

# 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.<sup>1</sup>**

**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.<sup>2</sup> The treaty also encourages voluntary information exchange regarding best practices and lessons learned between States Parties.<sup>3</sup>**

**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.<sup>4</sup> 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.<sup>5</sup> In addition, any new measures undertaken should be reported to the Secretariat when appropriate.<sup>6</sup>

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.<sup>7</sup> From that date, the State Party has one calendar year within which to submit its initial report to the ATT Secretariat.<sup>8</sup>

#### **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.<sup>9</sup> 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.<sup>10</sup> Having a state compile this reported information gives the Secretariat an opportunity to develop implementation guidance for ratifying or acceding states.<sup>11</sup> Initial reporting also provides an overview of how States Parties interpret and implement the ATT.<sup>12</sup> In addition, ATT reporting helps the international community to build a stronger picture of the current arms trade infrastructure.

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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.<sup>13</sup> 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,<sup>14</sup> 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.<sup>15</sup> Furthermore, the reports reveal that many states do not undertake national assessments because they do not export weapons<sup>16</sup> and the reports describe, for example, how some states define transit or transshipment in their legislation.<sup>17</sup> 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.<sup>18</sup> For example, Fiji's ATT-BAP identified legislative gaps on brokering legislation,<sup>19</sup> a technical gap (decentralised manual record-keeping) and the need for a national control list.<sup>20</sup>

## **(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.<sup>21</sup> 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.<sup>22</sup>

## **Annual reports**

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

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.<sup>26</sup> This report should be submitted no later than 31 May of the following year.<sup>27</sup>

*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.*<sup>28</sup>

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.<sup>29</sup> Used as an early-warning signal for potential armed violence, annual reports can reveal arms circulation trends by region or by end-user,<sup>30</sup> and in this way they help States Parties to strengthen their conflict-prevention efforts.<sup>31</sup>

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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup>

By providing this information, States Parties help to develop bilateral, regional and global strategies for combatting transnational diversions.<sup>36</sup> 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'.<sup>37</sup> 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.<sup>38</sup>

*'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.'*<sup>39</sup>

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.<sup>40</sup> 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.<sup>41</sup> This constitutes scrutiny not only of transfer authorisations and risk-assessment processes, but also of all aspects of treaty implementation.<sup>42</sup>

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.<sup>43</sup> 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.<sup>44</sup> It is worth noting that consumables such as fuel are not included in the scope of the treaty.<sup>45</sup>

*'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.'*<sup>46</sup>

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.<sup>47</sup> Information exchange helps states to identify 'matters of mutual interest regarding the implementation and application' of the treaty.<sup>48</sup> 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,<sup>49</sup> some of which are bilateral opportunities.<sup>50</sup>

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.<sup>51</sup>

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.<sup>52</sup>

## 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