to assess and mitigate the risk that a transfer of conventional arms will be used to commit or facilitate transnational terrorist or organised crime.¹²⁵</p> <p>These risk-assessment criteria require mitigation under the treaty, and so they would involve many terrorist and criminal activities, including wildlife trafficking, human trafficking and prostitution to finance operations. Furthermore, many of these organisations have been implicated in forcibly recruiting child soldiers to serve in illicit poaching operations.¹²⁶ Firearms are often enablers in poaching and illicit trade operations. The ATT will help to diminish the supply of illicit arms, making poachers or traders less able to resist anti-poaching operations.</p>
Wildlife tourism	<p>Fourteen African countries earn approximately US\$142 million per year in entrance fees for protected areas —national parks and safari reserves.¹³¹</p> <p>There is evidence that some organised crime and territorial insurgent groups can act as surrogate states, using the wildlife trade, among other things, to finance operations. For example, some African terrorist groups use ivory poaching to finance their operations.¹³²</p>	<p>States Parties are also required to take steps to prevent the diversion of arms and ammunition to unauthorised end-use or end-users.¹²⁷ The ATT will help restrict the growth of militant, terrorist and criminal groups by limiting the supply of essential tools, namely firearms. This will help to provide security in tourist destinations and protect natural and cultural attractions.</p>
Heritage tourism	<p>Cultural property is threatened by illicit trafficking during conflicts. When law and order breaks down, the looting of archaeological sites and museums is made easier and more profitable for criminal groups.</p> <p>Archaeological sites and monuments are also threatened by their military use and targeting.¹³³</p>	<p>Human rights violations dissuade tourists. The ATT can help to provide a safer, more secure environment to promote tourism. The ATT does this by including serious human rights violations, IHL and gender violence as criteria for transfer risk assessments.¹²⁸ If these violations are serious in scope (see Section 5), an exporting party must mitigate risks before the transfer can proceed.¹²⁹ This includes developing mitigation measures with the importing state.¹³⁰ This inhibits arms transfers to places where serious human rights violations are occurring, creates a safe environment for visitors and can set the foundations on which to build a tourism industry.</p> <p>The ATT can also help to achieve SDG Goal 11.4—to strengthen efforts to protect and safeguard the world’s cultural and natural heritage. It can prevent the diversion of arms that enable criminals to poach, loot, target or use cultural heritage in their operations.</p>

The ATT can help provide the secure and safe environment within which the tourism industry thrives. As demonstrated, increased human rights violations are the single largest adverse effect on tourist arrivals. The ATT can help to secure against terrorism and build a safe and stable environment, reducing access to arms by organised criminals who affect the personal safety of tourists or damage the host country's reputation.

THE BROADER BENEFITS: EDUCATION

Armed conflict and post-conflict violence often significantly reduce access to education.¹³⁴ As reduced access does not affect socio-economic classes and genders equally, this can deepen inequality in societies and create an increased risk of conflict.¹³⁵ As a result, diminished educational opportunities and an increased risk of armed violence can create a cyclical effect.

Education enrolment rates in developing countries increased from 83% in 2000 to 91% in 2015.¹³⁶ However, approximately 16 million girls aged between 6 and 11 will never learn to read and write—a rate twice that of boys of the same age group.¹³⁷ Children in conflict—affected countries comprise 17% of global primary school-aged children, but 36% of children are denied an education. State fragility or armed conflict results in children being twice as likely to not be in schooling than those living in peaceful developing countries.¹³⁸

In one of the most violent regions of the world, widespread firearm proliferation, gang violence and the illicit drug trade severely undermine safety on school campuses. Threats to students and teachers can arise from students taking small arms to school. In one country, 69 firearms were confiscated by educational authorities, while in another in the same region 42 weapons, including guns and grenades, were seized. In a neighbouring state '13% of school students had witnessed the presence of firearms on campus, 14% claimed to have easy access to a firearm in their school and its surroundings, and 4% claimed to have brought one to school'.¹³⁹ The ease of access indicated high levels of firearm availability.

How armed violence affects access to education and its outcomes

There are many direct and indirect ways that armed violence affects educational outcomes and reduced labour market opportunities later in life. Some of the impacts of armed violence in conflict and non-conflict contexts include:

- Destruction of infrastructure or lack of access to schools used for military purposes.
 - '... collapse of government provision of goods and services, including schooling, due to lack of financial resources or the diversion of finances to military efforts.'¹⁴⁰
- Absence of teaching staff. Teachers and students may be targeted in violent attacks.
- Recruitment of schoolchildren as child soldiers. Children are also recruited as:
 - porters;
 - messengers;
 - cooks;
 - providers of sexual services.¹⁴¹
- Gendered educational access. In short, dangerous environments can result in girls not being sent to school.
 - Armed groups may attack socially exposed girls and women.¹⁴²
 - Armed groups may disallow female education for ideological or religious reasons.¹⁴³
- Reallocation of household labour to children due to household financial burdens or conflict—recruitment, death or injury of adult family members due to armed violence.¹⁴⁴

Poverty, malnourishment and illness exacerbated by armed conflict are shown to have adverse effects on children's educational development. This may precipitate dropouts and lower school completion rates.¹⁴⁵ Armed violence can also cause displacement or forced migration, which are likely to inhibit education.¹⁴⁶ In some regions affected by post-conflict and non-conflict violence the dominant groups may restrict educational access based on constructed ethno-racial, class, linguistic or religious divides.¹⁴⁷

Education as a human right

The Geneva Academy finds that authoritative bodies on international human rights, legal mechanisms and precedent⁽⁹⁾ have established that prolonged disruption to education constitutes a serious violation of human rights.¹⁴⁸ This should be a consideration in the ATT risk-assessment process.¹⁴⁹

Insecurity and state fragility are demonstrably linked to a lack of access to education, while a lack of education can exacerbate armed violence through lack of workforce opportunity.¹⁵⁰ The Universal Declaration of Human Rights declares that 'Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages'¹⁵¹ This may be read with the UN General Assembly Declaration on the Right to Development (1986), which commits states to: and 'undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to ... education'.¹⁵²

Combined, these two declarations promote education because it is seen to be '*directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*'¹⁵³

How the ATT contributes to safe access to education

The ATT requires an exporting state to consider 'the risk of the conventional arms being used to commit or facilitate ... serious acts of violence against women and children'.¹⁵⁴ In this way the treaty requires the exporter's risk assessment to consider an 'overriding risk' that arms and ammunition could be diverted to irresponsible end-users, systematically inhibiting access to education. In addition, the ATT was adopted, in part, to contribute to international human rights protections. The treaty strengthens human rights law that protects a right to education. It requires risk-assessment criteria to include where arms transfers could be used to 'commit or facilitate a serious violation of international human rights law'.¹⁵⁵ Any risk must be mitigated to below an 'overriding risk' for the arms transfer authorisation to proceed.

The ATT contributes to reducing arms diversions, which in turn will reduce access to arms that fuel conflict, preventing crimes that deter children from attending school. The ATT contributes to secure and stable environments within which schools and education can be safely provided. Reducing arms diversion and the tools that fuel conflict can ensure environments in which education is able to flourish.

(i) CmHPR, *World Organization against Torture v Zaire*, 1996, paras 42–48.



Photo: Eskinder Debebe

THE BROADER BENEFITS: PUBLIC HEALTH

Public health is negatively affected by armed violence, both in and out of conflict. This includes the direct cost of injury and death, but also in conflict situations where healthcare systems are overburdened or inadequately resourced in funding, medical staff and medical supplies. This subsection explores the adverse effects of armed violence on conflict and non-conflict access to adequate healthcare.

Non-conflict armed violence burdens healthcare

The misuse of firearms has a serious impact on public health. Between 2007 and 2012, 46.3% of worldwide homicides outside conflict were committed with firearms. In one region the proportion was 69%.¹⁵⁶ Non-conflict homicide rates are a good indicator of the economic impacts of armed violence; however, the Geneva Declaration (2008) warns that disaggregated data and analysis are limited, and that figures collected in conflict zones are often more thorough.¹⁵⁷ As a result, the economic costs of armed violence tend to focus narrowly on conflict zones. Meanwhile, public health researchers argue that armed violence can actually increase in post-conflict situations.¹⁵⁸

Estimates from one high-income country place the economic cost of a single shooting at US\$250,000, amounting to US\$100 billion a year.¹⁵⁹ Eighty per cent of the economic cost of treatment and care in this country was covered by tax funding.¹⁶⁰ Slightly older, but more specific research, conducted in 2001 on high-violence middle-income countries calculated that 5–10% of these states' GDP was spent on firearm-related medical costs.¹⁶¹

Conflict and state fragility can inhibit access to healthcare

Conflict zones have a broad effect on public health. The direct impact is approximately 152,000 conflict-related deaths in 2015, or 3% of global deaths.¹⁶² The indirect consequences include:

- the displacement of populations,
- a diminishing ability to access healthcare,
- the breakdown of health services and access to doctors, and
- a heightened risk of combat death, injury and disease.¹⁶³

Another unfortunate indicator of a lack of access to healthcare is that fragile, conflict and post-conflict states account for 70% of global infant mortality.¹⁶⁴

In one nation afflicted by conflict and humanitarian crisis the 'health system is barely functioning, due to a severe shortage of skilled health workers and medical supplies'.¹⁶⁵ Approximately half the population of this country was dependent on humanitarian aid to survive. This resulted in a high death toll from easily preventable diseases, due to limited access to vaccination and sanitation. In the state capital, Médecins Sans Frontières (MSF) assisted in 8,965 births and 'offered comprehensive care to 5,239 victims of violence and 1,341 victims of sexual violence'.¹⁶⁶ In 2016, many other humanitarian organisations withdrew from the state in question, further burdening groups such as MSF. As at 2016, two MSF medical staff had been killed in conflict between armed groups.¹⁶⁷

How the ATT contributes to sustainable and accessible healthcare

As demonstrated, pervasive armed violence burdens healthcare resources. In non-conflict contexts, care, injury and disability is expensive and can have indirect costs in lost productivity. Conflict can see increases in injury and death, on the one hand, and financial strain on healthcare services, on the other. For example, the ATT commits States Parties to:

- recognise also the challenges faced by victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion;¹⁶⁸
- reduce human suffering.¹⁶⁹

The treaty does this in part by prohibiting transfers when there is knowledge at the time of authorisation that the arms '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'.¹⁷⁰ This provision should protect injured people and public health infrastructure from damage or destruction.¹⁷¹ Inhibiting access to healthcare may also violate a person's human rights (see *Section 5*).¹⁷²

Revisiting *Section 4*, faithfully implementing the ATT can diminish illicit diversions in non-conflict and post-conflict situations. In addition, the ATT can contribute to post-conflict responses which involve weapon collection.¹⁷³ This would restrict illicit arms and ammunition to criminal and terrorist organisations in non-conflict or post-conflict contexts, diminishing their ability to inflict armed violence.¹⁷⁴ The ATT contributes to secure environments where medical and humanitarian assistance can be safely delivered.¹⁷⁵ The ATT does this by strengthening compliance with IHL and IHRL.¹⁷⁶

THE BROADER BENEFITS: INFRASTRUCTURE AND INVESTMENT

In our globalising world, building resilience in fragile states or post-conflict capacity-building is important for humanitarian concerns and for regional security. Some argue that capacity-building to develop resilient institutions and infrastructure is one of the most important security challenges of the 21st century.¹⁷⁷ This is because post-conflict and fragile states can act as havens for terrorist and criminal actors that can destabilise states and the region.¹⁷⁸

Worldwide, there are large disparities in investment in infrastructure and amenities:

- approximately 1.1 billion people do not have access to electricity;
- 2,663 million people do not have access to clean water;
- 2.4 billion do not have adequate sanitation;
- about one-third of the world's population is not serviced by all-weather roads.¹⁷⁹

Investment in infrastructure and amenities is important for closing gaps in equality and building resilient communities. Infrastructure can affect inequality in three main ways:

- lowered health outcomes due to lack of access to basic services—water, sanitation and electricity;
- the lack of infrastructure such as irrigation and access to roads increases productivity and reduces trade and market access costs—helping local wealth generation;
- lack of transport and electricity can contribute to accessing jobs and livelihood.¹⁸⁰

Roads: What's at stake?

The New Partnership for Africa's Development (NEPAD) proposes nine highways across the continent at an estimated cost of US\$4.2 billion (2003). However, all nine of these highways pass through fragile states which, in most cases, include those portions of the roads that need the most rehabilitation. This is an expensive program, necessary to improve access to logistical infrastructure, local communities and interstate trade.

In Afghanistan, USAID provided:

- over US\$1.8 billion between 2002 and 2007 to reconstruct roads;
- an additional allocation of approximately US\$300 million funding for roads for the Commander's Emergency Response Program (CERP).¹⁸¹

These infrastructure programs and others show how key infrastructure can be destroyed by conflict or where state fragility can pose a risk to the sustainability of project outcomes.

