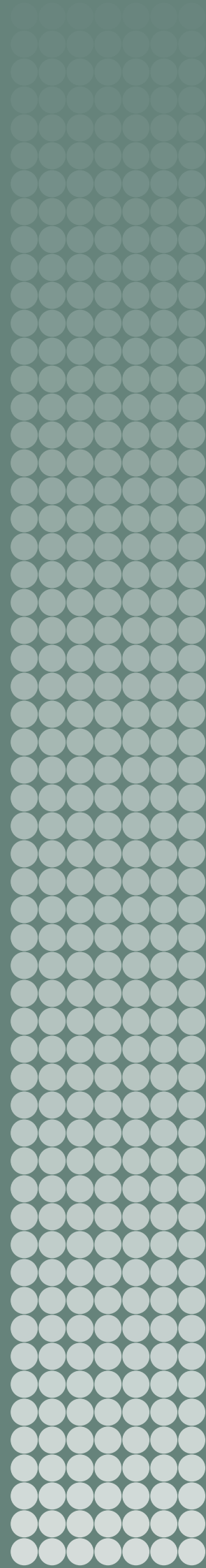


TAKING STOCK OF THE ARMS TRADE TREATY

Achievements, Challenges and Ways Forward

ANDREA EDOARDO VARISCO, GIOVANNA MALETTA
AND LUCILE ROBIN



**STOCKHOLM INTERNATIONAL
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Summary

The 2013 Arms Trade Treaty (ATT) entered into force seven years ago, on 24 December 2014. The treaty is the first legally binding international agreement that aims to establish the highest possible common international standards to regulate the international trade in conventional arms, eradicate their illicit trade and prevent their diversion.

The ATT now has a total of 110 states parties, and a further 31 states have signed but not yet ratified it. Numerous positive developments, much progress and many achievements can be ascribed to the entry into force of the ATT. These include the establishment of minimum standards for the control of international transfers of conventional arms, the establishment of prohibitions against certain transfers and development of criteria for assessing risk for an exporter to take into account prior to authorization of the export of conventional arms. The treaty has also promoted transparency in the arms trade and growing cooperation among a wide range of states—not just exporters but also importing, transit and trans-shipment countries. It has also led to the creation of funding and assistance instruments to support states' implementation of the treaty. At the same time, there remain areas in which the ATT can be improved or strengthened.

Five main aspects of the treaty are its scope, the application of its prohibitions and risk-assessment criteria, its processes and forums, promotion of its universalization, and support for states' implementation of the treaty. Based on an extensive data-collection exercise, a survey of states, and a series of interviews with key stakeholders, a range of policy options can be identified in each of these areas.

In relation to the scope of the ATT, a platform could be established to regularly exchange views on the scope of the treaty. A second option would be to increase the harmonization of states' national control lists. A third set of options would be to explore the possibility of establishing a formal mechanism to review and update the scope of the treaty in future years.

Different views have emerged on what substantive discussions on implementation of the ATT risk-assessment criteria should focus on. The non-governmental organization (NGO) community has advocated for discussion of the most difficult questions on arms transfers to specific destination or on arms transfer decisions more generally. States parties so far have preferred to focus on the regulatory and more formal aspects of treaty implementation. One way to improve the effective implementation of the ATT risk-assessment criteria would be to increase transparency and information sharing. A second option would be to improve the quality of the existing discussion on the topic.

The main challenges and concerns in relation to the processes and forums of the ATT are the need to ensure that all states parties and other stakeholders are able to attend Conferences of States Parties (CSPs), that the broader ATT process has sufficient financial resources, and that the focus of CSPs is able to shift from procedural questions to issues of implementation. Options that can be implemented with limited changes to the current processes and forums include measures aimed at improving the efficiency of current meetings, ensuring more inclusive participation and conducting some ATT work using virtual tools.

Many efforts have already been undertaken to increase the number of ATT states parties. These included the provision of capacity-building assistance to signatory and other non-party states committed to joining the treaty, or outreach activities to raise awareness and sensitize different national actors in countries where the political will to join the treaty is still lacking. Efforts to build on these existing efforts should be aimed at four main goals: supporting capacity-building in signatories and other non-

party states; improving the work of the Working Group on Treaty Universalization; implementing good outreach practices; and adopting a targeted universalization strategy.

Supporting states' implementation of the ATT in an effective way builds confidence among the states parties and helps them in their efforts to establish or strengthen national control systems. Numerous initiatives and positive steps have been taken in this respect; three further sets of policy options could further improve states' implementation of the ATT: ensuring an even better coordination of efforts through the implementation of new and existing tools; stimulating an exchange of relevant information among stakeholders; and embedding lessons learned from the Covid-19 pandemic in future assistance programmes.

Some of the measures proposed might be easier to achieve; others could be more difficult to agree on. Taken together, these measures represent a menu of options for ATT stakeholders—a first, important step to reflect on the achievements of the treaty and propose ideas that can be adopted, discussed and refined for further implementation (or discarded) and for strengthening the treaty in future years.

Abbreviations

APM	Anti-personnel mine
ATT	Arms Trade Treaty
ATT-BAP	Arms Trade Treaty Baseline Assessment Project
CCM	Convention on Cluster Munitions
CCW	Certain Conventional Weapons (Convention)
COARM	Working Party on Conventional Arms Exports (of the Council of the European Union)
CSP	Conference of States Parties
DIEF	Diversion Information Exchange Forum
ECOWAS	Economic Community of West African States
EU	European Union
GGE	Group of governmental experts
LAWS	Lethal autonomous weapon system
MTCR	Missile Technology Control Regime
NGO	Non-governmental organization
ODA	Official development assistance
POA	United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
SALW	Small arms and light weapons
UCAV	Uncrewed combat aerial vehicles
UN	United Nations
UNODA	United Nations Office for Disarmament Affairs
UNROCA	United Nations Register of Conventional Arms
UNSCAR	United Nations Trust Facility Supporting Cooperation on Arms Regulation
VTF	Voluntary Trust Fund
WA	Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies
WGETI	Working Group on Effective Treaty Implementation
WGTR	Working Group on Transparency and Reporting
WGTU	Working Group on Treaty Universalization

1. Introduction

The 2013 Arms Trade Treaty (ATT) is the first legally binding international agreement that aims to establish the highest possible common international standards for regulating the international trade in conventional arms, to eradicate their illicit trade and prevent their diversion.¹ Its creation and content can be situated within the context of broader efforts in the field of arms trade controls and humanitarian arms control. In particular, the ATT brought together four main wider historical processes with different evolutions and aims. The first of these was past international efforts to regulate the global arms trade, such as the 1925 convention agreed under the League of Nations that never entered into force.² The second was several key multilateral instruments to control or ban anti-personnel mines (APMs), cluster munitions and small arms and light weapons (SALW) that were conceived around the turn of the century. The third was the legally binding regional instruments to control SALW in the Americas and the subregions of Africa that also developed at this time. The fourth process was the development of regional and multilateral export control instruments such as the European Union (EU) Common Position on arms export controls and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA).³ Straddling these different historical efforts in one treaty resulted in both strengths and weaknesses in the ATT.⁴

Numerous positive developments can be ascribed to the entry into force of the ATT. As a global, legally binding instrument, the treaty establishes minimum standards that states should have in place in order to effectively regulate transfers of conventional arms.⁵ It has raised the profile and role that transfer controls can play, it has promoted growing cooperation among countries and it has significantly diminished the scope for unregulated trade in arms while enhancing the potential for identifying and interdicting illegal arms transfers.⁶ The scope of the treaty encompasses the export, import, transit, trans-shipment and brokering of eight categories of conventional arms, including SALW. Processes of acceding to the treaty and implementing it at the national level provided several countries with the means and motivation to adopt or improve their national control systems. The treaty links human suffering and arms transfer controls as one of its main purposes and establishes prohibitions against certain transfers and criteria for assessing risk—including the risk that conventional weapons are used to commit or facilitate acts of gender-based violence—for an exporter to take into account prior to authorization of the export of conventional arms. It promotes transparency in the arms trade, requiring states parties to produce an initial report on measures undertaken to implement the treaty and annual reports on exports and imports of conventional arms.⁷ The ATT provides a wide range of

¹ Arms Trade Treaty (ATT), adopted by the United Nations General Assembly 2 Apr. 2013, opened for signature 3 June 2013, entered into force 24 Dec. 2014, Article 1.

² Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War, opened for signature 17 June 1925, not in force. See also Holtom, P. and Wezeman, S. T., 'Towards an arms trade treaty?', *SIPRI Yearbook 2007: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2007).

