

Implementing the Arms Trade Treaty: Reporting International Arms Transfers

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Introduction

Transparency measures with regards to international arms transfers have been prominent in the discussions around an Arms Trade Treaty (ATT) since the beginning of the process at the UN.¹ Most commonly, states have referred to the possibility of including a requirement for the submission of regular national reports in an ATT to increase transparency in international arms transfers. Providing information on arms transfer authorizations and deliveries demonstrates that states have assessed the risk of proposed transfers and also that they maintain records. Many States have recognized the added value of increased transparency in international arms transfers, but concerns have also been raised regarding the sensitive nature of the information that would be reported. Negotiators of the ATT will have to ensure that the right balance is struck between ensuring that legitimate concerns are met and that an ATT will still be able to fulfill its transparency-related goals.

This paper provides options for achieving this balance. The first part of the paper stresses that reporting on international arms transfers is not a new phenomenon and that there are a number of existing approaches to provide peers and the wider public with information on international arms transfers. It acknowledges the challenges for reporting on international arms transfers. The second part of the paper considers options and challenges for reporting on authorizations and/or deliveries. The third part of the paper considers options and challenges for reporting on different types of activities, in particular imports, brokering and transit and transshipment. The fourth part draws upon existing practices for reporting on authorizations and deliveries for different types of categories of conventional arms, with a particular focus on ammunition, spare parts and components and technologies/licensed production.

¹ One would also expect States parties to an ATT to report on their national transfer control system. This will not be dealt with in this paper.

Lessons learned from existing reporting on international arms transfers

The development of a transparency mechanism for on ATT does not have start from scratch. Many States already provide their parliament with information on arms transfer control decisions, which are subsequently made available for the wider public. Most pertinent for an ATT is that since the early 1990s, an increasing number of regional and international transparency mechanisms have been developed in the field of arms transfers, and several States are either politically or legally committed to producing regular information on their arms transfer decisions or actual transfers to a regional or multilateral organization or instrument.

At the regional level, there are several mechanisms via which states exchange information on authorizations and deliveries and in some cases make some of this information available for the public – e.g. EU member states regularly exchange information on authorizations for export and brokering licences and deliveries of conventional arms and produce an annual report for all EU member states in accordance with the legally binding Common Position 2008/944/CFSP, which defines common rules governing control of exports of military technology and equipment. The Organization of Security and Co-operation in Europe (OSCE) Document on SALW and the Economic Community of West African States (ECOWAS) Convention on SALW, their Ammunition and Other Related Materials require states to report on SALW imports and exports, but do not include provisions for reports to be made public. The Organization of American States (OAS) Inter-American Convention on Transparency in Conventional Weapons Acquisitions requires states parties to submit annual reports on imports and exports of items falling within the seven categories of the UN Register and reports on all acquisitions within 90 days of their incorporation into the armed forces. While most reports can be found online, the Inter-American Convention provides that ‘States Parties shall guarantee the confidentiality of any information they receive, if requested to do so by the State Party providing the information’.

The single most important and oft cited example is the United Nations Register of Conventional Arms (hereafter referred to as the Register), under which UN member states have committed themselves to provide information annually on their imports and exports of seven categories of conventional arms.² The Register was established in 1991 primarily to build confidence and security between states,³ but also to facilitate the timely identification of trends in international arms transfers, promote informed public debate

2 More information about the Register can be found at: <http://disarmament.un.org/cab/register.html>. The Register was established by the *Transparency in Armaments* (TIA) Resolution (46/36L) adopted on 6 Dec 1991, which calls on UN member states to submit data on the number of arms exported from or imported to their territory during the previous calendar year.

3 The General Assembly resolution that established the Register notes the CSBM-role of transparency in its preambular paragraphs, *inter alia* by referring to “the consensus among member states on implementing confidence-building measures, including transparency and exchange of relevant information on armaments”, and noting that these measures are “likely to reduce the occurrence of dangerous misperceptions about the intentions of States and to promote trust among States”. Further, the first operative paragraph of the resolution “recognizes that an increased level of openness and transparency in the field of armaments would enhance confidence, promote stability, help States to exercise restraint, ease tensions and strengthen regional and international peace and security”. A/RES/46/36 L, “General and Complete Disarmament – Transparency in Armaments, 65th plenary meeting of the UN General Assembly’s First Committee, 6 December 1991.

about international arms transfers and prevent diversion and the illicit trade in arms.⁴ Since its inception the Register has received reports from more than 170 states. However, the level of reporting varies from year-to-year and in the past years has been at the lowest level since the creation of the Register. The Register has served as an important point of reference for ATT discussions with regards to scope of items to be controlled and reporting on international arms transfers.