Resilient and reliable civilian infrastructure is essential for economic development.¹⁸² For example there is an averaged trade-off between infrastructure investment and increases in GDP:

- a 1% increase in infrastructure is associated with a 1% increase in GDP;
- a 1% increase in telephone lines can result in a 0.2% increase in GDP.¹⁸³

These gains are important because 'a 1% increase in per capita income causes a reduction in the share of a population living in poverty by 0.5%'.¹⁸⁴ Investment in infrastructure development is estimated to generate aggregate marginal returns, particularly higher in poorer countries:

- the economic returns for telecommunication infrastructure are 30–40%;
- 40% for electricity;
- and 80% for roads.¹⁸⁵

The highest economic loss caused by armed conflict is damage and destruction of infrastructure. Armed violence can bring strategic destruction of key opposition support infrastructure—telecommunications, roads, bridges, airports and ports.¹⁸⁶ The flow-on effect can include armed groups looting hospitals and schools.¹⁸⁷ This conflict damage has potentially long-lasting post-conflict effects on civilian productivity and quality of life. Infrastructure is easily damaged or destroyed, but expensive to repair or replace.

The Impact of armed violence on Investment and Trade

Conflict and non-conflict criminal violence both reduce a state rating on the International Country Risk Guide by about 7.7 points,⁽ⁱ⁾ which an investor may consider in decision-making.¹⁸⁸ Even in non-conflict situations, arms-fuelled insecurity is seen to cause major obstacles to development when investors lose confidence in the market.¹⁸⁹ Investor confidence can also be difficult to rebuild in violence-affected and post-conflict economies due to lingering insecurity. This is not even considering the long-term loss of educated citizens as an outcome of armed conflict.

INVESTMENT IN REVERSE: THE HIDDEN COST OF ARMED VIOLENCE AND CAPITAL FLIGHT		
9% =>	20% =>	26.1% =>
In the lead-up to civil conflict, capital flight can be as high as 9% of private wealth.	During an average civil conflict, capital flight can increase to 20%.	At the end of the first decade post-conflict, capital flight has been measured at 26.1%. ¹⁹⁰

Trade is also sensitive to investor perceptions of risk, with a prolonged adverse effect in both conflict and post-conflict situations. Trade can drop on average:

- 12 and 25 per cent in the first year of a civil conflict;
- in major civil war⁽ⁱⁱ⁾ the loss of trade is around 40 per cent;
- an interruption in trade can persist for 25 years post-conflict.¹⁹¹

As demonstrated, armed violence can have a wide range of direct and indirect impacts on infrastructure, investment and trade. This can hinder the access of civilians to markets and jobs, adversely affecting their ability to develop and sustain productive livelihoods.

The ATT can build confidence and stability in a market

One purpose of the ATT is to build confidence among States Parties and contribute to international and regional peace, security and stability.¹⁹² By implementing comprehensive national systems, ATT State Parties can prevent the kinds of illicit arms flows which fuel insecurity and can cause:

- major obstacles to international investment;¹⁹³
- damage or destruction of infrastructure;
- barriers to national resource extraction and export development;¹⁹⁴
- excessive investment in the security sector, funding for which could be better invested in more productive activities.¹⁹⁵

The ATT can help offset these effects by enhancing national and regional arms control programs. The treaty inhibits inflows of illicit arms and ammunition through stronger common international standards and prevents diversion to irresponsible or illegal end-users, a precondition to overcoming localised armed violence.¹⁹⁶

Treaty compliance can also ensure that the quantity and level of sophistication of inflowing conventional arms do not contribute to instability or exacerbate existing fragility and national or regional insecurity. The treaty can therefore instil confidence in parties wishing to cultivate secure environments by inhibiting inflows of destabilising illicit conventional arms and helping to prevent local illicit arms races.¹⁹⁷ This can help to create certainty that international and domestic investment will generate returns and not be stolen, stunted or destroyed during or after armed violence.

(i) On a 100-point scale.

(ii) Major civil conflict is defined as those with a cumulative casualty rate greater than 50,000.

THE BROADER BENEFITS: POVERTY ALLEVIATION

Low-income fragile or conflict-affected states lagged 40 to 60% behind other low- and middle-income developing countries in achieving the MDGs.¹⁹⁸ Fragile, conflict-affected and post-conflict states account for 61% of global poverty,¹⁹⁹ with some African national economies retracting by 15% due to armed violence.²⁰⁰ This is not only a national problem: states adjacent to a conflict-affected country can also lose an estimated 0.7% of annual GDP.²⁰¹ A national doubling of terrorist incidents can potentially reduce bilateral trade by approximately 4%.²⁰² Furthermore, armed violence causes displacement, with approximately 75% of the world's refugees being hosted by neighbouring countries.²⁰³ These security issues compound regional developmental challenges by placing resources under additional stress.

Official Development Assistance (ODA) to fragile and conflict-affected states in 2010 amounted to US\$27 billion, with an additional US\$4.8 billion in humanitarian aid,²⁰⁴ while arms sales to fragile and conflict-affected states totalled approximately US\$1.7 billion.²⁰⁵ This means that 'military expenditure in fragile and conflict-affected countries grew by 15 percent between 2009 and 2010', whereas ODA to these countries grew by only 9% during the same period.²⁰⁶ This represents a lost opportunity to invest more in productive development initiatives, rather than high security and defence spending.

A SNAPSHOT OF INCOME LOSS TO ARMED VIOLENCE

Non-conflict	Conflict
US\$163 billion in lost productivity	60% of GDP
It is 'estimated that widespread armed violence in non-conflict settings costs US\$163 billion annually in lost productivity alone'. ²⁰⁷	'During the typical conflict the total income loss cumulates to 60 percent of a year's GDP.' ²⁰⁹
The costs of lost production can range from 2% to 3% of GDP for very high levels of violent crime. ²⁰⁸	'Civil conflict costs the average developing country roughly 30 years of GDP growth.' ²¹⁰

*'The interlink between security and development has been debated under the notion of human security, which encompasses freedom from fear, freedom from want and freedom to live in dignity. By putting the security and prosperity of human beings at the center, human security addresses a wide range of threats, both from poverty and from violence, and their interactions.'*²¹¹

World Bank, World Development Report (2011)

People need a sense of security and certainty in order to invest in livelihoods that are productive, and to invest in their children's future. All the adverse effects of armed violence on development outcomes addressed in this section demonstrably coalesce to hinder poverty reduction. We have seen that tourism is a growing labour-intensive industry that can diversify and decentralise an economy away from capital cities. This contributes economically to a broad range of people in developing countries. However, tourism is easily disrupted by armed violence, and particularly by human rights abuses.

Healthcare and education constitute investments in human capital which require sustained investment to overcome poverty. However, such services are easily disrupted and damaged by pervasive armed violence, state fragility and conflict. Healthcare is burdened by injuries and disabilities resulting from firearms while hospitals can be targeted or looted by armed groups. Health system funding may also be disrupted by pervasive armed violence. Likewise, schools can be targeted for looting, be subjected to attacks or used for military purposes. Finally, students may be forcibly or otherwise recruited into gangs and militias.

THE ARMS TRADE TREATY AND SUSTAINABLE DEVELOPMENT

International investment is an issue that has been revisited in this brief. In *Section 4* it examined the financial costs of disruption to industry and investment. *Section 4* focused on the additional security costs and showed how uncertainty of returns can dissuade investment in non-conflict situations; it explored disruptions to investment through a people-centred lens. Investment in infrastructure, services and amenities is shown as essential to promoting productivity by widening market access. However, widespread armed violence can damage infrastructure or prevent people from accessing the infrastructure necessary for their livelihood. In some contexts, armed groups deliberately target assets that support opposition groups, destroying communications and logistical infrastructure that is expensive to repair or replace following conflict.

The ATT is designed to assist in each of these security/development issues. Human development and a sense of security have been declared human rights. Conversely, development is seen to contribute to national and regional stability, and in turn security is necessary to ensure the sustainability of development initiatives. The SDGs aim to 'significantly reduce illicit financial and arms flows' by 2030.²¹² The assistance provided by the ATT to the SDGs is demonstrated in the security and development topics examined above.

The ATT also helps to create safe and sustainable cities and other secure environments that empower women (SDG Target 5.2) by explicitly making IHL and IHRL, gender and violence against children criteria for risk assessment in arms transfers. SDG 11.4 also seeks to protect cultural and natural heritage. As demonstrated in the subsection on tourism, armed violence can be very damaging to heritage as armed groups poach, loot and damage it either for profit or for ideological reasons. By diminishing access to illicit arms and ammunition, the ATT helps to diminish the operational capacity of armed groups.



UN Photo: Logan Abassi

Summary

This section has demonstrated that the ATT provides broader development benefits in the following ways:

- The ATT can enhance the effectiveness of the SDG framework, particularly Goal 16.
- The ATT can minimise the flow of illicit arms that adds stress to conflicts and prevents development.
- The ATT can contribute to providing a stable environment in which development can flourish.
- Money spent on combating illicit arms could be spent on achieving development goals.
- The ATT contributes to providing safety and security for cultural, wildlife and heritage tourism to thrive.
- The ATT can reduce the burden placed on a public health system by armed violence.
- The ATT can contribute to an environment in which investors have confidence in the market.
- The ATT can advance poverty alleviation, or at least prevent the perpetuation of a cycle of poverty.



UN Photo: Martine Perret

SECTION 7

THE ARMS TRADE TREATY AND THE CONVENTIONAL ARMS INDUSTRY



UN Photo: Harandane Dicko

The top 100 players in the global arms trade alone are reported to have sold US\$370.7 billion worth of conventional military arms and services in 2015.¹ Investors include state entities and public businesses, local manufacturers and multinational corporations, military service providers, financiers and many thousands of component, material and service suppliers. The trade employs large numbers of people, maintaining skills and manufacturing capacity that might otherwise be reduced. As a legitimate security and commercial interest in most countries, the arms industry has a considerable stake in the benefits of a fully implemented and effective Arms Trade Treaty (ATT). This section shows how the ATT provides certainty for industry actors by laying down reliable regulatory standards, not only for existing players but also for emerging manufacturers, exporters and states as they enter the market.

The second half of this section explores the vested interests of the conventional arms industry in the treaty, given the growth of corporate responsibility assessments across all sectors as a guide to investor and financier decision-making.

As reputation becomes increasingly important for corporate sustainability, it shows how effective ATT implementation can improve the image of the arms industry. Lastly, this section explores the additional benefits of the treaty as it combats the illicit arms trade by reducing black market supply. These are not separate factors, but they are interlinked and mutually reinforcing marketing advantages.

THE BROADER BENEFITS: ENHANCING TRADE STANDARDS AND IMPROVING MARKET VALUE

The ATT creates clarity in its support for a comprehensive regulatory environment,² providing exporters with clear risk-assessment criteria when authorising a shipment.³ This crucial step can avoid accusations of complicity in atrocities and human rights abuses caused through the misuse of arms and ammunition following a transfer.⁴

As the conventional arms market opens to emerging exporting states it will increasingly benefit both the existing industry and new players entering the trade.⁵ Current exporters have a stake in maintaining high regulatory standards to avoid being undercut by less scrupulous traders in an increasingly competitive market. For emerging exporters,⁶ the ATT offers international trade standards to aspire to along with a compliance framework to aid decision-making and to prevent unintended complicity in violations of international law.⁷

A trend towards a human security-centred approach

As another broader benefit, the ATT provides the private sector with a means to protect corporate image, an asset increasingly accorded value by stockholders, investors and financiers. As Corporate Responsibility Assessments support the trend towards a human security-centred approach to conventional arms and ammunition sales, the industry has a clear interest in incorporating the provisions of the treaty.^{8,9}

THE ATT PROVIDES CERTAINTY THROUGH RELIABLE REGULATORY STANDARDS

Trade globalisation has encouraged:

- value-added arms manufacturing and assembly practices;
- research and development;
- brokering, procurement and transfer supply chain complexity.

Often these changes have come more quickly than national regulatory controls can adapt.¹⁰ The privatisation of former state enterprises, such as ammunition and munitions producers, provides new business opportunities in the production of consumables.¹¹ This complexity is compounded when multinational corporations enter into long-term manufacturing and trade agreements in multiple jurisdictions with differing regulatory standards and systems.¹²

Such complexity can create gaps through which conventional arms may be diverted to illicit use, or employed in ways other than those agreed to by the exporting authority.¹³ As nearly all illegal arms sales begin as a legal transaction,¹⁴ ambiguity in domestic transfer controls can make it difficult for private industry to establish the legality of an international transfer.¹⁵ Conflicting requirements across a multi-jurisdictional supply chain can facilitate diversion, theft, looting and corruption.¹⁶

Factors which increase complexity in arms production, investment and trade include:¹⁷

- parts and components of conventional arms systems manufactured by a variety of companies in disparate regulatory environments;
- engineering, electronic or other subcontractors not involved in final assembly;¹⁸
- the growing complexity of value-added assembly and supply chains;
- the difficulty of categorising conventional arms whose parts and components employ dual-use technologies not controlled for civilian use.¹⁹

Before the ATT, different jurisdictions had a diffuse range of regulatory systems, all attempting to balance trade in arms with national security interests and humanitarian concerns.²⁰ Increasingly integrated and interdependent economies and globalised financial and trade systems created pressure for common rules.²¹

This is the first international, legally binding instrument to regulate the trade in conventional arms.²² If well implemented, the ATT is capable of harmonising the various regulatory approaches among States Parties in an increasingly interdependent world. The treaty aims to increase ethical and legal certainty by providing exporters with clear risk-assessment criteria in procurement and delivery processes. In this way it reduces the risk that trade agreements cannot be completed.²³

Regulatory benefits for all arms industry stakeholders

When considering the broader benefits of the ATT to the conventional arms industry, it is important to note that the benefits are not merely for industry actors—research and design, manufacturing and brokering—but increasingly for investors requiring certainty.²⁴ The finance industry—bankers, insurance companies and investment organisations—are often under pressure from stakeholders to reduce risks and to conform to ethical investment criteria.²⁵ International conventions and evolving societal expectations have caused a growing number of financial institutions to avoid relationships with companies involved in the arms trade for fear of reputational damage.²⁶ Makers and exporters of conventional arms and ammunition can easily earn a tarnished reputation in the wake of media, public and regulatory scrutiny which heightens public concern at irresponsible or illicit weapon transfers fuelling conflict and atrocities.²⁷

Standardised operational environments

The treaty will standardise operational environments and provide clarity as to the legality of arms procurement and delivery processes (see Section 2).²⁸ Operating under the protection of an ATT-compliant State Party can both enhance business opportunities and diminish the risk of complicity in violations of international law.²⁹ Sharing production and assembly between jurisdictions, for example in co-production licensing agreements,³⁰ becomes easier under standardised trade regulations. Exporters and importers working in a common regulatory environment will enjoy fewer risks and uncertainties, with improved transfer security, predictability and reliability.³¹ Clients will gain from streamlined procurement processes as they observe the expectations of responsible trade.