³ Council of the European Union, Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, Consolidated text as amended by Council Decision (CFSP) 2019/1560 of 16 September 2019, 17 Sep. 2019; and Beijer, P., 'Taking stock of the Arms Trade Treaty: Application of the risk-assessment criteria', SIPRI, Aug. 2021.

⁴ For an overview of the treaty negotiations and an historical overview of similar efforts in the field of arms exports controls see Bromley, M., Cooper, N. and Holtom, P., 'The UN Arms Trade Treaty: Arms export controls, the human security agenda and the lessons of history', *International Affairs*, vol. 88, no. 5 (Sep. 2012).

⁵ Beijer (note 3).

⁶ Beijer, P., Swedish Ministry for Foreign Affairs, Speaking in a personal capacity, Interview with authors, 10 Dec. 2020.

⁷ Arms Trade Treaty (note 1), Article 13.

states—not just exporters but also importing, transit and trans-shipment countries—with the opportunity to regularly meet and discuss issues related to transfer controls and arms diversion. The treaty has 110 states parties, a positive rate of universalization seven years after its entry into force. Furthermore, new funding and assistance instruments such as the Voluntary Trust Fund (VTF) have been created to support states' implementation of the treaty.

At the same time, there are several areas in which the ATT can be improved or strengthened. Despite developments in the field of conventional arms, the scope of the treaty was tied to an instrument that emerged from the cold war—the United Nations Register of Conventional Arms (UNROCA). Several non-governmental organizations (NGOs) have cast doubt on the effective implementation by states parties of the prohibitions and risk-assessment criteria under articles 6 and 7 of the treaty and on the actual impact of the treaty in preventing exported or transferred weapons from causing human suffering.⁸ Likewise, there has been a decline in reporting levels among states parties in recent years, coupled with an increase in the submission of confidential reports.⁹ It is also not clear whether the amount of work and time devoted to meetings in the annual ATT cycle are commensurate with the needs and resources of the parties, and the financial health of the treaty remains in doubt, with many states failing to pay their assessed contributions. Furthermore, the rate of treaty universalization is uneven: there is an unbalanced geographical representation in ATT participation; and top exporters of conventional arms (e.g. the United States and the Russian Federation) and major importers (e.g. Saudi Arabia, India and Egypt) have not joined the treaty.¹⁰ Similarly, there is a clear need to ensure that ATT-focused assistance efforts and those provided through other mechanisms are coordinated with each other and effectively implemented.

December 2020 marked the sixth anniversary of the entry into force of the treaty. From that date, states parties are able to propose, in accordance with Article 20, amendments to the treaty's text for discussion and potential adoption by the ATT Conference of States Parties (CSP).¹¹ While amending the treaty could be a difficult process—and no amendment to the treaty has been formally proposed to date—the passing of the six-year threshold represents an opportunity to take stock of the ATT and to consider steps that could be taken to strengthen and improve the treaty, its current mechanisms and its practices.

This policy paper takes stock of the current status of the ATT, focusing on five major aspects of the treaty: the scope of the ATT, the application of its prohibitions and risk-assessment criteria, its processes and forums, promotion of its universalization, and support for states' implementation of the treaty.¹² These have been subject of discussion and debate in CSPs and related preparatory meetings and have been analysed in the work of various ATT working groups. Chapters 2–6 of this paper focus on each of these five topics in turn, presenting the obligations and mechanisms put in place by

⁸ Acheson, R., 'A fight for the moral and political credibility of the ATT', *ATT Monitor*, vol. 12, no. 8 (30 Aug. 2019); and Pytlak, A., 'The meaning of implementation', *ATT Monitor*, vol. 12, no. 7 (29 Aug. 2019).

⁹ ATT Secretariat, 'Annual reports', 13 Sep. 2021. See also Stohl, R., *Reporting During a Pandemic: Reflections on the Arms Trade Treaty 2019 Annual Reports* (Arms Trade Treaty Baseline Assessment Project: Washington, DC, Oct. 2020), p. 9; and Varisco, A. E., Maletta, G. and Robin, L., 'The Arms Trade Treaty', *SIPRI Yearbook 2021: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2021).

¹⁰ See Wezeman, P. D., Kuimova, A. and Wezeman, S. T., 'Trends in international arms transfers, 2020', SIPRI Fact Sheet, Mar. 2021. The importers and exporters are listed in order of volume of imports or exports. See also Beijer (note 3). The United States has signed the treaty but no longer intends to become a state party. Russia, Saudi Arabia, India and Egypt have never signed, approved or accepted it.

¹¹ Arms Trade Treaty (note 1), Article 20.

¹² In parallel, the Stimson Center is conducting a review of the implementation of the transparency and reporting obligations of the ATT, another major aspect of the treaty that is not covered by this paper. See Stimson Center and Arms Trade Treaty Baseline Assessment Project, 'Private ATT reporting', Fact sheet, Aug. 2021; and Stimson Center and Arms Trade Treaty Baseline Assessment Project, 'ATT reporting challenges', Fact sheet, Aug. 2021.

the treaty and how the debates around the implementation of each of these aspects of the treaty has evolved since its entry into force. Each chapter first describes the problematic aspects and limitations of the respective topic, highlighting issues that were either already apparent during the negotiation of the treaty or that became apparent after its adoption. The chapters then describe steps taken and proposals made to overcome these problems, presenting mechanisms put in place by the CSPs, proposals made by states and NGOs, and additional ideas that arose from the project's survey and interviews (on which, see below). Each chapter closes by providing a series of policy options to strengthen the treaty. The aim of these measures is to generate fresh ideas and to offer some concrete and feasible solutions for states, NGOs and other ATT stakeholders to draw upon as the ATT community discusses how the treaty can be improved and successfully implemented. They are presented as a menu of options for ATT stakeholders to consider as they further strengthen the treaty in the future. They are drawn together in the concluding chapter, chapter 7.

The paper is based on activities conducted in the framework of the project 'The first six years—Taking stock of the ATT'. These include an extensive data-collection exercise, which comprised a literature review of around 275 sources, documents and guidance material produced by the ATT's working groups, initial reports by ATT parties, as well as relevant policy and research reports published by NGOs, academics and other key stakeholders.

A survey of states to collect their views on key aspects of the ATT and their level of support for different measures that could be taken to strengthen the treaty was also conducted in collaboration with the Stimson Center. The survey was addressed to the 110 states parties, 31 signatory states and 18 key non-party states. A total of 35 states (34 states parties and 1 non-party state) responded to the survey. The vast majority of respondents were European states. States parties in the Americas and Africa and one non-party state from Oceania also participated in the survey. The results of the survey are thus not representative of the views of all states parties and miss inputs from countries that could be struggling with ATT implementation. Nonetheless, the survey highlighted possible areas of improvement and ideas and suggestions on ways to further strengthen the treaty.

Interviews were also conducted with 22 key stakeholders, including experts on the ATT, former CSP presidents, former chairs of ATT working groups, national officials, officials of international organizations, officials of national agencies implementing assistance programmes, NGO researchers and representatives of the private sector.¹³ By targeting a wide and varied range of stakeholders, the interviews explored issues emerged from the survey and provided additional views, ideas and possible measures that could be adopted to strengthen the ATT.

Six experts on the ATT also authored a series of five preliminary papers that provided important insights on the content, functioning and implementation of the treaty, and possible recommendations and ideas on how to strengthen it.¹⁴ These papers were instrumental support in the drafting of this policy paper. Finally, preliminary findings of this paper were discussed during three closed virtual webinars involving a total of

¹³ A total of 38 interviewees were contacted. 22 of them were interviewed in the course of the project. Other stakeholders provided informal comments as well as feedback on draft versions of this paper or during the closed webinars (see below).

¹⁴ Holtom, P., 'Taking stock of the Arms Trade Treaty: Scope', SIPRI, Aug. 2021; Beijer (note 3); Dondisch, R., 'Taking stock of the Arms Trade Treaty: Processes and forums', SIPRI, Aug. 2021; Stohl, R., 'Taking stock of the Arms Trade Treaty: Universalization', SIPRI, Aug. 2021; and Maletta, G. and Bauer, S., 'Taking stock of the Arms Trade Treaty: International assistance to support implementation', SIPRI, Aug. 2021.