The experience of these existing reporting instruments indicates that states have to confront a number of challenges and concerns when it comes to reporting international arms transfers. States have indicated a number of reasons for failure to report their international arms transfers to these instruments including inadequate capacities, lack of awareness or political will, political or security concerns related to reporting, or reporting fatigue.⁵ These challenges will not automatically disappear if states can agree to report international arms transfers under an ATT.

Steps can be taken to limit the impact of some of these factors. For example, outreach activities by states parties and an ATT Implementation Support Unit (ISU), Secretariat, UN agencies or regional organizations, could help to raise awareness of the obligation to report on international transfers and address issues of political will. To help States report, international assistance could be provided to help states build capacity and establish systems to help collect and collate information to facilitate reporting. A positive example of where this has been particularly successful is the Western Balkans.⁶ Another option in this regard is to seek synergies between the reporting commitments under an ATT and states other reporting commitments.⁷ The most obvious example is to develop a reporting template for an ATT that is compatible with the template for reporting to the UN Register. One could then envisage states providing their ATT reports for international arms transfers to the UN Register for all categories for international arms transfers, although states would not provide information on holdings and procurement from national production submitted to the UN Register to an ATT reporting instrument. While some have advanced the idea of merging the two instruments, more compelling arguments have been made for keeping the two systems separate when the ATT's reporting system enters into force, not least because of the different scope, goals and purposes of the two instruments.⁸

The aim of reporting should still be to provide information that is deemed relevant for demonstrating an effective transfer control system. As will be discussed below this may

4 Wagenmakers, H., 'The UN Register of Conventional Arms: a new instrument for cooperative security', *Arms Control Today*, April 1993, p.16.

5 See for example Cattaneo, Silvia – Sarah Parker 2008: *Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Analysis of the National Reports Submitted by States from 2002-2008*, Geneva: United Nations, p. 133-136; and Holtom, Paul – Mark Bromley 2011: *Implementing an Arms Trade Treaty: Lessons on Reporting and monitoring from Existing Mechanisms*, SIPRI Policy Paper 28, July 2011, pp. 20-25.

6 Bromley, M., *The Development of National and Regional Reports on Arms Exports in the EU and South Eastern Europe*, Belgrade: SEESAC, Sept. 2011.

7 See for example reports from the regional seminars organized as part of the EU-UNIDIR project on 'Supporting the Arms Trade Treaty Negotiations through Regional Discussions and Expertise Sharing', available via: <www.unidir.org/att>.

8 Among reasons for keeping the two instruments separate, their different participation base (UNRCA as global and an ATT, at least in its inception, more limited) and scope (an ATT's scope in terms of weapons and equipment transfers is likely to be wider than that of UNRCA) have been mentioned. See Holtom, P. and Bromley, M., *Implementing an Arms Trade Treaty: Lessons on Reporting and monitoring from Existing Mechanisms*, SIPRI Policy Paper 28, July 2011, p. 33.

include reporting on authorizations rather than deliveries for some categories. Issues relating to the level of detail and disaggregation of data to be included in national reports on international arms transfers under an ATT will still require consideration. As with the discussions in the lead-up to the creation of the UN Register, national experts will have to decide on whether to require states to provide information on the number of units transferred or the financial value of transactions, or even whether this is an area which has to be decided depending on the category of items or national preferences. Further, will there be an interest for states to provide more than the minimum information on supplier and recipients, date of delivery, type of arms and quantity, for example to include information on final end-user (e.g. military, police, UN Mission).⁹ These issues are considered in more detail in the following sections.