Trading in or from an ATT-compliant jurisdiction can be marketed as added value through corporate responsibility and corporate sustainability assessments to investors, and to foreign governments when negotiating a trade deal.³² Developing markets and emerging exporters can earn additional benefits if they operate under States Parties' jurisdiction, because operational clarity encourages regulators to develop national control systems. In these environments, arms traders can advertise their observance of ATT trade criteria to avoid breaches of international law.³³

AEROSPACE AND DEFENCE INDUSTRIES ASSOCIATION OF EUROPE (ASD)

*'The provisions (of the ATT) will not increase the administrative burden on European industry. They will, however, drive higher standards of regulation in countries that currently don't operate comprehensive controls. ASD sees this as a positive step. Increasing the number of countries operating common standards of control will provide more predictability and confidence for organisations that operate in a global market place and with global supply chains. A global solution is required to address this.'*³⁴

ASD press statement (3 April 2013)



UN Photo: Mario Rizzolio

THE ATT SUPPORTS INDUSTRY

The ATT can assist international arms procurement and trade in the same way that consumer protection guidelines set standards now seen as assets in many other sectors.³⁵ While treaty compliance establishes criteria by which consumers can judge arms transfers,³⁶ suppliers are able to cite assurances that their product will not be used other than agreed. The treaty enhances reliability and consistency in delivery, protects from false or misleading claims by parties involved, and empowers consumers who value ethical and legal integrity when choosing goods and services.³⁷

Existing multinational corporations will benefit from the ATT whether or not a base of operation is under the jurisdiction of a State Party.³⁸ As more states become parties to the treaty, exporters in non-party states will be required to satisfy ATT provisions imposed by transit and importing states that have adopted them. In this way the treaty levels the playing field for those operating under stringent export controls, minimising the disadvantage of competing with less scrupulous operators.³⁹

The ATT protects existing industry standards

Market analysts foresee that new states, private-sector manufacturers and exporters will enter the global conventional arms and ammunition markets during the next decade.⁴⁰ This puts the onus not only on governments to make ATT implementation work, but on existing businesses for whom this is a one-off opportunity to establish and protect industry standards as the sector opens to increased participation.⁴¹

Corporations that work with governments have the opportunity to communicate concerns and suggest improvements to regulatory behaviour.⁴² Governments can then communicate these views at ATT Conferences of States Parties—meetings held annually to consider developments in the arms trade, to review the implementation of the treaty and to suggest any adjustments required.⁴³ While the spread of ATT standards provides behavioural guidance for emerging suppliers, it also encourages existing providers to actively improve the treaty to their own advantage.



UN Photo: Ramadan Mohamed

The ATT helps reputable players stay ahead

The global value of all arms transfer agreements between states in 2015 was US\$79.9 billion, of which developing nations contracted for 81.7%.⁴⁴ The estimated value of actual international deliveries following these agreements was US\$46.2 billion, of which developing states accounted for 72.7%.⁴⁵ In the same year, global orders for conventional arms decreased.⁴⁶ Arms suppliers struggled to maintain market share⁴⁷ while purchasing states were often limited by domestic budget concerns. As a consequence, new sales in conventional arms have been more difficult to conclude.⁴⁸ As one report observed, to overcome obstacles in securing conventional arms agreements many suppliers 'have increasingly utilised flexible financing options, and guarantees of counter-trade, co-production, licensed production, and co-assembly elements in their contracts to secure new orders'.⁴⁹

These practices may result in an expansion of emerging economies entering the supply market as technology exchange and training advance domestic production capabilities. For example, China's conventional arms are often based on designs obtained from earlier licensed production programmes with Russia.⁵⁰ Another example is the world's largest arms importer, India, which recently reformed foreign investment legislation to allow up to 100% foreign ownership of domestic defence firms.⁵¹ Already, inflows of foreign capital and expertise are enhancing India's domestic arms industry.

The top traditional manufacturing states will progressively contend with more emerging markets manufacturing arms and ammunition.⁵² China reiterates that foreign arms sales, including to developing states, are an important market in which it intends to compete.⁵³ In coming years, historically large importers of conventional arms will instead become exporting states to emerging economies.⁵⁴

It is plausible that an increased number of supply options for the client will reduce costs in a competitive market.⁵⁵ This may result in a 'lower end' of the arms market supply chain to less affluent states,⁵⁶ while traditional arms supplying states continue to focus on established clients and more affluent developing states.⁵⁷ For this reason the arms industry may be in danger of becoming more divided between 'actors striving to be responsible, accountable and transparent, and those who utilise regulatory loopholes to gain market advantage by being lenient on issues such as transparency or end-use controls'.⁵⁸ This could affect consumers as treaty compliance allows the client greater access to high-tech systems not necessarily available at the lower end of the market.

As the ATT establishes a legislative framework and trade norms that assist those operating under stringent export controls, defence industries who operate responsibly will increasingly be matched with clients who value compliance and ethical behaviour to the disadvantage of traders in poorly regulated supply chains.^{59,60} Gradually, treaty universalisation will oblige low-end suppliers to adopt the more rigorous standards already observed by established suppliers of conventional arms and ammunition.⁶¹

The ATT provides an opportunity for companies operating in the jurisdictions of States Parties to ensure that future parties in emerging markets comply with expected behaviour and defend their reputation and competitiveness against unscrupulous actors.⁶²

By providing standard guidelines to avoid ethical and legal risks, the ATT framework opens opportunities to stay ahead of emerging competitors.

THE ATT ENHANCES REPUTATION

One of the most valuable corporate assets is reputation.⁶³ ATT compliance benefits reputation by preventing misuse of conventional arms by terrorists, organised criminals and repressive regimes.⁶⁴ Treaty observance can also protect corporate reputation by avoiding misuse of conventional arms to harm troops, contractors and diplomats.⁶⁵ Such events attract widespread media coverage and can damage the public image of the industry.

*'We do not want the legitimate trade to be tarnished in any way by the diversion of conventional arms to embargoed destinations, nor for use in acts that would violate international law ... We also welcome the fact that the Treaty is agreed by most member states—154 of 193 voted for—and that provides the best basis for securing the signatures of all states, particularly the major current and future arms exporters.'*⁶⁶

Gert Runde, Secretary-General, Aerospace and Defence Industries Association of Europe
press statement (3 April 2013)

The ATT enhances stakeholder value

'The Aerospace & Defence sector is often seen as prone to bribery and corruption...'⁶⁷ Although bribes are initially intended to generate business, the potential downsides for companies involved are substantial. Since governments are significant A&D customers and are often sensitive to maintaining appropriate business relationships, companies must be vigilant to counter bribery exposure in order to maintain their ability to win government contracts.

*'Corporate culture and reputation can be severely damaged as a result of bribery or corruption cases. The more material downsides relate to fines, legal costs and loss of licenses to operate or tender for new business.'*⁶⁸

Eurosif Aerospace and Defence Sector Report
Eurosif and Sustainalytics (2011)

Shareholder value is enhanced by companies' commitment to risk-management practices including protecting reputation. Increasingly defence companies' board members, investors and individual shareholders consider ethical issues and corporate responsibility in their search for security.⁶⁹ Stockholders, business partners and even freight-forwarders seem increasingly reluctant to be associated with the conventional arms trade and possible negative attention.⁷⁰ Investors and financiers view corporate responsibility as added value where it provides additional security against unforeseen events and share value turbulence.

While established and emerging arms traders, fund managers and investment companies specialising in production and trade of sensitive items⁷¹ seek advice on reputation management, groups such as Transparency International, consultancy firms⁷² and institutions such as the United Nations Global Compact and the Danish Institute for Human Rights provide Corporate Sustainability Assessment tools and scorecards to rank institutional responsibility.⁷³

UN Global Compact

*'The UN Global Compact is a strategic policy initiative for businesses committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labor, environment, and anti-corruption.'*⁷⁴

Guiding Principles of the UN Global Compact

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights;

Principle 2: Businesses should make sure that they are not complicit in human rights abuses.

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.⁷⁵

As accusations of complicity can be levelled even in the absence of intent, the Guiding Principles of the Global Compact are important considerations for the arms industry:

- Direct complicity—when a company provides goods or services that it knows will be used to carry out the abuse.
- Beneficial complicity—when a company benefits from human rights abuses even if it did not positively assist or cause them.
- Silent complicity—when the company is silent or inactive in the face of systematic or continuous human rights abuse.⁷⁶



UN Photo: Mario Rizzolio

WHY SHOULD COMPANIES CARE?

Human rights

By disrespecting human rights, businesses face a number of potential hazards which might threaten their social licence to operate:

- reputational damage;
- consumer boycotts;
- exposure to legal liability and adverse government action;
- adverse action by investors and business partners.⁷⁷

*'Advances in information technologies and global communications mean that companies can ill afford to conceal poor or questionable practices...'*⁷⁸

*'Where an international crime is involved, complicity may arise ... where assistance had a substantial effect on the perpetration of the crime and the company knew that its acts would assist the perpetration of the crime even if it did not intend for the crime to be committed.'*⁷⁹

Corruption

*'... [C]ompanies whose policies and practices fail to meet high ethical standards, or that take a relaxed attitude toward compliance with laws, are exposed to serious reputational risks. Often it is enough to be accused of malpractice for a company's reputation to be damaged even if a court subsequently determines the contrary.'*⁸⁰

For more information see <<https://www.unglobalcompact.org>>⁸¹

Investors and the public often rely on risk analysis from the research community and news media to uncover arms trade complicity in human rights abuses.⁸² The UN Global Compact highlights the potential adverse impacts for industry when complicity in human rights violations acts as a disincentive for clients, who are mainly governments. Accusations of complicity in human rights violations can dissuade clients from continued arms procurement for reasons of principle. In one recent example a government intervened for political reasons in an export of cluster-munitions. Events such as these can seriously affect private actors unable to complete agreements.⁸³ Here the ATT would have provided guidance on the legality of the transfer, therefore helping to protect stakeholders from financial loss if transfer agreements could not be completed.

ATT compliance develops regulatory standards which close gaps for corrupt practices and encourage observance of human rights and international humanitarian law (IHL). In this way the treaty assists arms industry actors to enhance their reputation as a secure investment, or trading partners by minimising the risk of corruption and complicity in human rights violations.

THE ATT WEAKENS BLACK MARKET SUPPLY

Estimates put the value of the unregulated conventional arms trade at 10–20% of the annual turnover of the legal market.⁸⁴ Although the black market is unlikely to disappear,⁸⁵ the ATT can prevent new conventional arms and ammunition from entering the illicit trade. For example, the global average price for a variant of an Avtomat Kalashnikov (AK) rifle is US\$534.^{86, 87} Australia has reported an asking price of US\$15,493, compared to US\$75 in the Niger Delta,⁸⁸ and cost disparities between locations are commonly attributed to availability. There is even statistical evidence to suggest that low prices for AK variants increase the risk of armed conflict.⁸⁹ Here the ATT has a role to play in cutting supply to the black market, therefore avoiding diversion and misuse of product from the legitimate arms industry.⁹⁰

Correlations have been found between casualties in conflict zones and the availability and price of ammunition in neighbouring states.⁹¹ As ammunition is a consumable, the ATT can weaken black markets by reducing supply.⁹² A sudden shift in the price and availability of illicit ammunition can also correspond to a price reduction in compatible firearms.⁹³ Legitimate ammunition and munitions production is an important market for stakeholders to protect as it is expected to grow from US\$18.08 billion in 2016 to US\$21.98 billion by 2021.⁹⁴ Hence, the treaty can provide competitive advantage for the lawful production and secure transfer of consumables by restricting unlawful supply.

UN Global Compact

Addressing adverse human rights impacts connected to product misuse

'Product misuse: the use of a product or service, in whole or in part, for a purpose other than its intended application, which could lead to human rights harm.'⁹⁵

Why should a company care? What are the risks?

'Reputational risks: e.g. brand loss, increased government scrutiny, negative media coverage, anti-company campaigns by NGOs and civil society.'

'Financial risks: e.g. investor divestment, customer boycotts, contract suspension/withdrawal, work stoppages, fines.'