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50 ATT stakeholders from states, international organizations, NGOs and the private sector in September and October 2021.¹⁵

By its very nature, this stocktaking exercise focuses on possible problematic aspects of the treaty and provides a menu of options to improve these aspects. This should not detract from the efforts of the ATT stakeholders and the positive steps and developments that the ATT community has achieved since the entry into force of the treaty.

¹⁵ Other activities conducted in the framework of this project included the presentation of the project's preliminary findings at side events at ATT working group meetings and CSP7 informal preparatory meetings and at CSP7.

2. Scope¹⁶

The scope of the Arms Trade Treaty refers to the items and activities that the treaty requires states parties to regulate through their national control systems. Article 2 of the ATT specifies the range of conventional arms and types of activity that states are required to regulate. Article 2(1) lists eight categories of conventional arms to which the treaty applies: (a) battle tanks; (b) armoured combat vehicles; (c) large-calibre artillery systems; (d) combat aircraft; (e) attack helicopters; (f) warships; (g) missiles and missile launchers; and (h) small arms and light weapons. Article 2(2) defines ‘transfer’ in the context of the international trade as comprising ‘export, import, transit, transshipment and brokering’, and Article 2(3) provides an extra specification on arms moved internationally under a state party’s ownership.¹⁷ Articles 3 and 4 cover ‘ammunition/munitions’ and ‘parts and components’.

Problematic aspects and limitations

The conventional arms covered by the ATT

The definitions of categories a–g are tied to the categories used by UNROCA at a specific point in time—24 December 2014, when the ATT entered into force.¹⁸ By linking the seven categories of major conventional arms covered by the ATT to those of UNROCA, the negotiators provided a minimum scope for the treaty. At the same time, Article 5(3) encourages state parties ‘to apply the provisions’ of the ATT ‘to the broadest range of conventional arms’.¹⁹

For the eighth category, SALW, Article 5(3) specifies that ‘national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force’ of the ATT. It has been inferred that the definitions provided by the 2001 UN Firearms Protocol and the 2005 International Tracing Instrument are to be used.²⁰

The ATT does not provide any guidance or reference for the definitions of ‘ammunition/munitions’ or ‘parts and components’. However, the UN’s voluntary International Ammunition Technical Guidelines (IATG), the first edition of which was available during the treaty negotiations, provide definitions of ‘ammunition’, ‘munition’ and ‘munitions’ that could be used by states parties in support of implementation of Article 3.²¹ Likewise, some legal commentators have argued that ‘since States Parties potentially have broad discretion in their interpretation of Article 4 [on ‘parts and components’], the exact nature and scope of the provision—and its practical implementation—could usefully be explored by future Conferences of States Parties and subsidiary bodies’.²²

¹⁶ This section draws on description, analysis and recommendations in Holtom (note 14).

¹⁷ Arms Trade Treaty (note 1), articles 2(2) and 2(3).

¹⁸ Arms Trade Treaty (note 1), Article 5(3).

¹⁹ Arms Trade Treaty (note 1), Article 5(3).

²⁰ Holtom, P., ‘Article 2: Scope’, eds C. da Silva and B. Wood, *The Arms Trade Treaty: Weapons and International Law* (Intersentia: Cambridge, 2021), p. 36; 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 (UN Firearms Protocol), opened for signature 2 July 2001, entered into force 3 July 2005; and International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (International Tracing Instrument, ITI), adopted by the UN General Assembly in Decision 60/519, 8 Dec. 2005.

²¹ UN SaferGuard, *International Ammunition Technical Guideline: Glossary of Terms, Definitions and Abbreviations*, IATG 01.40, 2nd edn (United Nations: New York, 1 Feb. 2015). The definition of ‘ammunition’ can be found in para. 3.8, of ‘munition’ in para. 3.176 and of ‘munitions’ in para. 3.177.

²² Casey-Maslen, S. et al., *The Arms Trade Treaty: A Commentary* (Oxford University Press: Oxford, 2016), p. 163.

States parties are required by Article 5(2) to ‘establish and maintain a national control system, including a national control list’, in order to implement the provisions of the treaty.²³ Such national control systems regulate ‘the transfer of conventional arms covered under Article 2(1) and of items covered under Article 3 and Article 4’.²⁴ The coverage of national control lists differs among ATT states parties, and it is not clear to what extent states parties are fulfilling the ATT’s requirements on scope. Twelve of the 64 initial reports by states on their ATT implementation that are publicly available indicate that the state did not have a national control list or lists.²⁵ Conversely, other states are going beyond the minimum requirements of the treaty by applying its provisions to lists with a broader and more comprehensive scope than the items covered in articles 2(1), 3 and 4—such as the WA Munitions List or the Common Military List of the EU.²⁶ A total of 38 states parties (35 per cent of the ATT states parties) are EU member states or WA participating states (or both). Other states that are neither EU members nor WA participating states made reference to one of these lists in either their initial report, their response to a survey by the ATT Baseline Assessment Project (ATT-BAP) or in the survey undertaken in the framework of this project.²⁷ Thus, more than a third of ATT states parties have national control lists aligned with the WA and EU lists.

The overwhelming majority of states that responded to this project’s survey agreed that the treaty is sufficiently clear on the scope of categories of conventional arms as defined in Article 2(1). However, a minority of states raised questions about its overall relevance and the ability of the provisions of the treaty to keep pace with technological developments in the field of conventional arms. UNROCA and other arms controls instruments that are used as a basis for national control systems have mechanisms through which they can be updated to take into account these developments. For instance, the groups of governmental experts (GGEs) appointed every three years by the UN secretary-general to consider UNROCA’s operation and its further development have regular discussions on possible amendments of UNROCA’s scope to reflect technological advancements in the field of conventional arms.²⁸ Indeed, the UNROCA categories have been amended since the entry into force of the ATT: the heading and description of category IV changed from ‘combat aircraft’ to ‘combat aircraft and unmanned combat aerial vehicles (UCAV)’.²⁹ The GGE has also discussed further proposals on the inclusion of uncrewed attack helicopters and on lethal autonomous weapon systems (LAWS).³⁰ Likewise, the WA Munitions List is reviewed and amended on an annual basis, and these changes are reflected in annual updates of the EU Common Military List.

Article 17(4) of the ATT provides that the CSP shall ‘review the implementation of this Treaty, including developments in the field of conventional arms’.³¹ However,

²³ Arms Trade Treaty (note 1), Article 5(2).

²⁴ Arms Trade Treaty (note 1), Article 5(5).

²⁵ ATT Secretariat, ‘Initial reports’, 25 Oct. 2021. This refers to the number of states that responded ‘no’ to the question ‘The national control system includes the following: a control list [Article 5(2)]’. Some of these 12 countries have subsequently made efforts to establish national control lists. As of 25 Oct. 2021, 64 of the 84 ATT initial reports submitted by states parties had been made publicly available.

²⁶ The coverage of the WA and EU lists is identical, since the latter is drawn from the former.

²⁷ E.g. the initial reports of Albania, Bosnia and Herzegovina, Georgia, Iceland, Montenegro, North Macedonia and Serbia refer to the EU or WA lists. ATT Secretariat (note 25). See also Holtom (note 14); and ATT Baseline Assessment Project (ATT-BAP), ‘ATT-BAP survey: Database’, [n.d.].

²⁸ For an overview of the changes to UNROCA and their linkages to the ATT see Holtom (note 14).

²⁹ United Nations, General Assembly, Report on the continuing operation of the United National Register of Conventional Arms and its further development, A/71/259, 29 July 2016, para. 81; and Holtom (note 14).

³⁰ United Nations, General Assembly, Report on the continuing operation of the United Nations Register of Conventional Arms and its further development, A/68/140, 15 July 2013, para. 46; United Nations, A/71/259 (note 29), para. 82; United Nations, General Assembly, Report on the continuing operation of the United National Register of Conventional Arms and its further development, A/74/211, 22 July 2019, paras 52, 102–103; and Holtom (note 14).

³¹ Arms Trade Treaty (note 1), Article 17(4).

no official steps have been taken to date to ensure that developments in the field of conventional arms are reflected in the scope of the treaty. Thus the ATT, unlike the above-mentioned instruments, currently lacks a mechanism through which recent developments in the field of conventional arms can be regularly reviewed and reflected in the scope of the treaty.