Reporting authorisations and/or deliveries

The Chair's non-paper of July 2011 proposed a requirement for all State Parties to annually report on (a) all arms authorizations, transfers and denials and (b) all arms imports and shipments that transit their territory using records maintained for all arms authorizations, transfers and denials.¹⁰ The ATT negotiating conference Chair's discussion paper of July 2012 has removed the reference to reporting on denials and this is understandable given the political and practical dilemma of providing such information.¹¹ The discussion paper of July 2012 also offers greater flexibility with regards to reporting on the authorization or transfer (delivery) of conventional arms. While one would hope that over time states would provide information on both authorizations and deliveries, this flexibility acknowledges some of the challenges that states will face in the near future for reporting both types of information. Furthermore, information on either authorisations or deliveries provides an indication that the government has made a risk assessment and that it has subsequently granted permission for the proposed transfer to take place. The key is that states make it clear that they are reporting on either their authorisations or deliveries. However, they have different strengths and weaknesses.

States appear to be able and willing to produce information on authorisations for a wide range of arms and military equipment more readily than for deliveries. This could be due to fact that if a state has a licensing system for transfers (export, import, transit, brokering etc.) then all of the information for reporting has already been collected by the licensing authority – e.g. date of authorisation (e.g. year), state of the supplier or recipient, category of items and an indication of quantity (units or financial value) that might be transferred. Authorisations can be a poor indicator of what was transferred and when, as the licence might not be used, might be used only partially or could be used some time after the authorization has been granted.

9 Report of the Secretary General, Study on Ways and Means of Promoting Transparency in International Transfers of Conventional Arms, UN General Assembly, Forty-sixth session, General and Complete Disarmament: International Arms Transfers, UN Doc. A/46/301, 9 Sept. 1991, para. 117.

10 ATT Preparatory Committee, Chair's non-paper, 14 July 2011, annex II of United Nations, General Assembly, Report of the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty, A/CONF.217/1, 7 Mar. 2012.

11 See Holtom, P. and Bromley, M., *Implementing an Arms Trade Treaty: Lessons on Reporting and monitoring from Existing Mechanisms*, SIPRI Policy Paper 28, July 2011, p.

States currently utilise different sources to gather information on deliveries - e.g. information provided by companies on licences used, various government ministries and agencies involved in providing or procuring conventional arms and/or information generated by customs services. Those states that require entities granted licences to report on the use (or non-use) of licences appear to have a better record with regards to reporting on deliveries and some states have suggested that creating an obligation in national legislation to report on licences used is a useful way to generate data on actual arms exports.¹² An ATT could be used by states to require companies to report on deliveries of items covered by the categories of an ATT. Another way of collecting data could be for customs classifications for controlled items to be aligned with the control list categories used by licensing authorities, or perhaps the categories utilised for an ATT. However, as the UN Commodity Trade Statistics (Comtrade) database shows, there are states that supply arms and military equipment which do not record their transfers in their customs data and furthermore, this source would be of limited use for reporting on transfers of technology or licences for foreign manufacture.

Reporting on different types of transfer activities

An ATT should be a universal instrument covering all types of transfers of arms and all States, and ideally one would expect all states parties to report on all types of transfers that have been authorized, as well as deliveries and recorded movements of conventional arms in transit. However, experience shows that states have proven to be most willing and able to report on exports. A considerable number of UN states have reported on their imports of major conventional weapons at least once to the UN Register, but reporting on imports continues to be a sensitive issue. Some states are concerned that by provided data on arms imports, they are revealing sensitive information on national defence capabilities. This is reportedly especially the case among small importing states. One would hope that the fact that exporters are providing information on authorisations and deliveries would help to show that their position is undermined by the reporting of the other end of the transaction. The experience of the UN Register shows that this instrument has not completely assuaged such concerns in all states. With regards to reporting on the other types of transfer defined by the chair's non-paper of July 2011 and discussion paper of July 2012 – brokering and transit and transshipment – the picture is mixed.

In recent years there has been an increase in reporting on authorisations for commercial entities engaged in conventional arms brokering activities. One of the key factors for this increase was the April 2008 decision by EU member states to publish information on approvals and denials of brokering licences in the EU annual report. Fourteen EU member states have reported at least once on their brokering licences issued or denied to the EU Annual Report on arms exports, providing information on country of origin, destination, financial value, and military list category.¹³ Romania provides information

12 Polish Ministry of Foreign Affairs (MFA), Exports of Arms and Military Equipment from Poland: Report for the Years 2008–2009 (MFA: Warsaw, 2010), p. 15.