*'Legal risks (civil and criminal): a company could face civil allegations of complicity in inflicting damage resulting from a wrongful act; or criminal allegations in countries that recognise the criminal liability of companies, of complicity in the commission of a human rights offence. Taking "no action" (i.e. an omission), such as failing to employ human rights due diligence, could also lead to criminal or civil allegations because the company "should have known" its actions or omissions would contribute to human rights harm.'*⁹⁶

Opportunities from addressing misuse

The UN Global Compact surveyed business representatives to get an overview of the opportunities that arise from addressing misuse. Information gathered from business representatives reveals that addressing product misuse can provide a competitive edge for:

- 'Branding and marketing opportunities'.
- New business development (in particular if bidding on government contracts that contain human rights clauses).⁹⁷

Summary

As the human security-centred approach to the sale of weapons and ammunition continues to grow in significance, the arms industry has a clear stake in preventing diversion and misuse.⁹⁸ Increased globalisation of operations and focused media coverage can cause stakeholders—governments, investors, business partners, clients and third parties—to react strongly to accusations of human rights violations arising from misuse.⁹⁹ The UN Global Compact's guide to product misuse is relevant to the arms industry because investors, financiers and even freight-forwarders are concerned about the effect on their image and will not invest in, or will divest from, association with industry actors that are complicit in human rights abuses.¹⁰⁰ ATT compliance provides certainty for industry actors and investors by building clear criteria to follow in order to observe ethics, human rights and IHL.

The ATT will provide a framework for the international community to cooperate in addressing diversion and avoiding misuse of conventional arms by terrorists, organised crime and irresponsible end-users (see *Section 2*). The treaty establishes a collaborative approach in combating corruption and locating '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'.¹⁰¹ This is important for the conventional arms industry as perceptions of complicity in violations of human rights and humanitarian law can affect reputation, attractiveness to investment and sustainability of trade agreements.¹⁰² Hence, sustaining an image as a responsible trader can affect earning power.

The benefits of the ATT for the arms industry lie in creating a more comprehensive regulatory environment, and providing clear risk-assessment criteria to avoid accusations of complicity in human rights abuses and atrocities. Furthermore, illicit and irresponsible transfers negatively affect regional and global economies, adversely affecting the sustainability of ongoing trade and investment agreements.¹⁰³



UN Photo: JC McIlwaine

SECTION 8

THE ARMS TRADE TREATY AND REGIONAL BENEFITS



Illicit flows of arms affect entire regions.¹ The death, destruction and delayed development caused by armed violence and conflict in one country can spill over into others.² The ATT is designed for this, and can strengthen both interstate cooperation and regional organisations themselves. Where affected countries share socioeconomic and political characteristics, implementing the ATT establishes a network of neighbouring policy officials and implementing agencies to tackle illicit arms flow problems of mutual concern, then to develop context-specific regional solutions.³

The broader benefits of the ATT to security are addressed in *Section 4*. This section does not revisit this topic; instead, it highlights how the ATT benefits regional engagement and strengthens effective regional frameworks and networking opportunities. The first subsection examines the role that the ATT plays in this.

We provide examples of the types of regional organisation that can be engaged to support the implementation and operation of arms control measures.

The second subsection examines how the ATT encourages cross-border cooperation to pool resources in overcoming common local arms flow challenges.

THE BROADER BENEFITS: A FRAMEWORK FOR REGIONAL ENGAGEMENT

The ATT brings with it cross-border benefits by combating regional arms flows and interrupting the transfer of weapons to armed groups involved in criminal and politically motivated violence.⁴ When national and regional approaches are complementary, instability in one country is less likely to spill over. Regional collaboration slows the movement of illicit arms and armed groups across borders, strengthens customs controls and facilitates security operations, information sharing and investigations.⁵

Policy positions are increasingly developed between states that face, or have overcome, similar security issues.⁶ During ATT negotiations, regional organisations advocated policies that benefit their members. For example, Caribbean states strongly advocated the inclusion of small arms and light weapons in the treaty.⁷ CARICOM members well understood that if the treaty were to specifically include transfers of small arms—which it now does—this would be a significant benefit to their region as a whole.

Dialogue between regional low-income states, or with middle-income states that have recently experienced transformation, can be of immediate value to other states seeking to overcome similar capacity challenges.⁸ Engaging regional partners that have similar socio-cultural contexts can also ensure that policy design merges best local practices with ATT implementation. All stakeholders then benefit from better designed and regionally owned approaches to combating the illicit trade in and misuse of arms.

Layers of opportunity: Regional and sub-regional organisations

The ever-changing characteristics of arms diversions and transnational illicit arms flows require that states and non-governmental actors coordinate their efforts within a unified strategic and operational framework. The cooperative approach encouraged under the ATT⁹ provides a template for regional approaches that can be adapted to the current needs and capacities of states.

The treaty can diminish the duplication of regional efforts to deal with the illicit arms trade and misuse of arms by enabling resources to be pooled with the aim of building more effective regional approaches. The ATT encourages international cooperation, consistent with respective security interests and national laws, to benefit regional organisations and networks.¹⁰

It also encourages cooperation when states:

- exchange information with regard to the implementation and application of the treaty;¹¹
- share information on illicit activities, criminal operational methods and criminal actors;¹²
- help with investigations, prosecutions and judicial proceedings regarding violations of national measures established under the ATT;¹³
- exchange experience and lessons learned about any aspect of the ATT.¹⁴

UN ORGANISATIONS, OTHER ORGANISATIONS AND SPECIALISED ORGANISATIONS

There are layers of UN organisations, other organisations and specialised organisations that can help to identify implementation challenges and develop appropriate localised responses.

The UN has a network of regional peace and disarmament centres:

- the UN Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC) located in Lima, Peru;
- the UN Regional Centre for Peace and Disarmament in Asia and the Pacific (UNRCPD) located in Kathmandu, Nepal, and
- the UN Regional Centre for Peace and Disarmament in Africa (UNREC) located in Lomé, Togo.¹⁵

Other regional organisations played an important part in the ATT pre-negotiations and the treaty adoption process. They will continue to be important in implementing the treaty.¹⁶ These include:

- African Union (AU)—The Union coordinated a common position on the Arms Trade Treaty for use by member states;¹⁷
- European Union (EU)—As the ATT fell within the scope of the EU's Common Commercial Policy activating Article 3 of the Treaty on the Functioning of the European Union, the Council of the European Union authorised the ratification of the ATT by EU Member States.¹⁸



UN Photo: Eskinder Debebe

EXAMPLES OF OTHER ORGANISATIONS

- CARICOM—The Caribbean Community was engaged in the pre-negotiation of the ATT to ensure that the treaty would suit the Caribbean.¹⁹ Since then, the Caribbean Community, through CARICOM, has been active in negotiations about the scope and parameters of ATT infrastructure to ensure that its members' interests are taken into account.²⁰
- Pacific Islands Forum (PIF)—It developed a 16-nation common regional negotiating position to ensure that the ATT took into account the concerns of Pacific states.²¹

As the adverse impacts of illicit firearms are of particular importance to their communities, regional organisations such as these also lobbied to have small arms included in the scope of the ATT. As a reflection of the impact of the Caribbean on the establishment of the ATT, at the First Conference of States Parties in 2015, Switzerland was chosen as the location for the ATT Secretariat over Trinidad and Tobago by only a few votes.²²

Furthermore, regional organisations such as CARICOM and PIF have the potential to encourage other states within their region to accede to the ATT. These groupings can also ensure that the interests of the small nations they represent are taken into account in decisions affecting the operation and development of infrastructure.

EXAMPLES OF SPECIALISED ORGANISATIONS

- African Mechanism for Police Cooperation (AFRIPOL)—Facilitates regional cooperation between police chiefs to combat trans-border threats.²³ This network of police chiefs coordinates efforts to combat illicit arms transfers and transnational crime.
- Pacific Transnational Crime Network (PTCN)—Assists police, customs and immigration officials to 'provide a proactive operational criminal intelligence and investigative capability to combat transnational crime in the Pacific through a multi-agency and regional approach'.²⁴
- Oceania Customs Organisation (OCO)—This group 'exists to help administrations align with customs international standards and best practice, leading to greater economic prosperity and increased boarder security'.²⁵
- Pacific Island Law Officers' Network (PILON)—A legal organisation that brings together attorneys-general, solicitors-general and senior crown counsel or representatives of each law office in the Pacific.²⁶
- CARICOM Coordinating Agency for Crime and Security (IMPACS)—A 'multilateral Crime and Security management architecture, specifically designed to administer a collective response to the Crime and Security priorities of Member States'.²⁷

This is only a partial list of relevant regional and sub-regional organisations, but many of these functions are replicated in other regionally focused organisations whose brief includes arms control and ATT implementation.

Why engaging regional organisations is important

The ATT Preamble acknowledges the 'role regional organisations can play in assisting States Parties, upon request, in implementing this Treaty'.²⁸ Regional organisations provide important frameworks for developing region-wide approaches to preventing the illicit arms trade as they rely on trusted, familiar structures and mechanisms to communicate issues and develop regional policies.

Cooperation facilitated by regional organisations has clear benefits in developing ATT implementation because the organisations can:

- build solidarity between regional stakeholders as national issues affect neighbouring states;
- take the initiative to improve traction or 'ownership' among regional members;²⁹
- provide a platform for sharing information and collaborating without there being any binding obligations;³⁰
- provide a discussion forum for officials from states with similar arms issues and timelines;
- build regional consensus or a common approach to interactions with the international community that may 'also help bridge gaps in perspectives among countries receiving international assistance';³¹
- organise meetings or workshops on ATT accession and/or implementation. This helps states with capacity constraints to access international expertise and to tailor local plans for ATT implementation and compliance;
- promote synergies with other frameworks such as the UNPoA at a regional level.

The ATT encourages States Parties to consult and to exchange information on matters of mutual interest.³² Regional approaches can also assist the individual state by:

- negotiating regional action plans for policing, investigation, prosecution and border control;³³
- making political recommendations on issues specifically relevant in the regional context;³⁴

- assembling region-specific policy resources and making them easy accessible;
- coordinating positions at international forums, then voting as a bloc on common issues;³⁵
- sharing information on treaty adoption and implementation with policy makers in the region.

How the ATT benefits regional organisations

While regional organisations encourage universalisation and support the implementation of the ATT, the organisations themselves can also benefit. This is because the treaty provides that:

1. regional organisations already combating illicit arms flows can be strengthened by the ATT's structural support for cross-border cooperation;
2. the ATT offers a framework for regional cooperation, bringing together police, customs officers, licensing authorities and legal networks;
2.1 functional organisations, such as those which exist in the Pacific,⁽ⁱ⁾ stand to benefit from the ATT as it provides a framework for guiding discussion;
3. the ATT Voluntary Trust Fund supports capacity-building at the regional level.

(i) For example, the Pacific Transnational Crime Network (PTCN) and the Oceania Customs Organisation (OCO)

Engaging regions through the ATT framework

Since the ATT entered into force, the treaty has been used to encourage regional dialogue and information sharing between states to curb regional flows of illicit arms. For example, the Centre for Armed Violence Reduction (CAVR) has collaborated with several regional organisations in order to encourage the adoption and improve the implementation of the ATT. Regional workshops are important for generating awareness of the benefits of the ATT among officials.

Using the ATT as a starting point for discussion, workshops in the Pacific identified many regional and national challenges.³⁶ Discussion of the treaty often touched on practices more closely related to the UNPoA, such as marking and tracing arms, and stockpile management.³⁷ In this way the ATT helps regional organisations to bring together officials from different implementing agencies to discuss effective regional methods that curb the flow of illicit arms using interdependent instruments. Such regional meetings and workshops often lead to delegates organising tailored national workshops to guide their own state's position on ATT adoption and compliance.³⁸





THE MELANESIAN SPEARHEAD GROUP BENEFITS FROM THE ATT: TOWARDS A REGIONAL PLAN

In 2015, the Melanesian Spearhead Group (MSG), encouraged by its Member States in the Pacific, co-hosted a workshop with the Pacific Small Arms Action Group (PSAAG). The workshop brought together 20 representatives of implementing agencies from each MSG Member State, including foreign affairs, defence, customs and police. The workshop, inspired by the recent entry into force of the ATT, encouraged Melanesian states to adopt the ATT. The workshop also doubled as a platform for discussing the implementation of the UNPoA. During the discussions, officials recognised the many synergies between the ATT, the UNPoA and other related arms-control processes.

During the workshop, officials identified several regional challenges: vast oceans, minimal surveillance capacity, the popularity of homemade weapons, arms flows across porous borders and inefficient manual record-keeping and marking and tracing systems. Some of these challenges could be dealt with through effective ATT implementation, while others could benefit from the implementation of the UNPoA.

Regardless of the arms control instrument in question, national officials using the ATT as a discussion point quickly identified steps to develop a regional action plan aimed at improving national arms control systems and forming an effective network. The initial steps were to:

- identify a focal person in each country to coordinate with the MSG Secretariat;
- hold national-level workshops to bring together all relevant agencies to discuss the implementation of the ATT and the UNPoA;
- conduct an ATT Baseline Survey with all relevant agencies in each MSG Member State to identify gaps that might prevent the ratification of the ATT or accession to it;
- introduce the International Small Arms Control

Standards (ISACS) to a wider group of government officials, particularly those within relevant implementation agencies;

- review current legislation in MSG Member States and its compliance with the ATT and UNPoA;
- call for the establishment of a focal point in the MSG Secretariat to help coordinate the arms-control work of MSG Member States, for example with reminders of reporting deadlines;
- encourage wider engagement with states outside Melanesia and the Pacific Islands Forum (PIF);
- propose a working group coordinated by the MSG Secretariat to facilitate donor assistance;
- approach other organisations such as the Oceania Customs Organisation (OCO) to assist with the promotion of common arms control laws and systems.