The importance of reviewing the scope of the ATT is confirmed by states' responses to the project's survey. Some noted that the conventional arms categories listed in Article 2(1) should be adapted to changes that have been made to UNROCA since the entry into force of the ATT, including the inclusion of UCAVs. Others proposed that the scope of the ATT be extended to match the coverage of the WA and EU lists by including more categories of military items and technologies—a point that was already discussed and dismissed during the treaty's negotiations—and that more clarity be provided on whether certain items fall within the current categories. In general, some states parties considered the current ATT categories—or at least the arms covered within these categories—as not being all-encompassing and having become outdated, particularly given current technological developments in the fields of uncrewed vehicles, dual-use technologies and applications of artificial intelligence in weapon systems, including LAWS.

The transfers covered by the ATT

The activities of the international trade that are covered by the ATT comprise export, import, transit, trans-shipment and brokering—referred to as 'transfer'.³² The treaty does not define these activities.³³ Furthermore, the language of Article 2(2) does not clarify whether the activities that constitute a transfer only include commercial transactions (e.g. sales and leases) or also cover non-commercial transactions (e.g. gifts and loans). Early drafts of the treaty included references to leases, loans, gifts, re-export and 'production by major producers/exporters' in the definition of international arms transfers, and also attempted to define international arms transfer as involving 'the transfer of title or control over the equipment as well as the physical movement of the equipment into or from a national territory'.³⁴ These suggest that payment or other financial transaction is not a condition or prerequisite for a transfer. However, these references were not included in the adopted version of the treaty.

Switzerland and a few other states consider gifts, loans and leases as falling under the scope of the ATT and clarified their view through interpretative declarations submitted alongside their instruments of ratification.³⁵ Article 2(3) explicitly clarifies that 'international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party's ownership' is excluded from the treaty. This excludes from the treaty the movement of conventional arms for overseas peacekeeping operations or other international movements of conventional arms in which the ownership does not change.³⁶ The presence of this explicit exclusion seems to indicate that, conversely, other types of transaction—including

³² Arms Trade Treaty (note 1), Article 2(2).

³³ Casey-Maslen et al. (note 22), pp. 124–31.

³⁴ UN Conference on the Arms Trade Treaty, Chairman's draft paper, 14 July 2011, para. IV.2(e)–(f), annex A, para. 1(a); and UN Conference on the Arms Trade Treaty, Discussion paper, 3 July 2012, para. B(1)(e)–(g), from Parker, S., 'Breaking new ground? The Arms Trade Treaty', *Small Arms Survey 2014: Women and Guns* (Cambridge University Press: Cambridge, 2014). The definition of transfer adapted a description proffered by the 1992 panel of experts on UNROCA. United Nations, General Assembly, Report on the Register of Conventional Arms, A/47/342, 14 Aug. 1992, para. 10.

³⁵ See the declarations of Liechtenstein of 16 Dec. 2014, of New Zealand of 2 Sep. 2014 and of Switzerland of 30 Jan. 2015 in United Nations, Treaty Collection, 'Arms Trade Treaty: Declarations and reservations', [n.d.].

³⁶ Lustgarten, L., 'The Arms Trade Treaty: Achievements, failings, future', *International & Comparative Law Quarterly*, vol. 64, no. 3 (July 2015), p. 578. See also United Nations, A/47/342 (note 34), para. 12.

those not involving a financial payment such as gifts and loans—are regarded as ‘transfers’ under Article 2(2).³⁷ However, the CSP has never clarified the issue.³⁸

Responses to the project’s survey seem to indicate that the provisions on transfers do not constitute a major problem for states. Almost all state respondents concurred that the scope of the ATT on transfers—as defined in Article 2(2)—is sufficiently clear. Only two states required further clarity on transfers. One survey respondent acknowledged that ‘transfers are not sufficiently defined in the ATT, which can cause misinterpretation’, particularly on whether a change of ownership is required and in the case of leasing weapons. Another noted that technical assistance services should also be included within the scope of the treaty.

Differences in which ATT provisions apply to which items

While conventional arms are covered by Article 2(1) of the ATT, ammunition and munitions and parts and components are separately addressed in articles 3 and 4, respectively. This distinction is relevant because some provisions of the treaty refer only to the conventional arms categories in Article 2(1), and do not refer to items covered in articles 3 and 4. In particular, the provisions on import (Article 8), transit or trans-shipment (Article 9), brokering (Article 10), diversion (Article 11), record-keeping (Article 12), reporting (Article 13) and international cooperation (Article 15) explicitly refer, and at a minimum apply, only to conventional arms covered under Article 2(1)—although Article 5(3) encourages application of the provisions of the treaty to the broadest range of conventional arms. Meanwhile, only provisions in articles 5, 6 and 7 refer to ammunition and munitions and parts and components

The fact that not all provisions of the ATT refer or explicitly apply to ammunition and munitions and parts and components in addition to conventional arms was highlighted by the results of the project’s survey.³⁹ One state respondent noted that ‘the full range of obligations applying to the items listed in Article 2(1) should also apply *mutatis mutandis* to the items listed [in articles 3 and 4], that is, also articles 11, 12, 13’. They further added that Article 3 should also cover items such as ‘mines and hand grenades’, which are currently not explicitly covered by Article 3 since they are not ‘fired, launched or delivered by the conventional arms covered under Article 2(1)’.⁴⁰ Other respondents asked for more regulation of the transfer of ammunition and munitions and parts and components.

There is also an apparent discrepancy between the wordings of Article 6 and of articles 8–10. The prohibitions in Article 6 apply to ‘any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4’.⁴¹ As transfers ‘comprise export, import, transit, trans-shipment and brokering’, the prohibitions in Article 6 should also apply to import, transit, trans-shipment and brokering of conventional arms covered by Article 2(1), ammunition and munitions covered by Article 3, and parts and components covered by Article 4. However, Article 8 on import, Article 9 on transit or trans-shipment, and Article 10 on brokering only explicitly refer to conventional arms covered by Article 2(1).⁴²

³⁷ Arms Trade Treaty (note 1), Article 2(3).

³⁸ See also Fukui, Y., ‘The Arms Trade Treaty: Pursuit for the effective control of arms transfer’, *Journal of Conflict and Security Law*, vol. 20, no. 2 (summer 2015); Lustgarten (note 36), p. 579; and Doermann, K., *Adoption of a Global Arms Trade Treaty: Challenges Ahead*, International Law Summary (Chatham House: London, 16 Apr. 2013), p. 4.

³⁹ See also Casey-Maslen, S., Giacca, G. and Vestner, T., *The Arms Trade Treaty (2013)*, Academy Briefing no. 3 (Geneva Academy of International Humanitarian Law and Human Rights: Geneva, June 2013).

⁴⁰ Arms Trade Treaty (note 1), Article 3.

⁴¹ Arms Trade Treaty (note 1), Article 6.

⁴² Wood, B., Independent expert, Written communication with authors, 18 Oct. 2021. See also Danssaert, P. and Southward, F., ‘Article 8: Import’, eds da Silva and Wood (note 20), pp. 179, 182, 184; Danssaert, P. and Beijer, P., ‘Article 9: Transit or trans-shipment’, eds da Silva and Wood (note 20), pp. 196–97; and Wood, B., ‘Article 10: Brokering’, eds da Silva and Wood (note 20), pp. 223, 228–29.

Provisions of several articles of the ATT thus explicitly refer to or apply to conventional arms listed in Article 2(1) as minimum requirements of the treaty. This implies that any future amendment or modification of the treaty's scope and of the categories of conventional arms in Article 2(1) will have a knock-on effect, with implications for numerous other articles and provisions. It is thus important to consider new minimum requirements in case amendments to the scope of the treaty are made.

Steps taken and proposals made

Implementation of the ATT's provisions on scope

Since the entry into force of the treaty, there have already been some efforts within the framework of the ATT to support implementation of its provisions on scope. These efforts have been undertaken within the CSP framework and via international assistance programmes to share information on useful reference points for the development and maintenance of national control lists that cover, at least, all of the items in articles 2(1), 3 and 4, but which also go beyond these minimum requirements.

In the preparations for the fourth CSP (CSP4), the Wassenaar Arrangement gave a presentation on the WA Munitions List and the process for updating and amending it to the sub-working group on Article 5 of the CSP's Working Group on Effective Treaty Implementation (WGETI). In the same meeting, New Zealand presented a model control list for use by Pacific Island states.⁴³ This list draws on the WA Munitions List but is more limited in scope. Similarly, during CSP5 the WGETI presented a draft ATT Voluntary Basic Guide to Establishing a National Control System, which also includes a section on national control lists.⁴⁴ In addition, the Working Group on Transparency and Reporting (WGTR) has produced a list of questions and answers related to reporting in the ATT annual reports, which also includes guidance on the scope of the annual reporting obligation.⁴⁵

Participants in this project also made some proposals. One survey respondent noted how the WA Munitions List and the EU Common Military List have broader scopes than the ATT. In suggesting that the ATT could incorporate more items within its scope, they proposed that 'all international arrangements (including UNROCA), adopt a harmonized approach' in relation to scope. One interviewee highlighted how lists with a broader scope can serve as a model when implementing the provisions of the ATT at the national level and for the inclusion and clarification of different categories of arms within the ATT framework.⁴⁶ However, the use of such lists could also cause confusion for states that are more familiar with UNROCA categories than with the lists with a broader scope.