13 Council of the European Union, Thirteenth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, Official Journal of the European Union, C382, 30 Dec. 2011; Council of the European Union, Twelfth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, Official Journal of the

on brokering licences authorised, used and denies in the annual report on arms export controls, an example of which is shown below:

Example 1. Reporting on arms brokering authorisations and deliveries: Romania

Brokering activities – activities carried out by a natural or legal person regarding:

- negotiations or the arrangement of transactions involving the transfer of military goods included in the lists approved by the Government decision from a third country to any other third country; or
- buy, sale or arrange the transfer of military goods included in the lists approved by the Government decision, in their ownership, from a third country to any other third country.

CROATIA			
	Exporter	Importer	
	United States of America	Croatia	Total per destination
	ML 15		
a ⁴	1		1
b	26 584		26 584
c	26 584		26 584
d	0		0
e	-		-

Licences issued for:
night vision binocular (G)

Military goods exported:
night vision binocular

Source: Arms export controls annual report, January-December 2010, Ministry of Foreign Affairs of Romania, Department for Export Controls - ANCEX

Few states report on authorisations for transit and transshipment. The Netherlands reports on transit authorisations, in line with its definition of transit, in monthly reports and provides aggregated data broken down by destinations in its annual report. An example from the annual report on the Netherlands arms export policy is provided below.

Example 2. Reporting on transit authorisations and deliveries: the Netherlands

Appendix 3: Value of licences issued for transit of military goods in 2009 ¹
by country of final destination

2009 € million					
Country of final destination	Cat. A	Specification	Cat.B	Specification	Total
Algeria	-	-	0.04	B10	0.04
UAE	-	-	12.85	B4	12.85
India	1.54	A10	3.56	B10	5.10
Malaysia	-	-	0.03	B4	0.03
Mali	-	-	0.15	B1	0.15
Russia	0.04	A9	-	-	0.04
South Africa	0.30	A2	0.01	B7	0.31
South Korea	0.01	A10	-	-	0.01
Tanzania	0.03	A8, A9	-	-	0.03
Ukraine	0.44	A10	-	-	0.44
Countries accounting for export values below € 10,000					
Philippines, Israel Latvia	0.01	A8, A10		-	0.01
TOTAL	2.37		16.64		19.01

¹ Since August 2008 all transit of military goods not involving partner/allied countries (EU/NATO+) has been subject to mandatory licensing. Where an EU/NATO+ partner is involved, mandatory notification applies. Information on those notifications is available on the website www.exportcontrole.ez.nl. Further information on the transit licences of which the value is reported here in Appendix 3 is also published on that website, be it not under transit reports but in the monthly returns for military goods.

Source: Annual report on the Netherlands arms export policy, 2009, The Minister of Economic Affairs and the Minister of Foreign Affairs and also on behalf of the Minister for Development Cooperation, 23 June 2010.

Reporting on categories of items

Much of the discussion on the potential scope of an ATT has been influenced by the scope of the UN Register of Conventional Arms. The categories of the UN Register are defined by the fact that they are 'indispensable for surprise attacks and large-scale offensive military actions (...) relatively easy to identify, define, record and monitor'. The architects of the UN Register did not seek to establish a definitive list of conventional arms to be the subject of transfer controls. Instead the Munitions List of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies provides the basis for the control lists of the 40 states that are members of the group, as well as for several significant arms-exporting nonmembers.¹⁴ Therefore, a number of states have called for an ATT to have broader scope than the UN Register.

¹⁴ Holtom, P. and Bromley, M., 'The international arms trade: Difficult to define, measure and control', *Arms Control Today*, July 2010, pp. 8-10.

The chair's non-paper of July 2011 proposed 12 categories of items to be covered by the ATT. The chair's discussion paper of July 2012 has reduced the number of categories to 11 by removing the category for technology and equipment. Nevertheless, seven categories in the chair's papers can be regarded as expanded versions of the seven categories of the UN Register and 2 categories can be compared to the 'virtual eighth category' of SALW. Only the categories for ammunition, parts or components or technology and equipment have no potential comparable category in the UN Register.