These examples show how the ATT framework can generate discussion and encourage collaboration and action regionally, promoting not only an effective ATT but other arms control instruments. This helped the MSG Secretariat to develop an adoption and implementation plan in line with the vision of its members.

Summarised from: PSAAG 'Advancing the ATT and UNPoA in the Pacific', a workshop hosted by PSAAG and MSG, 1–2 September 2015.³⁹

HOW CARICOM HAS BENEFITED FROM THE ATT: A REGIONAL NETWORK OF NATIONAL CONTACT PERSONS

Additional benefits from the ATT to a regional organisation include exchanging cross-regional lessons learned. For example, CAVR participated in a CARICOM IMPACS workshop that discussed the coordination and capacity challenges to ATT implementation shared by small island states in both the Pacific and the Caribbean.⁴⁰

While CAVR provided best practice examples and challenges from the Pacific, in return CAVR members gained knowledge of initiatives that might be translated from the Caribbean context. For example, CARICOM brought together officials from key implementing agencies to discuss the importance of national points of contact (NPCs) to the effective functioning of the ATT. The delegates then recommended the establishment of a regional network of NPCs.⁴¹ Coordinated by CARICOM IMPACS, the Caribbean network now provides cross-regional benefits to:

- promote cooperation between Member States on issues that include arms transfers, information exchange and sharing best practice;
- assist CARICOM by clearly identifying contact persons to facilitate arms control liaison between its members, the regional agency and other stakeholders;
- develop more comprehensive tools, systems and procedures for tackling regional challenges presented by illicit arms flows.

The broader benefits of engagement

Regional organisations act as repositories of information on neighbouring countries and critical regional issues and are therefore well positioned to be instrumental in building engagement between states. Regional organisations can also identify influential member states that can act as local champions of ATT universalisation⁴² and support other members in adopting and implementing the treaty.

In 2016, the UNRCPD and the Government of Samoa co-hosted a regional workshop⁴³ that illustrated the flow-on benefit of using the ATT as a mechanism for bringing states together.⁴⁴ The common standards established by the treaty make collaboration in regional arms control easier. They do so by introducing international expertise and applying it in a local context tailored to the needs of low-income states not otherwise able to finance delegations to attend international forums.

At this workshop, specific attention was paid to the responsibilities, in a South Pacific context, of transit and transshipment States Parties to the ATT.⁴⁵ Issues important to island states were given a prominence not normally afforded them—all best addressed by a regional approach.

This regional workshop also provided an opportunity for national inter-departmental engagement. This was because a broad range of departments were able to participate in numbers that would not have been possible if they had been invited to a meeting outside their region.

As a result, the Samoan UNRCPD workshop opened opportunities for representatives from the ministries of Foreign Affairs, Defence and National Security, Justice, the Attorney-General's Office, Police and Customs to 'exchange views and experiences and lessons learned when building comprehensive arms control systems in their respective states'.⁴⁶

Working collaboratively with other countries to prepare for ATT accession and implementation reliably enables prospective Member States to identify commonalities and differences and to highlight opportunities to pool resources when formulating responses. An example of this is the Arms Trade Treaty Model Law, which was developed to identify ATT commitments and to translate them into national legislation for Pacific island states.⁴⁷ The purpose of the model law is essentially to provide legislative guidance appropriate to the Pacific and to meet the aspirations and security objectives of the region.⁴⁸ In recognition of the value of this initiative, CARICOM has since developed its own model law based on the Pacific model.⁴⁹



UN Photo: Eskinder Debebe

(i) Project timeframe: 15/01/2015 – 14/01/2016. Not yet publicly accessible.

THE BROADER BENEFITS: ENHANCING CROSS-BORDER COOPERATION

As a trade treaty, the ATT focuses on international relationships. One key purpose is to promote cooperation, confidence and business certainty by way of trade standardisation,⁵⁰ not only among states but also to help regional organisations coordinate efforts of common interest. The NPCs can potentially play an important coordinating role in the establishment of ATT support by avoiding the duplication of structures already established to support other arms-control instruments.⁵¹ Regional organisations and/or NPCs could be asked to coordinate ATT implementation to benefit related regional networks.

Such coordination could increase dialogue and interaction between networks that might not previously have worked together. An example from the Pacific demonstrates the broader benefit of the ATT to regional networks:

- Pacific Transnational Crime Network (PTCN)⁵²
- Oceania Customs Organisation (OCO)⁵³
- Pacific Island Law Officers' Network (PILON).⁵⁴

Each network has a mandate that allows them to support ATT implementation and to share resources between related instruments and networks, in particular by assisting states that face resource constraints. Networking identifies opportunities to collaborate on issues of mutual interest, and to avoid duplication of effort. The ATT can serve to solidify these opportunities into a region-wide plan to combat the illicit arms trade and related crime.

Close gaps and regional vulnerabilities

Regional gaps in arms trade regulations create loopholes that criminals can exploit. The broader benefits of the ATT for regional security were examined in *Section 4*, where it was established that irresponsible and illicit arms transfers intensify and prolong conflict and lead to regional instability.⁵⁵ Regional vulnerabilities included:

- pervasive unregulated arms accumulation;
- stockpile leakage;
- weak border control;⁵⁶
- governance, and
- security-sector capacity constraints.

Procedural and legislative gaps create vulnerabilities ripe for exploitation, for example:

- the availability of 'old stocks' of arms in the civilian community;⁵⁷
- the 'lack of infrastructure for effective weapons accountancy and stockpile management';⁵⁸
- outdated or incomplete legislation governing the licensing or registration of arms traders;
- insufficient capacity to fully enforce legislation and procedures.⁵⁹



Brokering exemplifies a field of trade regulation that requires development. Of the state respondents to the ATT-BAP survey, 22% indicated that they did not yet have legislation to regulate arms brokering.⁶⁰ Unregulated arms brokering is an important gap to address because brokers can work across jurisdictions to take advantage of inadequate legislative controls.⁶¹ If brokering supply chains are poorly regulated, the potential is increased for diversions to take place in transshipment or recipient states.

While negotiating the best deal and delivery method for their client, legitimate brokers may exploit gaps in state, regional or international regulatory systems.⁶² This can make possible illicit transfers of conventional arms to conflicts or to zones of fragility, in violation of arms embargoes.⁶³ While closing gaps may appear to overcome a domestic problem for domestic benefit, in the case of unregulated arms brokering closing such gaps also has benefits for regional and global security.

The process of becoming ATT compliant includes amending legislation and strengthening procedural and management processes.⁶⁴ This benefits all states by ensuring that transferred or diverted arms do not contribute to instability or aggravate regional fragility or conflict.⁶⁵ Common trade standards for conventional arms inhibit arms supplies to criminal and terrorist organisations, repressive regimes and governments that seek to inflame regional tensions.⁶⁶ At the same time, they do not affect the responsible trade necessary to satisfy the legitimate defence needs of states.⁶⁷

Summary

This section demonstrates that the ATT can facilitate stronger regional cooperation. The ATT encourages the establishment of networks of officials from different states, while also improving coordination between policy officials and implementing agencies within national governments. Mutually reinforcing benefits include strengthening regional organisations such as policing and customs networks.

The benefits the ATT brings to efforts to increase regional engagement and collaboration are:

- The ATT encourages States Parties to facilitate international cooperation and to consult on matters of mutual interest.⁶⁸ To this end, States Parties are also encouraged to share information regarding illicit activities and actors, and to help with investigations, prosecutions and judicial proceedings associated with breaches of the treaty;⁶⁹
 - These steps can identify regionally specific issues and solutions;
 - A regional focus creates ownership of the implementation approaches and increases their effectiveness.
- Collaboration helps to identify common regional issues and leads to the design of regional solutions:
 - By encouraging regional states to pool resources, the ATT can enhance the effectiveness of regional approaches to regulate arms trade and prevent diversions.
- The ATT provides an opportunity to close legislative and procedural gaps by workshopping region-specific approaches:
 - to ATT implementation, which facilitates reforms to national control systems;
 - that provide a mechanism for stakeholders—interdepartmental representatives, police and customs officers—who otherwise do not travel to international forums on the ATT to participate in assessing implementation challenges and solutions.
- The ATT provides an opportunity for pursuing a regional approach to developing explanatory and other guidance materials, such as a model law.

SECTION 9

THE ARMS TRADE TREATY AND GLOBAL COLLABORATION



The Arms Trade Treaty (ATT) focuses global attention on current arms and ammunition export and import practices. It highlights the role every state can play in both regulating and supporting the legitimate arms trade while curbing the flow of illicit arms, whether as an exporter, an importer or a transit state. More broadly, the ATT:

- creates a framework to support global collaboration;
- generates flow-on benefits to bilateral and multilateral relationships between states;
- provides access to international assistance, and
- strengthens national systems.

By becoming a State Party and taking a seat at the table, governments can use the ATT framework to influence the development of international norms and the future direction of both this treaty and other related instruments. Membership of the ATT also enhances a state's reputation as a willing player in international cooperation.

This section shows how the ATT generates broader benefits to the state by advancing global collaboration. It suggests using the ATT to develop and maintain relationships among states, which will gain from the treaty process. These relationships will also provide a link to other forums of national and regional importance. The section then goes on to highlight some of the advantages to be gained from becoming a State Party or an ATT signatory or simply by demonstrating commitment to the treaty. It shows how joining the ATT earns each state a voice with which to guide and influence deliberations to best suit national policy aims. Finally, this section highlights the reputational advantage of being a willing player in a global instrument with a noble aim—to curb the flow of illicit arms and ammunition.

For all states the treaty can improve foreign policy interactions and collaboration among like-minded governments, improve national security infrastructure and benefit international reputation. As these and other benefits flow into other issues of importance, states will come to appreciate the breadth of the benefits gained from being a member of the treaty.

THE BROADER BENEFITS: RELATIONSHIP BUILDING

The ATT creates a structure to foster relationships between states. States Parties, signatories and observers currently meet at least four times a year to discuss the status of the treaty, its universalisation and its implementation.¹ Most often it is the same officials who attend these meetings, be they Conferences of States Parties or other linked arms control discussions. This ongoing process allows states to establish and to reinforce bilateral and multilateral relations.

Such dialogue can benefit states advocating shared ideas about the direction of the treaty. For example, small-island transit states in the Pacific and the Caribbean are actively encouraging links between their two regions in order to tackle common arms control problems. This not only supports collective lobbying efforts for those states disproportionately affected by illicit weapons, but also helps to identify other issues facing small-island transit states. Tackling problems collectively can be less expensive and more effective than going it alone.²

Developing and strengthening relationships within the framework of the ATT not only facilitates the identification of issues of mutual interest but also improves the chances of success when lobbying on the basis of shared interests. This approach also builds trust and develops additional opportunities for collaboration among States Parties. Legally binding instruments on arms control and non-proliferation are acknowledged by the UN Conference on Disarmament as enhancing mutual international trust and confidence.³ The effective limitation of arms flows can also have confidence-building value. Practical confidence-building measures have the potential to contribute to achieving the following objectives:

- 'Enhancing peace and security at all levels;
- Defusing tensions and promoting cooperation and friendly relations between States;
- Enhancing dialogue and greater transparency;
- Eliminating or at least reducing the causes of mistrust, fear, uncertainties, misunderstanding and miscalculation between States;⁴
- Promoting progress in conventional arms control.⁵

Linking the ATT to other instruments

Joining the treaty can have positive ripple effects in multilateral and bilateral relationships for states in more than just arms control.⁶ Building relationships that cross-reference these instruments can be important to advancing national interests: states with shared interests in one forum can more readily join forces in other forums. For example, efforts to prevent the diversion of small arms and light weapons and illicit arms trade under the ATT duplicate efforts under the UNPoA.⁷ As the officials who attend such meetings are often the same, developing strong relationships with ATT States Parties can positively influence a state's engagement with the UNPoA.

For example, Fiji first engaged Australia and civil society to analyse and understand the nation's preparedness to implement the ATT.⁸ Fiji then arranged meetings with Australia at UNPoA events to discuss its need for a centralised arms database system—such a tool would be of great value both for UNPoA implementation and for ATT reporting.

For the first time, the ATT links responsible arms and ammunition transfers with sustainable development, international humanitarian law and human rights. States can now use multilateral forums, UN meetings, World Summits and the like to link the ATT to other political agendas that are important to them.⁹ States have already acknowledged the link between the ATT and the recently established Sustainable Development Goals (SDGs).¹⁰ In particular, SDG 16 highlights the need to consider illicit arms flows when designing development policy and programming. By focusing on the illicit weapons which so often disrupt national progress, the ATT provides a new lever with which to achieve sustainable development. States can capitalise on relationships developed from participation in the ATT, using these partnerships and networks to make progress on SDGs. By identifying the links between arms control and other challenges, the ATT fosters relationships between officials operating in separate silos.