The relevance of the scope of the ATT

Some proposals emerged in the course of the project related to the need to keep the list of arms categories covered by the ATT's scope up-to-date and in line with developments in the field of conventional arms and changes and updates in other instruments. Reflecting developments in the field of conventional arms in the items covered by the treaty's scope would be important to ensure the relevance of the scope of the ATT in the future.

⁴³ Arms Trade Treaty, 4th Conference of States Parties, Working Group on Effective Treaty Implementation, Chair's draft report, ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep, 20 July 2018, para. 41.

⁴⁴ Arms Trade Treaty, 5th Conference of States Parties, Working Group on Effective Treaty Implementation, Chair's draft report, ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep, 26 July 2019, annex A.

⁴⁵ Arms Trade Treaty, Working Group on Transparency and Reporting, 'Reporting authorized or actual exports and imports of conventional arms under the ATT: Questions & answers', Draft, ATT/CSP5.WGTR/2019/CHAIR/533/Conf.Rep.Rev1, 26 July 2019, annex B.

⁴⁶ Drew, M., British Export Control, Interview with authors, 29 Jan. 2021.

Table 2.1. Policy options on the scope of the Arms Trade Treaty

Policy option
1. <i>Establish a platform to regularly exchange views on the scope of the treaty</i>
1.1. The states parties could establish a platform on scope to (a) clarify the language on transfers; (b) clarify provisions on ammunition/munitions and on parts and components; (c) issue guidance materials to states parties; and (d) look at the feasibility of extending all of the treaty provisions to articles 3 and 4
2. <i>Increase harmonization in states' national control lists</i>
2.1. The Conference of States Parties (CSP) and the Working Group on Effective Treaty Implementation could review the national control lists submitted to the ATT Secretariat in accordance with Article 5(4)
2.2. Assistance mechanisms such as the ATT Voluntary Trust Fund and the European Union ATT Outreach Project should keep supporting states parties' efforts to establish and maintain national control lists
3. <i>Establish a mechanism to review and adjust the scope of the treaty</i>
3.1. The CSP could adopt measures to maintain the scope of the treaty in line with other existing instruments
3.2. The CSP could explore options to review and amend the scope of the treaty on a regular basis within the ATT framework

Participants in the projects suggested two main possible approaches. As other instruments have mechanisms and processes in place through which they regularly update their scope, the first approach relies on adopting some of the outcomes of these processes within the ATT. In line with this approach, state party representatives, for instance, highlighted the need to regularly update the scope of the ATT to match it at least to the latest changes in the UNROCA list.⁴⁷ They also expressed an interest in including UCAVs in the categories of Article 2(1) and expanding the application of a wider range of treaty provisions to ammunition, parts and components. Proposals from survey respondents included addressing developments in armaments and considering 'some kind of procedure of periodical actualization in the future'.

The second approach, suggested by a few stakeholders, is more ambitious: it would entail reviewing and amending the scope of the treaty within the ATT framework. It would recognize that the 'ATT is now the standard and this is where the focus should lie in changing things', instead of adapting the treaty's scope and practices to processes started and under development in other frameworks (most specifically, UNROCA).⁴⁸ UNROCA was established in 1991 and its reporting levels have been gradually declining.⁴⁹ Furthermore, the object and purpose of the ATT differ from those of UNROCA; unlike UNROCA, membership of the treaty is not linked to membership of the UN; and the ATT has a legally binding nature that UNROCA lacks. Delinking the scope of the ATT from UNROCA would also entail that states parties will be able to directly discuss and take decisions about the scope of the treaty, rather than relying on inputs and decisions on scope taken by a limited number of experts working in a GGE linked to an instrument external to the treaty.⁵⁰ Furthermore, adopting solutions related to the scope of the treaty within the ATT framework, such as for instance adopting in a CSP a standard list with a number of minimum items, may also help support capacity-building efforts.⁵¹

⁴⁷ This point is also highlighted by Holtom (note 14).

⁴⁸ Prins, D., United Nations official, Interview with authors, 19 Mar. 2021. A similar point was also raised by Pollard, G., Representative from private industry and former diplomat, Interview with authors, 23 July 2021; and Vestner, T., Non-governmental expert, Geneva Centre for Security Policy, Interview with authors, 26 Aug. 2021; and in Holtom (note 14).

⁴⁹ United Nations Register of Conventional Arms, 'Participation statistics', [n.d.].

⁵⁰ Inputs provided by a participant according to the Chatham House Rule on confidentiality during the SIPRI closed webinars 'The first six years: Taking stock of the Arms Trade Treaty', 27–29 Sep. and 1 Oct. 2021.

⁵¹ Vestner (note 48).

Policy options

The problematic aspects and limitations highlighted in this chapter have not yet constituted a major obstacle to the universalization and implementation of the ATT. The flexibility of the treaty has allowed states parties to establish and maintain their national control systems in accordance with their different interests, capabilities and weapon systems. The treaty provides a minimum scope and already gives states parties the possibility to cover more than the arms categories listed in UNROCA ‘at the time of entry into force’ of the treaty. Indeed, in line with Article 5(3), several states parties already apply the ATT provisions beyond the treaty’s minimum scope and ‘to the broadest range of conventional arms’.⁵² Nonetheless, the following list of measures (summarized in table 2.1) presents a menu of options for state parties to consider for further improving the ATT provisions on scope.

Establish a platform to regularly exchange views on the scope of the treaty

The establishment of a platform where states parties and ATT stakeholders can regularly exchange views on the scope of the treaty could be a good first step in initiating a dialogue on potential problematic aspects related to scope. This platform could be used not only for technical exchanges related to national control systems and national control lists, but also to encourage broader discussions among state parties and ATT stakeholders on other issues related to the scope of the treaty. These could include the relevance of the scope of the treaty and its provisions on transfers, ammunition and munitions, and parts and components.

For instance, states parties and ATT stakeholders could use the platform to improve clarity on the meaning of ‘transfers’ by sharing national understandings and to clarify the provisions on ammunition and munitions and parts and components. They could also issue guidance materials to states parties, including on the consistent implementation of the treaty’s prohibitions and the national regulations on import, transit, trans-shipment and brokering to items covered by the scope of articles 3 and 4.⁵³ In addition, this platform could look at the feasibility of extending all ATT provisions to articles 3 and 4 of the treaty.

Increase harmonization in states’ national control lists

A range of possible measures and responses could be explored to address the lack of harmonization in states’ national control lists. These are based on previous efforts and steps already taken in this direction by states parties in the ATT framework, specifically through initiatives within the WGETI and the WGTR.

As a first measure, the CSP and the WGETI could review the national control lists that states parties have submitted to the ATT Secretariat, in accordance with Article 5(4).⁵⁴ This review will not necessarily result in a complete harmonization of states parties’ national control lists—the goals, needs, national practices and capacity to control different items might differ among different states parties. Nonetheless, such an exercise could constitute an initial step towards a constant exchange of good practices among states parties. The review would help share national practice guidance, assess compliance with Article 5(3), encourage states parties to develop and maintain national control lists that go beyond the minimum standards set by the ATT, and facilitate a possible exchange and discussion on national definitions of conventional arms categories, SALW, ammunition and munitions, and parts and

⁵² Arms Trade Treaty (note 1), Article 5(3).

⁵³ Wood (note 42).

⁵⁴ The recommendation, including the following point on the publication of the lists on the ATT website, is proposed in Holtom (note 14).

components. These exchanges will also give the opportunity to a greater number of technical experts to participate in and provide inputs to the work of the CSP and the WGETI.

As part of this measure, the ATT Secretariat can also consider establishing—and maintaining—a webpage on the ATT website with copies of the national control lists that have been submitted. Article 5(4) encourages states parties ‘to make their control lists publicly available’.⁵⁵ A similar practice is already in place in the WA.⁵⁶ This measure could help states parties exchange national practices and provide companies engaged in the international arms trade with useful information for compliance purposes. It would also constitute a tangible effort to promote increased transparency.