However, the chair's papers do not offer definitions for the types of items to be covered by the broad headings nor propose sub-categories. It is worth noting here that although states are invited to provide background information on international transfers of SALW to the UN Register, they are provided with a template that disaggregates reporting on small arms into six sub-categories and provides seven sub-categories for light weapons. Will similar approaches be deemed suitable for reporting under an ATT?

Comparing the proposed scope of categories of conventional arms to be covered by an ATT and the categories of the UN Register of Conventional Arms

Chair's non-paper of July 2011	UN Register of Conventional Arms
a. Tanks	I. Battle tanks,
b. Military Vehicles	II. Armoured combat vehicles,
c. Artillery Systems	III. Large-calibre artillery systems,
d. Military Aircraft	IV. Combat aircraft,
e. Military Helicopters	V. Attack helicopters,
f. Naval Vessels	VI. Warships
g. Missiles and Missile Systems	VII. Missiles or missile launchers.
h. Small Arms	Background information on SALW
1. Light Weapons	Background information on SALW
J. Ammunition	No equivalent
k. Parts or Components	No equivalent
l. Technology and Equipment	No equivalent

Challenging categories for reporting

One of the reasons given by some states for having the scope of the ATT match that of the UN Register has been that items beyond the seven categories would be a challenge for reporting. The scope of the items to be controlled in accordance with an ATT should not be held hostage to reporting challenges based on security considerations or the quantity of authorisations or volume of units. However, one can acknowledge that there

are a number of practical and political challenges with reporting on ammunition, parts and components and technology and equipment. Provided detailed information on authorisations or deliveries of such items could produce not only an increased bureaucratic burden but also heighten concerns about revealing too much information on national defence capacities, which could put some states off signing and acceding to the ATT. For instance, many countries have raised concerns about the inclusion of ammunition in the ATT's reporting mechanism on the grounds that revealing the volume and other trends of ammunitions transfers would render their security strategies vulnerable. Similar concerns have also been expressed with regard to reporting on technology transfers and transfers of parts and components.

However, one could envisage several options for dealing with these categories. First, it might be regarded as necessary to require mandatory reporting for some categories and voluntary reporting for others. Second, it might be deemed acceptable to provide 'incomplete' reports for certain categories. For example, Sweden provides only partial information to the UN Register for items falling within category VII as it provides information on recipients and a description of the missiles or MANPADS, but it does not provide information on the number of units supplied due to considerations for the national security of the recipient. Third, it might be feasible to provide information that is more aggregated than for other categories – e.g. total number of authorisations for the category broken down by recipient. For those states that are willing and able, full reporting would always remain an option.

Three examples of states that have provided information on either authorizations or deliveries in either their national reports on arms exports for three 'challenging' categories of items are presented below. Reporting on these transfers is thus an area in which some degree of flexibility is likely to be expected and where the sharing of experiences and practices could help to enable states to collect and report on all transfers. To this end, examples are provided below

Ammunition is included in the scope of the categories of items to be covered by an ATT in the chair's non-paper but has often been highlighted as a category that provides a practical challenge due to the large volume of international transfers and the bulk nature of the consignments. It is also recognised that some states find information on numbers of ammunition provided sensitive. For example, Sweden does not provide information on exports of missiles in its reports to the UN Register due to considerations for recipient security concerns and the political sensitivity of providing an indication of stocks of missiles. However, it does provide information on recipients and a description of the type of missiles being provided. Another approach can be seen in the national reports on arms exports that use the categories of the Wassenaar Arrangement's Military List and provide aggregated information on the financial value licences issued for ML category 3 (e.g. ammunition) that is disaggregated by recipient. There are several examples of states reporting on ammunition transfers in their national reports. For example, Montenegro provides information on export authorisations and deliveries including the number of items and a description of the goods.