The ATT and synergies with other arms control instruments

In the 1990s, the international community began to recognise the availability and circulation of small arms and light weapons (SALW) as a problem. At the end of the Cold War the international community began to focus on internal conflicts as opposed to traditional inter-state conflict, particularly in the context of UN activities.¹¹ As a result, the international community became increasingly aware of the pervasiveness of SALW and their role in conflict.¹² A number of issues requiring attention came to the fore:

- the types of conventional arms being used in conflicts;
- the causes of excessive and destabilising accumulation and transfer of SALW;
- plausible methods to prevent and reduce excessive and destabilising accumulation and transfer.¹³

The Firearms Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol) and the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNPoA) were developed in parallel. The Firearms Protocol was adopted in May 2001 and in July 2001 a UN Small Arms Conference agreed to a consensus PoA, which was adopted by the UNGA on 24 December 2001.¹⁴

The Firearms Protocol focuses strictly on crime prevention and law enforcement. Among other things, it established a precedent for what was possible in international arms controls. It is the first legally binding instrument on small arms and it established the illicit manufacturing of, and trafficking in, firearms as criminal offences.¹⁵ The Firearms Protocol also identified tracing and law-enforcement cooperation as primary tools for helping investigators and prosecutors to combat organised crime.¹⁶

The UNPoA built off the Firearms Protocol¹⁷ and broadly 'provides UN member states with a mandate to develop and implement practical measures to curb illicit trade' in SALW.¹⁸ It is a political commitment that focuses on SALW and excludes ammunition.¹⁹

The UNPoA is a framework that identifies gaps in control systems and develops technical, policy and legislative recommendations for combating illicit SALW trade. Furthermore, the UNPoA deals with the manner in which the illicit manufacture, transfer and storage of SALW, as well as its excessive accumulation, has an impact on human suffering.²⁰

Other arms instruments in various regional and international forums have been developed to build stronger regulatory systems and tackle illicit arms flows that threaten peace and security. The relationship between the ATT and these instruments is symbiotic. Reviewing the implementation of these instruments can identify best practice in technology, policy and legislation. Conversely, the ATT can offer complementary benefits in arms trade security that contribute to a comprehensive system focused on combating illicit arms flows.

SYNERGIES: UNPOA AND THE ATT

The United Nations Programme of Action on Illicit Small Arms and Light Weapons (UNPoA) is a political commitment that provides a policy framework for UN Member States to prevent, combat and eradicate the illicit trade in small arms and light weapons. It provides a range of detailed recommendations for action at the national, regional and global levels.²¹

The UNPoA covers SALW but excludes ammunition, whereas the ATT has a much broader scope, covering as it does many consumables and weapons systems—from ammunition and munitions to SALW and warships, and many more in between.²²

The UNPoA's Implementation Support System (PoA-ISS) is beneficial to states establishing a comprehensive national control system under the ATT because it provides detailed recommendations on best practice. The ATT provides legal support to much of the practical implementation recommended in the UNPoA.



UN Photo: Win Khine

SYNERGIES: UNPoA AND THE ATT

UNPoA PROVISIONS	ATT PROVISIONS
<p>II 4. To establish, or designate as appropriate, national coordination agencies or bodies and institutional infrastructure responsible for policy guidance, research and monitoring of efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects ...</p> <p>II 5. To establish or designate, as appropriate, a national point of contact to act as liaison between States on matters relating to the implementation of the Programme of Action.</p>	<p>Article 5 General Implementation—(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 ...</p> <p>(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 ...</p> <p>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.</p> <hr/> <p><i>The UNPoA is a political commitment and is therefore not legally binding; owing to its status as a treaty, the ATT is legally binding. So while the ATT and UNPoA both refer to the identification of a national point of contact (NPC) and the identification or establishment of a coordinating agency, States Parties to the treaty are required to establish or designate an NPC and coordinating national authority and to register the details with the ATT secretariat.²³</i></p> <p><i>The definition of ‘conventional arms’ under the ATT is broader than the definition under the UNPoA, encapsulating ammunition as well as SALW. Under the ATT, the NPC and the national authority are encouraged to identify issues of mutual interest, including illicit SALW trade, and to cooperate in mitigation measures. The ATT will therefore supplement the UNPoA’s efforts to combat and eradicate the illicit manufacture and trade in SALW.</i></p>
<p>Import controls/end-use documentation</p>	
<p>II 12. To put in place and implement adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of small arms and light weapons, including the use of authenticated end-user certificates and effective legal and enforcement measures.²⁴</p> <p><i>PoA-ISS provides training modules on establishing end-use certification.²⁵</i></p>	<p>Article 8 Imports—Each importing State Party shall take measures to ensure that appropriate and relevant information is provided, upon request, ... 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> <hr/> <p><i>The ATT supports the UNPoA by requiring importing parties to produce documentation procedures at import, whereas the UNPoA can provide practical recommendations on developing end-user documentation.</i></p>

Marking at import and record-keeping

II 7. To ensure that henceforth licensed manufacturers apply an appropriate and reliable marking on each small arm and light weapon as an integral part of the production process. This marking should be unique and should identify the country of manufacture and also provide information that enables the national authorities of that country to identify the manufacturer and serial number so that the authorities concerned can identify and trace each weapon.²⁶

II 8. To adopt where they do not exist and enforce, all the necessary measures to prevent the manufacture, stockpiling, transfer and possession of any unmarked or inadequately marked small arms and light weapons.

(PoA-ISS provides training modules on best practice in marking and record-keeping.)²⁷

Article 12 Record Keeping—(1) Each State Party shall maintain national records, pursuant to its national laws and regulations, of its issuance of export authorizations or its actual exports of the conventional arms ...

(3) Each State Party is encouraged to include in those records: the quantity, value, model/type, authorized international transfers of conventional arms ...

(4) Records shall be kept for a minimum of ten years.

The UNPoA encourages manufacturers to mark small arms and light weapons at point of manufacture. This is encouraged to facilitate tracing but also to provide a quick-and-easy way to discern legal manufacture from illicit manufacture.

The ATT supplements the political commitment under the UNPoA by specifying what information could be documented and how long records should be kept.

Establishing a national control system

II 11. To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade. Likewise, to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons.

Article 5 General Implementation—(2) Each State Party shall establish and maintain a national control system, including a national control list ...

Article 14 Enforcement—Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.

The ATT requires each State Party to create a national control system. This includes identifying a national point of contact, a national control list, arms brokering regulations and a re-examination of a party's trade regulations. This process helps a state to close gaps in its national controls and international arms trade procedures. This process will support and enable enforcement agencies to carry out their duties.

The UNPoA encourages states to develop trade practices that prevent diversions of SALW. The ATT risk-assessment procedure (see Section 2) will assist the UNPoA because SALW is included within its scope, for the purpose, among other things, of preventing diversions.

THE ARMS TRADE TREATY AND GLOBAL COLLABORATION

SYNERGIES: UNPoA AND THE ATT

UNPoA PROVISIONS	ATT PROVISIONS
Arms embargoes	
<p>II 15. To take appropriate measures, including all legal or administrative means, against any activity that violates a United Nations Security Council arms embargo in accordance with the Charter of the United Nations.</p>	<p>Article 6 Prohibition—(1) A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.</p> <hr/> <p><i>The UNPoA calls on states to establish legal measures to prevent any activity that violates an arms embargo. A State Party to the ATT is legally bound to prohibit transfers of all conventional arms within the treaty's scope in line with UN arms embargoes.</i></p>
Legislation to regulate brokering	
<p>II 14. To develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering. This legislation or procedures should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State's jurisdiction and control.</p>	<p>Article 10 Brokering—Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms ... Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.</p> <hr/> <p><i>Of the countries surveyed by the ATT-BAP, 22% stated that they did not have legislation to regulate brokering, while 77% did.²⁸ The implementation of the ATT will fill this regulatory gap, because all States Parties to the ATT must regulate conventional arms-brokering activity.</i></p> <p><i>The Arms Trade Treaty Model Law—'presents model legislative provisions to assist in identifying and translating ATT commitments into national legislation. The model law offers a solid framework to guide Pacific states, and small states in other regions, in implementing the ATT.'²⁹</i></p>

Cooperate to combat diversions

II 11. To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade. Likewise, to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons.

Article 11 Diversions—(2) The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms ... through its national control system, ... 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 ...

Article 9 Transit or trans-shipment—Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms ...

Article 13 Reporting—(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 ...

The ATT extends the UNPoA-recommended measure to prevent diversions by requiring States Parties to develop their national control systems to close gaps in transfers where diversion can occur. The ATT expands transfer controls identified under the UNPoA, by detailing risk-assessment criteria for states to use and suggests the use of mitigation measures. The ATT also encourages voluntary reporting on measures implemented to prevent diversion.

The ATT also expands on the UNPoA's commitment to taking measures to control international transit. The ATT identifies the need for transit or transshipment states to implement regulations that prevent the diversion of conventional weapons.

SYNERGIES: UNPoA AND THE ATT

UNPoA PROVISIONS

II 23. To make public national laws, regulations and procedures that impact on the prevention, combating and eradicating of the illicit trade in small arms and light weapons in all its aspects and to submit, on a voluntary basis, to relevant regional and international organizations and in accordance with their national practices, information on, inter alia, (a) small arms and light weapons confiscated or destroyed within their jurisdiction; and (b) other relevant information such as illicit trade routes and techniques of acquisition that can contribute to the eradication of the illicit trade in small arms and light weapons in all its aspects.

III 5. States and international and regional organizations should, where appropriate, cooperate, develop and strengthen partnerships to share resources and information on the illicit trade in small arms and light weapons in all its aspects.³⁰

ATT PROVISIONS

Information exchange and collaboration

Article 6 Prohibition—(1) A State Party shall not authorize any transfer of conventional arms covered under Article 2(1) or of items covered under Article 3 or Article 4, if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.

Article 7 Export and Export Assessment—(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 ...

Article 11 Diversion—(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 ...

(5) In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2(1), States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.

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.

The UNPoA calls on states to establish legal measures to prevent any activity that violates an arms embargo. A State Party to the ATT is legally bound to prohibit transfers of all conventional arms within the treaty's scope in line with UN arms embargoes.

The ATT expands on the general recommendations of the UNPoA regarding information exchange to combat illicit trade. The UNPoA recommends 'relevant information such as illicit trade routes and techniques of acquisition', whereas the ATT expands on this with more detailed recommendations under Article 11(5). In fact, the information exchange and sharing encouraged under the ATT is more extensive than that under the UNPoA.

As we have demonstrated above, the UNPoA and the ATT are complementary. Each supplements the other: for example, the UNPoA recommends marking at manufacture, which would also meet the requirements of the ATT to develop transfer record-keeping practices. Conversely, the ATT supports the implementation of UNPoA recommendations because ATT States Parties are required to report their annual or authorized exports. This process strengthens record-keeping systems and stockpile review.

The UNPoA recommends detailed standards and procedures relating to the management and security of stockpiles.³¹ Stockpile security established under the UNPoA can have additional broader benefits as it builds confidence among traders that conventional arms can be obtained by the client without the risk of corruption or diversion.³² Becoming an ATT State Party encourages states to look at their domestic legislation covering domestic controls. This process serves to identify gaps in control systems. The adoption of legislation necessary for states to comply with the ATT will make good commitments under the UNPoA to address unregulated brokering and small arms diversions.

The ATT and the UNPoA also allow small or developing states to develop a single, comprehensive system that develops both effective internal and external controls to prevent illicit flows of arms. This can be done in a way that prevents duplication, saving human and other resources. For example, a state with limited capacity may consider developing a single national action plan that the same interagency government group uses to focus on implementing both the UNPoA and the ATT simultaneously by taking complementarity into account.

SYNERGIES: ITI AND THE ATT

The International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (ITI).

A politically binding instrument adopted by UN member states in 2005.³³ The ITI does not cover ammunition within its scope.³⁴ The ITI focuses on a refined set of control measures marking, record-keeping, and tracing cooperation—as essential elements in combating the illicit trade in SALW.³⁵

THE ARMS TRADE TREATY AND GLOBAL COLLABORATION

SYNERGIES: ITI AND THE ATT

ITI PROVISIONS	ATT PROVISIONS
Marking	
<p>Article 7 and 8—For the purpose of identifying and tracing illicit small arms and light weapons, States will:</p> <p>(a) At the time of manufacture of each small arm or light weapon under their jurisdiction or control, either require unique markings providing the name of the manufacturer, the country of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification by all States of the country of manufacture; and encourage the marking of such additional information as the year of manufacture, weapon type/model and calibre;</p> <p>(b) Taking into account that import marking is a requirement for the States Parties to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, require to the extent possible appropriate simple marking on each imported small arm or light weapon, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the small arm or light weapon; and require a unique marking, if the small arm or light weapon does not already bear such a marking. The requirements of this subparagraph need not be applied to temporary imports of small arms and light weapons for verifiable, lawful purposes, nor for the permanent import of museum artefacts;</p> <p>(d) Take all necessary measures to ensure that all small arms and light weapons in the possession of government armed and security forces for their own use at the time of adoption of this instrument are duly marked.³⁶</p>	<p>Article 12 Record Keeping—(3) Each State Party is encouraged to include in those records: the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2(1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s), and end users, as appropriate.</p> <p>Article 8 Import—(2) Each importing State Party shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction ...</p> <p>Article 4 Parts and Components—Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms ...</p> <hr/> <p><i>The ITI is a political commitment that provides guidance on best practice in marking. In this regard the ITI and the ATT are complementary, because the ITI specifies marking at point of manufacture.</i></p> <p><i>The ATT does not require marking but it is incumbent on States Parties to develop control systems for record-keeping, documenting imports and exports, and reporting.</i></p>

Record-keeping

Article 11—The choice of methods for record-keeping is a national prerogative. States will ensure that accurate and comprehensive records are established for all marked small arms and light weapons within their territory ...³⁷

Article 12 Record Keeping—(2) Each State Party is encouraged to maintain records of conventional arms covered under Article 2(1) that are transferred to its territory as the final destination or that are authorized to transit or trans-ship through territory under its jurisdiction

The ATT establishes specific requirements for record-keeping with regard to actual or authorised conventional arms transfers. These records, if public, will help the ITI to trace arms diverted from legal transfers to the final point of legal transfer.

