

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.



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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



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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.

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REINVIGORATING THE NARRATIVE

THE BROADER BENEFITS OF
THE ARMS TRADE TREATY



Published by:
The Centre for Armed Violence Reduction
Sydney, Australia
September 2017

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DOI: 10.6084/m9.figshare.5259553



Australian Government
Department of Foreign Affairs and Trade

Disclaimer: Although this publication has been made possible by a grant from the Australian Department of Foreign Affairs and Trade, its contents are the sole responsibility of the authors. Where a state is identified by way of example, any such mention is cited from a reputable, publicly available source and is used in good faith. These, and any opinions expressed herein, do not necessarily represent the official position of the Australian Government.



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