As a second possible measure, assistance mechanisms such as the ATT Voluntary Trust Fund (VTF) and the EU ATT Outreach Project should keep supporting states parties’ efforts to establish and maintain national control lists.⁵⁷ Positive examples of assistance aimed at this goal could be promoted, and lessons learned could be shared with other states parties that might have similar needs and requests.⁵⁸

Establish a mechanism to review and adjust the scope of the treaty

A third set of policy options aims at exploring possibilities to update the scope of the treaty, either by maintaining it in line with other instruments such as UNROCA or through a process of revision initiated within the ATT framework. Some of these possible measures entail the creation of new platforms or mechanisms or the amendment of the current text of the treaty. They might be ambitious and time-consuming and are probably difficult to achieve. Nonetheless, implementing some of these measures to update the scope of the treaty could have a highly positive impact on the ATT in the medium and long terms: with further technological advancements in the field of conventional arms and some states parties using other instruments for their national control systems, the current lack of a mechanism to adjust and review the scope of the treaty could undermine the relevance of the ATT as a transfer control instrument.

Some recommended measures would maintain the scope of the treaty in line with other existing instruments: the platform on scope (see above) could be used to provide regular updates from other multilateral processes. For instance, it could host regular presentations from the WA and from the chairs of the GGEs on UNROCA on their processes and on the ways in which they update the scopes of their respective instrument.⁵⁹ The chair of the GGE on Emerging Technologies in the Area of LAWS established in the context of the 1981 Certain Conventional Weapons (CCW) Convention could also be invited to give presentations.⁶⁰ Similarly, resources and information on new technologies generated in the context of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (POA) could also be presented to inform a possible discussion on the ATT’s scope.⁶¹

⁵⁵ Arms Trade Treaty (note 1), Article 5(4).

⁵⁶ Wassenaar Arrangement, ‘Export control documentation’; and Webinar participant (note 50).

⁵⁷ See also chapter 6 for more on support for states’ implementation of the ATT.

⁵⁸ E.g. the VTF in 2019 funded a project aimed at building capacity to establish and maintain Zambia’s national control list. ATT Secretariat, ‘3rd Voluntary Trust Fund cycle (2019): Overview of projects approved for ATT VTF funding’, [2019]; and Small Arms Survey, ‘Building capacity to establish and maintain Zambia’s ATT national control list’, [n.d.].

⁵⁹ The recommendation is proposed in Holtom (note 14).

⁶⁰ Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW Convention, or ‘Inhumane Weapons’ Convention), opened for signature 10 Apr. 1981, entered into force 2 Dec. 1983. On the GGE on LAWS see Bruun, L., ‘The group of governmental experts on lethal autonomous weapon systems’, *SIPRI Yearbook 2021* (note 9).

⁶¹ United Nations, General Assembly, Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, A/CONF.192/15, 20 July 2001.

Other measures to broaden the scope of the ATT could be taken within the context of the CSP, in line with Article 17(4) and the CSP's role to review developments in the field of conventional arms. In order to keep the scope of the ATT current and to align it with successive changes made to UNROCA, the CSP could commit 'on a regular basis to the successive changes made to UNROCA' and recommend that states parties refer to the latest categories of UNROCA as the minimum standard for items covered by the ATT.⁶² Further steps in this direction might be more formal and entail amendments to some articles of the treaty. Possible amendments could include removing the text 'at the time of entry into force of this Treaty' from Article 5(3), or periodic amendments of Article 2(1) to align with changes in the UNROCA categories.⁶³

These measures have the advantage of relying on mechanisms that are already established in other instruments. However, the memberships and goals of these instruments differ from those of the ATT. Another possible option is thus for the treaty to take control of its own scope, rather than depending on processes established in other instruments—disconnecting the treaty from UNROCA and working internally within the ATT framework to find consensus.

The states parties could thus explore options to review and amend the scope of the treaty on a regular basis within the ATT framework. One possible measure in this direction could be the establishment within the WGETI of an ad hoc sub-working group to prepare a set of criteria or considerations for reviewing the scope of the treaty and to start work on basic definitions of items covered in the treaty.⁶⁴ A second measure would require the CSP to consider the preparation of additional protocols on scope or the adoption of a standing mechanism for reviewing and updating the scope of the treaty. The latter mechanism could work by consensus to ensure agreement among states parties on the application of minimum provisions on scope that could evolve over time.⁶⁵

⁶² This formulation of the recommendation is derived from a response to the project survey. A similar recommendation is also proposed in Holtom (note 14).

⁶³ This recommendation is proposed in Holtom (note 14).

⁶⁴ A similar recommendation is also proposed in Holtom (note 14).

⁶⁵ Webinar participant (note 50).

3. Implementation of prohibitions and the risk-assessment criteria

Articles 6 and 7 of the Arms Trade Treaty outline the treaty's provisions on prohibitions and risk assessment for arms transfers and arms exports. Article 6 lists a series of circumstances in which transfers of conventional arms or of items covered by the scope of the treaty are prohibited. These include when the transfer would violate an arms embargo established by the United Nations Security Council or when the transferring state party has 'knowledge at the time of authorization that the arms or items would be used' to commit any of a series of acts unlawful under international law (e.g. war crimes, crimes against humanity, grave breaches of the 1949 Geneva Conventions). If an export is not prohibited under Article 6, Article 7(1) requires that the state party assesses the potential that the arms would undermine or contribute to peace and security or could be used to commit or facilitate serious violations of international humanitarian law and international human rights law—or an act of terrorism or transnational organized crime. Under Article 7(2), the exporting state party is also required to 'consider whether there are measures that could be undertaken to mitigate' these risks. However, as clarified in Article 7(3), if such risks are still 'overriding', the state party must deny authorization for the export. In addition, Article 7(4) also provides that the exporting state party 'shall take into account' the risk of the exported material being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children, but it does not indicate what states should do if such risks are identified.⁶⁶

There is widespread acknowledgement among states and NGOs that the ATT's prohibitions, contained in Article 6, and the risk-assessment obligations, outlined in Article 7, are crucial to fulfilling and operationalizing one of the key objectives of the treaty: to 'establish the highest possible common international standards' in the field of arms trade regulations for the purpose, among other things, of 'reducing human suffering'. Consistent and widespread adherence to the prohibitions and application of the export risk-assessment criteria by states parties could have positive normative effects among ATT states parties and beyond. As one former government official noted, such adherence could turn relevant practices into customary norms from which all states, whether party to the ATT or not, would find difficult deviating.⁶⁷ Further, as ATT states parties undertake a varied set of activities in the field of arms transfers—encompassing (as described in chapter 2) not only exports but also imports, transit, trans-shipment and brokering—the application of the risk-assessment criteria in these different contexts could support a wider application of these 'common standards' beyond exports.

Problematic aspects and limitations

Language ambiguities

The prohibitions and risk-assessment obligations introduced by articles 6 and 7 of the ATT were not developed in a vacuum. As the International Committee of the Red Cross and others have noted, the commitments laid out in Article 6 largely reflect the pre-existing limits and thresholds already set by international law. These include the obligation to respect and ensure respect for international humanitarian law, which also creates the requirement to ensure that the weapons that states transfer will not

⁶⁶ Beijer (note 3), p. 7; and Casey-Maslen et. al. (note 39).

⁶⁷ Beijer (note 3), p. 2.

be used in violation of this body of law.⁶⁸ Moreover, many of the standards embedded in articles 6 and 7 were already reflected in national control systems or in relevant regional, multilateral and international instruments. These latter include legally binding documents, such as the 2006 Economic Community of West African States (ECOWAS) Convention on SALW and the 2008 European Union Common Position on arms export controls, among others.⁶⁹ States have also developed guidelines and best practices in the contexts of the Wassenaar Arrangement, of regional organization—such as the Organization for Security and Co-operation in Europe (OSCE), the Regional Centre on Small Arms in the Great Lakes Region, Horn of Africa and Bordering States (RECSA), and the Organization of American States (OAS)—and, not least, the United Nations.⁷⁰ Nonetheless, turning the language contained in these instruments into a set of legally binding provisions agreed at the international level proved to be one of the hardest aspects of negotiating the ATT. As a result of the need to reach consensus on these sensitive issues and to build in some flexibility to leave states leeway in treaty implementation, the final text of articles 6 and 7 contains elements that have been interpreted as constituting a series of ambiguities and limitations.