Cooperation in tracing

Article 14—While the choice of tracing systems will remain a national prerogative, States will ensure that they are capable of undertaking traces and responding to tracing requests in accordance with the requirements of this instrument.

Article 16—To ensure smooth and effective cooperation in tracing, requests for assistance in tracing illicit small arms or light weapons will contain sufficient information, including, inter alia:

(a) Information describing the illicit nature of the small arm or light weapon, including the legal justification therefor and, to the extent possible, the circumstances under which the small arm or light weapon was found;

(b) Markings, type, calibre and other relevant information to the extent possible;

(c) Intended use of the information being sought.

Article 19—States receiving a tracing request will acknowledge receipt within a reasonable time.

Article 20—In responding to a tracing request, the requested State will provide ... all available information sought by the requesting State that is relevant for the purpose of tracing illicit small arms and light weapons.³⁸

Article 11 Diversion—(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 ...

(4) If a State Party detects a diversion of transferred conventional arms ... the State Party shall take appropriate measures, ... Such measures may include alerting potentially affected States Parties ... and taking follow-up measures through investigation and law enforcement.

(5) In order to better comprehend and prevent the diversion of transferred conventional arms ... States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.

As with the relationship between the ATT and UNPoA, the ATT supports commitments made under the ITI, in particular with regard to information provided in response to tracing requests. The ATT strengthens the ITI by encouraging international cooperation and information exchange. The documentation about transfers produced for the ATT will help the ITI to trace small arms light weapons diverted to the illicit market to the final point of legal transfer, thereby exposing techniques of acquisition, corrupt practices, illicit trade routes and methods of concealment.

REPORTING AND INFORMATION EXCHANGE: THE POTENTIAL RELATIONSHIP BETWEEN THE ATT, ITI AND INTERPOL

ITI provisions	International Police Organisation (INTERPOL)
<p>Article 33—States, where appropriate, will cooperate with the International Police Organization (Interpol) to support the effective implementation of this instrument.</p> <p>34. States that are members of Interpol will promote the implementation of this instrument when participating in Interpol’s organs.</p> <p>Article 35—States, where appropriate, in accordance with Interpol’s statutory rules, are encouraged to make full use of Interpol’s mechanisms and facilities in implementing this instrument. Interpol may, at the request of the concerned State, assist in the following areas:</p> <p>(a) Facilitation of tracing operations conducted within the framework of this instrument;</p> <p>(b) Investigations to identify and trace illicit small arms and light weapons;</p> <p>(c) Wherever possible, building national capacity to initiate and respond to tracing requests.³⁹</p>	<p>INTERPOL’s iARMS—The Illicit Arms Records and Tracing Management System can assist with law enforcement, investigations and prosecutions. iARMS has training modules to help:</p> <ul style="list-style-type: none"> • submit a trace request; • read, monitor and export incoming and outgoing trace requests; • respond to or comment on an incoming trace request; • update the status of a trace request; • generate and analyse reporting on incoming and outgoing trace requests.⁴⁰
	<p>ATT assists in recording and exchanging Information</p>
	<p>The ATT can supplement tracing requests established between the ITI and INTERPOL. ATT Article 11 encourages States Parties to share relevant information with one another on effective measures to address diversion.⁴¹ Initial and annual reporting under the ATT can provide a resource, if public, for ITI and INTERPOL tracing requests. Obligatory annual reports record authorised or actual exports and imports of conventional arms.⁴² Effective marking covered under the UNPoA and ITI, coupled with comprehensive transfer records held at the ATT Secretariat, can help INTERPOL to trace arms that have been diverted from legal custody or have resurfaced from illicit trade.</p>

The ATT encourages States Parties to consult on matters of mutual interest and exchange information. Subject to its own national laws, the ATT encourages States Parties to provide to other States Parties assistance in investigations, prosecutions and judicial proceedings.⁴³ In this regard, the ATT reinforces the political commitments made under the ITI. Meanwhile, the ITI identifies best practice in marking, record-keeping and tracing, supporting ATT compliance.

THE ARMS TRADE TREATY AND GLOBAL COLLABORATION

HOW THE ATT CAN BENEFIT THE WORLD CUSTOMS ORGANIZATION

As at June 2016, the World Customs Organization (WCO) had a total of 180 members, 'three-quarters of which are developing countries', whose members 'are responsible for managing more than 98% of world trade'.⁴⁴

WCO goals	ATT benefits
<p>Strategic Goal 1—Promote the security and facilitation of international trade, including simplification and harmonization of Customs procedures = Economic Competitiveness Package</p> <p>The WCO is working with its Members to ensure growth by securing and promoting economic competitiveness. Trade security and facilitation is one of the key factors for the economic development of nations and is closely tied to national policy on social wellbeing, poverty reduction and economic development of countries and their citizens. Likewise, the WCO provides a forum for the development of instruments and tools to simplify and harmonise customs procedures.⁴⁵</p>	<p>The ATT will provide comprehensive trade standards covering export, transit and import control systems that will simplify and harmonise customs procedures. The treaty can contribute to obtaining WCO Strategic Goal 1 by providing secure transfer of a potentially dangerous product. As demonstrated above, human security can be threatened by the poorly regulated accumulation and circulation of conventional arms. To this end, the ATT contributes to the WCO Strategic Goal 1 by improving human security.</p> <p>As demonstrated in Section 6, the unregulated accumulation and circulation of conventional arms can have adverse effects on individual and communal access to livelihoods, healthcare and education. This undermines efforts to reduce poverty. The ATT supports development goals by reducing the black market supply of arms (see Section 7).</p>
<p>Strategic Goal 3—Protect society, public health and safety = Compliance and Enforcement Package</p> <p>The efficiency and effectiveness of customs border compliance is a determining factor in ensuring the compliance of goods, people and means of transport with laws and regulations, the attainment of safe and secure communities, the economic competitiveness of nations, the growth of international trade and the development of the global marketplace.</p> <p>The WCO will continue to develop and maintain standards and guidelines with respect to the goal of protecting society. The exchange of customs-enforcement information and intelligence is crucial to the WCO's Enforcement Strategy. To this end, the WCO will coordinate and implement customs-law enforcement initiatives and operational activities with assistance from key stakeholders.⁴⁶</p>	<p>The ATT will provide certainty through reliable regulatory standards among States Parties.⁴⁷ This will benefit exporting states, importing states and freight couriers by providing greater transparency and confidence that individual transfers of conventional arms are legal (see Section 7). The standardisation of trading practices and legislative controls will contribute to WCO's Strategic Goal 3 by supporting the growth of the international conventional arms trade and the development of the global arms market.</p> <p>The objective of the ATT was to establish the highest possible common international standard for regulating international trade in conventional arms and to prevent the illicit trade and diversion of arms. The attainment of this objective will contribute to the WCO goal of protecting society, public health and safety.</p>
<p>Strategic Goal 5—Promote information exchange between all stakeholders</p> <p>The WCO provides a forum for international cooperation to promote greater connectivity and more harmonious interaction, including the exchange of information and experience and the identification of best practices between member administrations, other government agencies, international organisations, the private sector and other relevant stakeholders.⁴⁸</p>	<p>One objective of the ATT is to promote 'cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties'.⁴⁹</p> <p>Confidence-building is partly achieved through a commitment to the exchange of a range of obligatory and voluntary information.⁵⁰ The ATT can help the WCO by developing comprehensive trade standards, providing capacity-building assistance⁵¹ and exchanging lessons learned on best practice.⁵²</p> <p>States Parties to the ATT may seek, offer or receive assistance through the WCO, given its status as an international organisation.⁵³</p>

THE ARMS TRADE TREATY AND GLOBAL COLLABORATION

This does not represent an exhaustive review of the complementarity of the ATT to other regulatory instruments. The treaty has synergies with other instruments, including:

- supplementing the existing legislation of jurisdictions to include the complete cycle of the arms trade;
- strengthening international controls in order to have a positive impact on internal controls, that is, record-keeping, reporting and stockpile management;
- preventing the international flow of illicit arms to reduce the domestic availability of illicit arms;
- reducing illegal, cross-border smuggling activities;
- sharing lessons learned about reporting, which will facilitate the development of a single, comprehensive reporting structure on arms instruments;
- providing a holistic picture of the global arms trade and illicit flows;
- building a fully integrated national, regional and international arms control system to prevent illicit arms flows.

The ATT differs from other instruments because it is a treaty. Therefore its provisions are legally binding. It also differs in that it covers a very broad range of conventional arms and ammunition. Whereas the UNPoA and ITI focus on illicit activity that may include trade, the ATT is concerned with establishing the highest possible common international standards for the trade in conventional arms. The broader benefits of the ATT are therefore greater than for the other, more limited instruments. As shown above, the ATT supports and complements other instruments, for example by regulating the trade in SALW from manufacture to end-use.



UN Photo: Catianna Tijerina



UN Photo: Catianne Tijerina

THE BROADER BENEFITS: INTERNATIONAL COLLABORATION AND ASSISTANCE

Multilateral treaties commonly enhance inter-state cooperation.⁵⁴ The ATT is a good example, because it sets up the world's first legally binding cooperative framework on arms trade regulations.⁵⁵ Through transparency and information exchange exporters and importers can build mutual trust.⁵⁶ The implementation of this treaty may also open the door for increased collaboration in defence, dual-use technology, and training and development.⁵⁷

A mechanism to share financial resources is essential for widespread participation and effective implementation of the ATT.⁵⁸ Many states are not able to join the treaty if they lack the funds to implement its obligations.⁵⁹ Outside assistance and expertise is required to enable developing states to participate, and to implement the agreed norms of the treaty.⁶⁰ For this reason an ATT Voluntary Trust Fund (VTF) was established in 2016.⁶¹ Any State Party, signatory or other state 'having shown clear unambiguous political commitment to accede to the ATT' can submit a proposal for assistance.⁶²

To encourage the universalisation of the treaty, many arms-exporting nations have provided financial assistance. In 2013, several donors established the UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR) to promote the universalisation and implementation of both the UNPoA and the ATT.⁶³ With support from UNSCAR and in partnership with civil society, small or developing states have been provided with assistance to ratify and implement the ATT.⁶⁴

States can use the VTF, UNSCAR partnerships or bilateral relationships with donors to improve their national arms control systems and to implement the ATT. In this way, donor states invest in the success of the treaty and improve regional security by supporting small or developing states that are experiencing capacity challenges. In return, recipient states contribute to universalisation and norm setting while improving their own security infrastructure,⁶⁵ opportunities that would not have been available if the treaty had not existed.⁶⁶

What has already improved as an outcome of the ATT?

Although the ATT is still young, it has already asked states to take stock of their current systems and make appropriate changes. This has led to advances in both large and medium-sized exporting states, just as it has with small or developing importing and/or transit states. Examples of steps taken to improve national arms control systems are shared at the annual ATT Conference of States Parties, where working groups communicate lessons learned to others that are seeking to improve their own control systems.

ADVANCES IN EXPORTING AND IMPORTING STATES

Many states have conducted a national assessment of their arms control system to determine their capacity to implement the ATT.⁶⁷ The ATT also obliges States to identify gaps by preparing baseline reports on their own national systems.⁶⁸ Several guides have been published about conducting national assessments and building comprehensive national controls,⁶⁹ describing first steps to incorporate ATT norms and practices, and highlighting any gaps.⁷⁰ Lessons learned during this process are then shared with the wider ATT community, providing assistance to all states.

Some states have already implemented domestic legislation to meet their ATT obligations to regulate arms brokers.⁷¹ Although brokers make vital connections in many arms and ammunition deals, the shadowy influence of some actors can be neglected by states whose laws overlook their importance.⁷² When arms brokers are regulated, illegal activity becomes explicit, providing fewer opportunities for unscrupulous practices.⁷³ This then encourages other states to regulate brokering within their own jurisdictions to avoid becoming the next vulnerable transit point for the opportunistic shadow trade.⁷⁴

Reports and national assessments have helped governments make policy and procedural decisions, verify state compliance, and promote transparency.⁷⁵ Despite ongoing debate as to whether reports should be public or private, in 2016 very few governments submitted private reports.⁷⁶ Instead, most followed the example of the large majority of states who took part in the first round of reporting in 2015.⁷⁷ The more states that continue to report openly, the more transparency becomes the norm.⁷⁸

FURTHER ADVANCES IN SMALL IMPORTING OR TRANSIT STATES

The ATT has already improved the legislative arms control framework of many small or developing states. Model legislation for small importing and transit Pacific island nations was developed by New Zealand,⁷⁹ but any government can cover the range of ATT obligations by adopting this legislation to suit their own situation. CARICOM states have used the Pacific model law to draft their own version for the Caribbean.⁸⁰ In regions plagued by drug and gun trafficking, small states will soon be less vulnerable to the illicit arms dealers and brokers who exploit legal loopholes.