Example 3. Reporting on international transfers of ammunition

END USER COUNTRY	NUMBER OF ISSUED LICENCES	CATEGORY IN NATIONAL CONTROL LIST	DESCRIPTION OF GOODS	APPROVED QUANTITY (IN MEASUREMENT UNITS)	VALUE OF ISSUED LICENCES (EUR)	VALUE OF USED LICENCES	COUNTRY OF ORIGIN	CONSIGNEE (BUYER)
Burundi		NL 1	7,62 mm 30-round receiver for AR; 12,7mm submachine gun; 7,62x54mm M84 with a tripod and accessories	15,080 pcs	82,198	82,198	Serbia; Albania	Cyprus; Burundi
		NL 3	Ammunition 12,7x108mm APIT	115,510 pcs	25,513	25,513	Montenegro	Burundi
		NL 4	Air-dropped bombs fab-100 with a stabilizer and one fuse AUFK m91	34 pcs	7,152	7,152	Serbia	Burundi

Source: 2009 Annual report on foreign trade in controlled goods, Montenegro, Ministry of Economy, 2010.

Several states include information on parts and components in their national reports on arms exports. However, in most cases this information is not provided under the heading of 'parts and components' but is rather included in the military list category for the system for which the parts are intended – e.g. avionics for an aircraft in military list category 10. This might be an approach worth considering for reporting under an ATT if there are states that are willing and able to report on parts and components. For example, this is how information on parts and components is reported in the German national report on arms exports. Rather than providing information on units the financial value of the parts and components is provided. This appears to be the most appropriate approach for capturing such transfers.

Example 4. Reporting on international transfers of parts and components: Germany

Country	No. of licences	EL item	Total value (€)	EL merchandise as percentage of total value	Denials of final exports	EL item	Total value (€)	No. of denials/reasons/EL item
Mali	1	A0013	28,440	Splinter protection vests, splinter protection visors and combat boots (A0013/100 %)				
Mauritius	13	A0001 A0008	37,230	Hunting rifles and parts for hunting rifles (A0001/99.9 %)				
Mexico	15	A0001 A0006 A0008 A0010 A0013 A0014 A0016 A0018	922,486	Armoured all-wheel-drive vehicles and parts for armoured vehicles (A0006/36.4 %); pistols and parts for rifles with war weapons list numbers, pistols (A0001/25.2 %); target simulators (A0014/22.4 %)				

Source: Report by the Government of the Federal Republic of Germany on its Policy on Exports of Conventional Military Equipment in 2008, 2008 Military Equipment Report, Federal Ministry of Economics and Technology, March 2010.

The Wassenaar Arrangement Munitions List provides categories for technology and equipment that enables states to report on the financial value. However, the Swedish national report provides an interesting example of how states could report on authorisations for licensed production agreements, providing information on the companies involved and the systems. One could go further and include information on the number of units or value authorised by the agreement.

Example 5. Reporting on international transfers of technology and equipment

Table 9. Licences for manufacturing rights issued to foreign companies in 2010

Country	Company	General scope
Japan	Saab Dynamics AB	Ammunition
Republic of Korea	Kockums AB	Carbon fibre composites
Switzerland	Saab AB, Security and Defence Solutions	Firing control equipment
South Africa	Saab AB, Electronic Defence Systems	Microwave production
Thailand	Gripen International AB	Data link technology

Source: Strategic Export control in 2010 – Military Equipment and Dual-Use Products, Government Communication 2010/11:114, Sweden, 10 March 2011

Recommendations

- Synergies should be sought between reporting on international arms transfers under an ATT and states' other reporting commitments, such as those under the UN Register and regional instruments. One approach on this issue would be to develop a standardised reporting template that is compatible with the reporting template used for reporting to the UN Register.
- States should be encouraged to provide information on both authorizations and deliveries when reporting on international arms transfers to an ATT reporting instrument. However, it is acknowledged that flexibility on this issue will be necessary and states may provide information on either authorizations or deliveries. If this approach is taken, then states shall indicate whether they are reporting on authorizations or actual transactions.
- States should be expected to provide information on international transfers of all categories of items covered by the scope of an ATT. However, to balance between the need for transparency and national security concerns, it could be considered that there would be different requirements for reporting on some categories of items. For example, one could expect that reporting for some categories of items could be mandatory and detailed, whereas for categories such as ammunition, parts and components, and technology transfers it might be necessary to consider that reporting for such categories might have to be voluntary in the first instance and that the information provided would be less detailed and more aggregated than for other categories.
- Reporting requirements should be complemented with outreach and assistance activities to raise awareness about reporting and to help states build capacity to collect and collate information.

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