Some of these ambiguities and limitations relate to the definition of the circumstances and conditions under which states must not authorize a transfer or an export. For instance, Article 6(3) of the treaty obliges states parties to not authorize a transfer when the transferring state has ‘knowledge at the time of authorization’ that the transferred items would be used to commit unlawful acts under international law, but it does not provide a definition of what constitutes ‘knowledge’ in this context.⁷¹ Identifying the precise violations that would give rise to the prohibition of a transfer was also the subject of intense negotiations, which generated language that is open to different national interpretations.⁷² In this regard, representatives of NGOs and legal experts have argued that the language on prohibitions should have included references to specific instruments such as the 1977 Protocol I to the Geneva Conventions or the 1998 Rome Statute of the International Criminal Court (ICC).⁷³ Mentioning such instruments in the ATT would have been hard to achieve in the context of consensus-based negotiations. However, some states, especially EU member states, pressed hard to at least include the obligation for a state to not authorize transfers that would be used

⁶⁸ International Committee of the Red Cross (ICRC), ‘Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949’, Commentary, 2 Mar. 2016.

⁶⁹ Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials, adopted 14 June 2006, entered into force 29 Sep. 2009; and Council of the European Union, Council Common Position 2008/944/CFSP (note 3). For an overview of other regional arms transfer-related regulations and standards see International Committee of the Red Cross (ICRC), *Understanding the Arms Trade Treaty from a Humanitarian Perspective* (ICRC: Geneva, Sep. 2016), pp. 11–12; and International Committee of the Red Cross (ICRC), *Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria—A Practical Guide* (ICRC: Geneva, Aug. 2016), pp. 5–6.

⁷⁰ Conference for Security and Co-operation in Europe (CSCE), Forum for Security Co-operation, ‘Principles governing conventional arms transfers’, DOC.FSC/3/96, 25 Nov. 1993; Wassenaar Arrangement, ‘Best practice guidelines for exports of small arms and light weapons (SALW)’, agreed 2002, amended 2007 and 2019; Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA), *Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons* (RECSA: Nairobi, 2005); Organization of American States (OAS), ‘Model regulations for the control of brokers of firearms, their parts and components and ammunition’, 13 Nov. 2003; and UN General Assembly Resolution 46/36 H, 6 Dec. 1991. For an overview of other regional arms transfer-related regulations and standards see International Committee of the Red Cross, *Understanding the Arms Trade Treaty* (note 69); and International Committee of the Red Cross, *Arms Transfer Decisions* (note 69).

⁷¹ Vestner, T., *Prohibitions and Export Assessment: Tracking Implementation of the Arms Trade Treaty*, Geneva Paper no. 23/19 (Geneva Centre for Security Policy: Geneva, Mar. 2019), pp. 5–6; International Committee of the Red Cross (ICRC), ‘ICRC analysis of articles 2, 3, 4 and 5 of the July 2012 draft Arms Trade Treaty’, 12 Mar. 2013, p. 4; and International Committee of the Red Cross, *Understanding the Arms Trade Treaty* (note 69), pp. 26–27.

⁷² German Federal Foreign Office, ‘Memorandum of the Federal Government on the Arms Trade Treaty’, 1 Mar. 2014, p. 8.

⁷³ Protocol I Additional to the 1949 Geneva Conventions, and Relating to the Protection of Victims of International Armed Conflicts, opened for signature 12 Dec. 1977, entered into force 7 Dec. 1978; and Rome Statute of the International Criminal Court, opened for signature 17 July 1998, entered into force 1 July 2002. See also Acheson, R., ‘A tale of two treaties’, *ATT Monitor*, vol. 6, no. 9 (28 Mar. 2013), p. 2; and Casey-Maslen et al. (note 22), p. 184.

in commission of ‘other war crimes as defined by international agreements to which [the state] is a Party’.⁷⁴ Many states parties explicitly consider these and other relevant instruments, as clarified in their interpretive declarations made upon ratifying the ATT or through their initial ATT reports.⁷⁵

In relation to export risk assessments, the possibility given to states to assess whether an arms export might contribute to peace and security was widely viewed as particularly contentious when the ATT was adopted, and remains so today. As noted in the German Federal Foreign Office’s memorandum on the ATT, such language leaves open the possibility of the negative consequences of an export being offset by a favourable assessment of its positive contribution to peace and security.⁷⁶ No clear definition of ‘peace and security’ is provided in the ATT. Nonetheless, a study analysing the available initial reports of ATT states parties and a selection of parties’ national laws and policies has pointed out that there are parties that explicitly consider the potential positive impact of their arms exports in areas that could be interpreted as connected to peace and security. For example, they take into account whether the arms will be used in peace operations or to fight terrorism.⁷⁷

Other key terms that are introduced, but not clearly defined, by Article 7 can also be subject to different and conflicting interpretations.⁷⁸ The obligation to deny an export authorization in the presence of an ‘overriding risk’ was criticized as possibly providing states with too high a degree of discretion in their decision-making processes on arms export control and for not being in line with language in existing instruments. For example, the EU Common Position requires member states to deny an export if there is a ‘clear risk’ that the exported material might be used in the commission of serious violations of international humanitarian law.⁷⁹

Challenges in the implementation of prohibitions and the risk-assessment criteria

The adjustment of national control systems to integrate obligations under articles 6 and 7 into national laws, policies and practices was immediately identified as a challenge that states parties would have to confront while implementing the ATT.⁸⁰ Some aspects of this challenge have emerged in the discussions that have taken place in the context of the WGETI sub-working group on articles 6 and 7—established during CSP4—and in the survey conducted for this project. These refer to difficulties in both interpreting and applying key treaty terms or specific provisions.⁸¹

Discussions in the sub-working group have highlighted the different baselines from which states parties have approached the implementation of articles 6 and 7.⁸² Specifically, states parties—especially larger arms exporters—that already had a national control system in place prior to joining the treaty had different practical experiences from states that had to start building their systems from scratch or have little role in the international arms trade. As an example of this, the ATT initial

⁷⁴ German Federal Foreign Office (note 72), p. 8.

⁷⁵ United Nations Treaty Collection (note 35); and Stohl, R. and Holtom, P., *Reviewing Initial Reports on ATT Implementation: Analysis and Lessons Learned* (ATT Baseline Assessment Project: Coventry, 2016), pp. 20–21.

⁷⁶ German Federal Foreign Office (note 72), pp. 9–10.

⁷⁷ Vestner (note 71), pp. 9–10.

⁷⁸ Clapham, A., ‘The Arms Trade Treaty: A call for an awakening’, *European Society of International Law (ESIL), ESIL Reflections*, vol. 2, no. 5 (6 May 2013); and Casey-Maslen et. al. (note 39), p. 30.

⁷⁹ Council of the European Union, Council Common Position 2008/944/CFSP (note 3), Article 2(2)(c). See also Acheson (note 73), p. 3; and Prizeman, K., ‘Looking to the future of the ATT: Shifting attention to implementation’, *ATT Monitor*, vol. 6, no. 11 (2 Apr. 2013), p. 2.

⁸⁰ Holtom, P., ‘The Arms Trade Treaty’, *SIPRI Yearbook 2014: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2014), pp. 448–50.

⁸¹ On the work of the sub-working group on articles 6 and 7 see Beijer (note 3), pp. 8–9.

⁸² Arms Trade Treaty, 3rd Conference of States Parties, Ad Hoc Working Group on Effective Treaty Implementation, Co-chairs’ draft report, ATT/CSP3.WGETI/2017/CHAIR/158/Conf.Rep, 31 July 2017, paras 11–12; and Arms Trade Treaty, ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep (note 43), para 17.

reports show that at least 16 states parties had national control systems that did not yet fully reflect the obligations of either or both of articles 6 and 7.⁸³ At least five of these states stated that they were in the process of making the necessary adjustments to fill this gap.⁸⁴ Six indicated that their national control systems do not include arms export risk assessment-related procedures either because they are neither arms exporters nor manufacturers or because they prohibit arms exports under all circumstances.⁸⁵ Therefore, framing discussions on the effective implementation of the ATT in the context of the WGETI sub-working group on articles 6 and 7 is a difficult task considering the different levels of experience that states have in applying these obligations and the different approaches that they have adopted based on their role in the international arms trade.