The ATT has also helped identify where improvement in the technical capacity of small or developing states is beneficial. Fiji, together with the government of Australia and civil society, recently conducted a baseline assessment of its arms control system.⁸¹ This identified the country's need to regulate brokering and to develop a centralised arms export and import database.⁸² Officials now have a baseline from which to measure, and a plan to design improvements.⁸³ CARICOM has also worked with assistance from Germany to review Caribbean arms control import and export systems.⁸⁴

The ATT Voluntary Trust Fund recently announced grants to several governments to allow them to progress towards treaty ratification and to facilitate the full implementation of the treaty. Over time, following several funding rounds and the completion of a number of projects, the ATT community will be able to assess the value of these projects and develop best practice.

By taking part in the ATT process, a range of states big and small have enhanced their national security infrastructure, finding that treaty observance can bring benefits much broader than merely complying with its obligations.⁸⁵ In particular, a nation's defence sector can reap benefits from system improvements encouraged by the ATT.⁸⁶

THE BROADER BENEFITS: HAVING A SEAT AT THE TABLE

Without a seat at the table, it is difficult to influence the growth and direction of the ATT. The treaty will, for the first time, provide all stakeholders in transfer supply chains and those who are affected by illicit arms flows with an opportunity to guide regulations on arms control.⁸⁷

This means that those most acutely experiencing the adverse effects of the poorly regulated arms and ammunition flows now have a voice.⁸⁸ Because the ATT is a young treaty, States Parties still have an opportunity to contribute to the development of its organisation and processes for greater effectiveness.⁸⁹ By joining the treaty, states can contribute to developing norms, establishing multilateral cooperation and generating consensus to influence behavioural change.

The broader benefits of joining the ATT family: Influencing the development of norms

Through the ATT, states can define, reinforce and supplement the development of norms on arms prohibitions, export risk assessments, transparency and state cooperation.⁹⁰ For example, transfers of arms or ammunition in the face of a UNSC arms embargo are already prohibited under international law.⁹¹ The ATT reinforces this as a norm.⁹²

It also widens the 'legal implications of state responsibility' beyond political responsibility.⁹³ Now states can be held responsible under international law for their complicity in an embargoed transfer.⁹⁴

The ATT has driven new understandings of arms transfer norms.⁹⁵ It is helping states,⁹⁶ think tanks,⁹⁷ international organisations⁹⁸ and scholars⁹⁹ to engage in research and dialogue that aims to define these norms. Collectively, a new body of discussion is defining what it means for an exporter to have 'knowledge at the time' of grave crimes;¹⁰⁰ how to assess whether arms 'could be used' in a violation; what constitutes a 'serious violation' of international human rights;¹⁰¹ and when a transfer faces an 'overriding risk' of negative consequences.¹⁰² This new body of international legal opinion can be called upon during arms transfer assessments.¹⁰³

States must have a voice at the table if they want to encourage and influence the process of responsible trade. They have a voice only by becoming States Parties. Annual Conferences of States Parties provide a platform from which to influence the development of norms and standards. There, Parties can articulate to others the behaviour they will, and will not, accept.

THE ARMS TRADE TREATY AND GLOBAL COLLABORATION



UN Photo: Martine Perret

The broader benefits of joining the ATT family: Building consensus

The broader the consensus for the ATT and its norms, the more legitimacy it gains in its bid to regulate arms and ammunition transfers.¹⁰⁴ The more defined the norms are, the less likely it is that ambiguities will cloud effective implementation.¹⁰⁵ The fewer the ambiguities with implementation, the more likely that a universal standard of export risk assessment will become normal state practice. Once these new norms are firmly established, exporters will find it harder to find ways to circumvent the system.¹⁰⁶ Likewise, importers will be expected to use arms appropriately and to deliver them only to approved end-users.

Universalising the ATT norms is best promoted through more ratifications and accessions.¹⁰⁷ The noncommittal position of some states towards the ATT should not discourage other states from joining. Rather it should encourage states to sign up and bolster consensus to pursue stronger arms control norms and practices. Treaties such as the ATT can have a broader impact when some states who are not States Parties proceed to implement its provisions. For instance, the United States is not a party to the Anti-Personnel Mine Ban Convention,¹⁰⁹ but it has in large part implemented it.¹¹⁰ By complying with the landmine treaty, states decreased the market value of landmines and non-States Parties were forced to change their practices. By standardising arms transfers, the ATT also has the potential to put pressure on non-States Parties to adopt its norms and practices.¹¹¹

States join the ATT for different reasons, but each has a vested interest in a strong treaty. For example, for CARICOM states, the ATT offers hope that gun violence, fuelled by illicit flows from other countries, can be reduced.¹¹²

'Jamaica, like much of the Caribbean and Central America, is challenged by crime, concentrated in certain communities. This has had a destructive impact on families, and has deterred investment and discouraged business development ... Crime in sections of Jamaica threatens the attainment of sustainable development goals ...

'Jamaica is acutely aware of the destruction that can be wrought as a result of easy access to small arms and light weapons, particularly when in the possession of sophisticated networks of organised criminal groups ... It is this reality that has defined and propelled our participation in a range of bilateral, regional and multilateral arrangements, aimed at restricting the source, means and capabilities that have been fuel to these dangerous relationships, made even more destructive through links to the drug trade ...

'Jamaica has been a staunch supporter of the Arms Trade Treaty and we are working towards its full and effective implementation ...'¹¹³

Jamaican Prime Minister Andrew Holness (2016)

For small states such as Fiji who contribute peacekeepers, the ATT could reduce the threat posed to their personnel in the field by limiting illicit weapon and ammunition flows to armed groups.¹¹⁴ The ATT is a vehicle for States Parties to set norms, and to influence behaviour in order to improve standards for responsible trade in arms. Regardless of the motivation for becoming a State Party, without joining, states can do little to assert their state interests or influence the norm-building with regard to responsible arms and ammunition transfers.

THE BROADER BENEFITS: REPUTATION BUILDING

Adopting the ATT can boost a state's reputation. The compliance-based theory of international law suggests that by joining and participating in a legal mechanism, a state demonstrates its commitment to international legal obligations and enhances its reputation as an attractive and reliable partner invested in a rule-based system.^{115, 116, 117}

Conversely, a state may suffer reputational damage by not joining the ATT. The Asia-Pacific region has been singled out at each ATT CSP as the region with the lowest proportion of States Parties.¹¹⁸ However, many states are progressing despite limited resources and capacity.¹²⁰ States in this region are taking steps to strengthen their arms control systems, while some Pacific states are apprehensive about joining the ATT before becoming fully compliant for fear of being called out for non-compliance.¹²¹ This fear is unfounded, but could inadvertently cause reputational damage if a state decides on this basis not to participate in the treaty. As explained in the conclusion, States will be encouraged by others to 'come as they are'.

The treaty acknowledges differences in national systems. ATT obligations for small or developing states may well be minimal:¹²² it is largely left up to each government to decide how it regulates the transfer of arms and ammunition.¹²³ In addition, the ATT community recognises that non-compliance by small or developing states is often the result of capacity constraints.¹²³ For this reason, the treaty provides assistance rather than sanctions.¹²⁴ Finally, by joining the ATT in good faith with the declared intention of implementing the treaty when practicable, states can demonstrate a commitment not only to arms control, but to the international system of treaties, thus enhancing their reputation.¹²⁴

Summary

Global collaboration through the ATT will potentially have flow-on benefits to new members beyond the immediate benefits of ATT membership.

Relationships forged at ATT, UNPoA and related meetings commonly deliver benefits in other forums, some of which may be significant to the state in question.

Besides building capacity and strengthening arms control, the ATT provides networking opportunities and relationship building with a wide range of donors and like-minded state officials who also often participate in the meetings of related international instruments.

CONCLUSION

COME AS YOU ARE



UN Photo: Eskinder Debebe

The Arms Trade Treaty (ATT) will not completely eliminate the illicit trade in arms and ammunition. This treaty is not the answer to all the problems that may result from irresponsible arms transfers. Nor is it a narrow, isolated instrument with only a single outcome. Instead, the ATT offers a broad range of benefits to many stakeholders, many of whom have yet to realise its potential.

For many states, reducing the inflow of illicit arms still leaves a basic problem: there remain too many unlawful weapons in circulation. If implemented effectively and widely—perhaps even universally—the ATT can improve many facets of life, from reducing armed criminality and the recruitment of child soldiers to boosting tourism and the economy as a whole.

The ATT can fully deliver these benefits only if all states become parties to the treaty and then if they implement the treaty in line with its object and purpose. For the treaty to be most effective, universalisation is necessary to remove gaps in the regulatory framework.

- **In Section 1** we described the object and purpose of this international trade treaty, then showed how it defines basic terms such as 'conventional arms' and 'transfer'.
- **In Section 2** we defined 'responsible trade' as due diligence, offering benefits for populations at risk, the arms industry, investors, governments and people in general.
- **In Section 3** we showed how transparency fostered by the ATT will help to identify trends in the arms trade, illicit flows and points of weakness in implementation.
- **In Section 4** we outlined how the ATT reinforces processes designed to prevent atrocities, combat gender-based violence and promote international humanitarian law.
- **In Section 5** we described how the ATT can enhance human rights protections and reinforce international human rights law through the application of the ATT's risk assessment.
- **In Section 6** we described how the benefits of the ATT flow to education, public health, tourism, investment and poverty alleviation, all of which help states meet the Sustainable Development Goals.
- **In Section 7** we outlined benefits of the ATT not only for those in the firing line, but also for those in the legitimate arms and ammunition industry by standardising regulations, enhancing reputation and limiting the competition from the black market.
- **In Section 8** we explored the value of the ATT to regions. In addition to influencing international stability, the treaty offers another framework for regional engagement and cross-border cooperation.
- **In Section 9** we showed how states can reap broader global benefits as the ATT enhances collaboration, forges new relationships and strengthens a nation's reputation as an active player in the legitimate arms trade. Without a seat at the table, states miss an opportunity to control the flow of weapons and the future direction of the treaty.

ACKNOWLEDGING DIFFERENCES AND SUPPORTING GROWTH

The ATT acknowledges difference. It recognises that many states do not export arms and may instead need assistance to improve, for example, brokering or transit controls. It encourages willing states who face constraints to join the treaty process now, then work towards compliance once inside the system. In fact, some states have already taken a seat at the table without being able to fully implement the ATT.¹

The treaty also supports capacity development, inviting states to benefit from working groups which share lessons learned about effective implementation.²

The ATT Voluntary Trust Fund was established to grow states' capacity, so that they can identify and address gaps in national arms control systems.³



UN Photo: Martine Perret



UN Photo: Martine Perret

But perhaps the most valuable benefit of the ATT is that it provides a forum in which bilateral, regional and global relationships can develop. These relationships then allow for collaborative approaches to reducing the flow of illicit arms. The treaty provides a framework in which states can discuss challenges, identify gaps and share solutions. Such collaborations may extend into other forums, some arms-related (for example, the UNPoA), but also others which address the particular interests of each State Party.

Treaty universalisation—building the largest possible community of ATT States Parties—is essential to combating the illicit arms trade and has become a primary focus of the ATT community. While key major arms exporters remain noncommittal, small and medium states grow in importance as, one by one, they become States Parties and together weave a global net in which to catch illicit arms transfers.

The international arms trade is a global system, one that requires each participant to play its role. In return, the broader benefits of the ATT extend to all stakeholders, all governments and all citizens. If your state is not already a State Party, we encourage you to ‘come as you are’. Join the treaty for its many advantages, then help to shore up your neighbourhood against illicit and irresponsible trade in conventional arms.





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- 122 Rebecca Byrnes & Peter Lawrence (note 66) 59; Jutta Brunnee 'Compliance control', in Geir Ulfstein, Thilo Marauhn & Andreas Zimmermann (eds) *Making Treaties Work: Human Rights, Environment and Arms Control* (Cambridge University Press, 2007) 373, 388; George W Downs, David M Roche & Peter N Barsboom (note 78) 92, 94.
- 123 ATT Article 16(3); Facilitator on Voluntary Trust Fund (Germany) 'Revised draft of 24 August 2016: Terms of reference for the ATT Voluntary Trust Fund' (24 August 2016), Arms Trade Treaty Second Conference of States Parties Geneva, 22–26 August 2016, ATT/CSP2/2016/WP.3/Rev.1, [2],[16]. <http://www.thearmstradetreaty.org/images/CSP2_Statements/Voluntary_Trust_Fund_Terms_of_Reference-24_Aug_2016_Rev.1.pdf>.
- 124 George Downs & Michael Jones (note 54) 117, 121.

CONCLUSION: COME AS YOU ARE

- 1 See eg New Zealand is a State Party and currently developing brokering legislation, Arms Trade Treaty Baseline Survey, 'Assessing ATT Implementation in the Asia-Pacific Region' (2017) 8. <http://www.armstrade.info/wp-content/uploads/2014/10/ATT-BAP_Assessing-ATT-Implementation-in-the-Asia-Pacific-Region.pdf>.
- 2 Ad Hoc Working Group on Effective Treaty Implementation Ad Hoc ATT Working Group on Effective Treaty Implementation, Co-chairs' Draft Discussion Paper, Annex A, 17 May 2017.
- 3 ATT Secretariat Voluntary Trust Fund Calls for Project Proposals for 2017 Implementation 1.



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For further information about any issues raised in this publication or about the Centre for Armed Violence Reduction and how we can help your government or civil society organisation, please contact us on;

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SUSTAINABLE
DEVELOPMENT GOALS

CAVR and Australia support the Sustainable Development Goals