The importance—and, in certain cases, difficulty—of accessing the information needed to properly assess the presence of one of the risks outlined in the ATT has been discussed in the sub-working group.⁸⁶ It was also raised by four states in survey responses. Difficulty of accessing relevant information also illustrates why it can be challenging, as noted above, to define what constitutes ‘knowledge’ in the application of Article 6(3). On the requirement to comply with arms embargoes, one of the states responding to the survey noted that it is difficult to assess the potential link of a prospective end user with sanctioned entities based on the limited information on foreign companies and individuals that licensing officers can access. One survey respondent also indicated that the difficulty of gathering useful and official information to assess possible risks particularly affects countries that have a limited number of diplomatic missions abroad and, thus, have a smaller international presence. This comment is directly related to the different challenges that can be experienced by states with less experienced and resourced national control systems. Another survey respondent pointed out that gathering sufficient data is an obstacle to specifically assessing the presence of a risk of the items exported being used to commit or facilitate gender-based violence.⁸⁷ Notably, the assessment of a presence of a risk, specifically, of gender-based violence has been hard for many states parties, regardless of the level of maturity of their national control systems.⁸⁸

Finally, the sub-working group, in developing its multi-year working plan, has identified the need to conduct further discussions on how states parties have interpreted key concepts of Article 7, such as ‘facilitate’, ‘serious’ and ‘overriding risk’—that is, terms that have raised some interpretative doubts.⁸⁹ These discussions will also address the different measures that states parties have undertaken to mitigate possible risks as provided by Article 7(2). At least 37 states parties have so far indicated in their publicly available initial report or the responses to the ATT-BAP survey that they adopt risk-mitigation measures.⁹⁰ However, the details that they have provided on this specific aspect of implementation of the ATT have revealed a variety of approaches to risk mitigation, ranging from due diligence (e.g. use of end-user certificates, post-shipment

⁸³ These 16 states are those that answered ‘No’ to question 2A of the initial report (on prohibitions) or answered ‘No’ or ‘Not applicable’ to one or all of the sub-questions of section 3A (on exports). See also Stohl and Holtom (note 75), pp. 18, 22–23; Arms Trade Treaty Baseline Assessment Project, ‘National transfer controls’, accessed 7 Nov. 2021; and ATT Secretariat (note 25).

⁸⁴ See e.g. the initial reports of Liberia, Paraguay, Trinidad and Tobago, Uruguay and Zambia. ATT Secretariat (note 25).

⁸⁵ See e.g. the initial reports of Costa Rica, Dominican Republic, Palau, Panama, Samoa and Sierra Leone. ATT Secretariat (note 25); and Stohl and Holtom (note 70), p. 23.

⁸⁶ Arms Trade Treaty, ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep (note 43), para. 19.

⁸⁷ See also Arms Trade Treaty, ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep (note 44), pp. 2, 4.

⁸⁸ Arms Trade Treaty, ATT/CSP3.WGETI/2017/CHAIR/158/Conf.Rep (note 82), paras 11–12.

⁸⁹ Arms Trade Treaty ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep (note 44), para. 20. See also Vestner (note 71); and Clapham, A., (note 78)

⁹⁰ ATT Secretariat (note 25); and Arms Trade Treaty Baseline Assessment Project (note 83).

verification and inter-agency consultation) to vaguely defined confidence-building measures.

Lack of substantive discussions and dedicated channels

Since the entry into force of the ATT, meetings of states parties have been dominated by the more technical aspects of treaty implementation, such as compliance with financial and reporting obligations. While there has been widespread acknowledgement of the value of moving beyond these discussions and focusing more on the practical aspects of treaty implementation, there has also been a recurring division between states parties and NGOs about which areas of ‘implementation’ should be prioritized.⁹¹ Specifically, NGOs have repeatedly advocated for more substantive discussions on how states parties have applied prohibitions and risk-assessment obligations in practice, particularly with reference to arms transfers that they consider controversial and worthy of discussion during CSPs.⁹² In contrast, states parties have so far focused their work on ‘how national legislative and regulatory instruments should be adjusted in order to allow for effective treaty implementation’.⁹³

This reticence on the part of states is to a certain extent understandable since, as noted above, some states parties do not have fully fledged transfer control systems in place or have different levels of experience in the implementation of the prohibition and risk-assessment provisions of the ATT. However, it means that substantive problems related to the implementation of states’ treaty obligations in the field of prohibition and risk assessment have only occasionally emerged in the context of meetings of states parties. For instance, states have delivered statements in CSP meetings in which they have generally noted that often the countries that support implementation of the ATT are also those whose exports fuel armed conflict and violence elsewhere.⁹⁴ Other statements have called on other states parties to abstain from transferring weapons on the basis of articles 6 and 7 of the ATT in the light of the internal situation of the recipient or its international behaviour.⁹⁵

CSP3 provided some more concrete, but still limited, perspectives on development of normative standards and substantive discussions when a group of states from the Americas called on all ATT states parties to abstain from all arms transfers to Venezuela. The EU subsequently imposed an arms embargo on Venezuela, although it is unclear if this decision was affected by discussions at CSP3.⁹⁶ The implementation of and compliance with articles 6 and 7 in relation to specific arms transfers have often (if not exclusively) found space in panel discussions that NGOs have organized on the sidelines of preparatory meetings or CSPs and in which states representatives have also sometimes participated.⁹⁷ Besides these efforts, the mandate of the WGETI

⁹¹ Bromley, M. and Brockmann, K., ‘The Arms Trade Treaty’, *SIPRI Yearbook 2018: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2018); Bromley, M., Brockmann, K. and Maletta G., ‘The Arms Trade Treaty’, *SIPRI Yearbook 2019: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2019); and Maletta, G. and Bromley, M., ‘The Arms Trade Treaty’, *SIPRI Yearbook 2020: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2020).

⁹² See e.g. Acheson (note 8); Pytlak (note 8); and Jurdi, S., ‘CSP7 agenda’, Statement at CSP7 preparatory meeting, Control Arms, 30 Apr. 2021.

⁹³ Bromley and Brockmann (note 91), p. 406. See also Pytlak, A., ‘A turn to substance? Yes please’, *ATT Monitor*, vol. 10, no. 2 (12 Sep. 2017); and Pytlak, A., ‘Nothing ventured, nothing gained—A look ahead to CSP4’, *ATT Monitor*, vol. 11, no. 1 (20 Aug. 2018).

⁹⁴ Acheson, R., ‘Talking inside, dying outside’, *ATT Monitor*, vol. 9, no. 4 (26 Aug. 2015), p. 1.

⁹⁵ Costa Rica, Statement at CSP4, 20–24 Aug. 2018 (in Spanish); and Palestine, Statement at CSP4, 20–24 Aug. 2018.

⁹⁶ Bromley and Brockmann (note 91), pp. 406–407; and Council of the European Union, Council Decision (CFSP) 2017/2074 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela, *Official Journal of the European Union*, L 295, 14 Nov. 2017.

⁹⁷ See e.g. Control Arms, Amnesty International and PAX, ‘How arms transfers are fuelling conflict and atrocities in the Middle East’, CSP3 side event, 12 Sep. 2017; Control Arms and Amnesty International, ‘The situation in Myanmar: How irresponsible arms flows fuel the crisis’, ATT side event, 28 Apr. 2021; and Control Arms, ‘The impact of irresponsible arms transfers on current conflicts: How the ATT can make a difference’, CSP7 side event, 2 Sep. 2021.

and the areas of work that it has prioritized have left little room to discuss concrete applications of articles 6 and 7 and, consequently, particular (and often controversial) arms exports. Nor have they allowed for the exchange of specific and relevant information, for example, on why certain exports have been denied or allowed or on the implementation of mitigation measures.

This clearly indicates that states parties do not yet see WGETI or CSP meetings in their current format as appropriate forums to address arms transfer decisions, which they view as falling within their exclusive national prerogatives. This applies also to cases when authoritative UN bodies and international NGOs have continued to highlight the role played by the arms transfers of certain ATT states parties in the perpetuation of conflicts and have documented patterns of violations of international humanitarian law—one of the most notable recent examples being the war in Yemen—and have publicly called into question their compliance with the ATT.⁹⁸ Representatives of NGOs have argued that states parties' failure to promote meaningful discussions on similar cases ultimately risks undermining the credibility and legitimacy of the treaty itself.⁹⁹ However, conducting similar discussions in such a broad, international and public forum as the ATT might be premature for those states parties that are still focusing on building up their transfer control systems, or might, more generally, be particularly sensitive for states from a diplomatic and political point of view.¹⁰⁰

Conducting exchanges in a closed format may overcome these limitations and contribute to achieving some form of interstate transparency. However, in the case of the ATT, such settings may still present obstacles. Outside the context of the ATT, some states have discussed these matters in regional or multilateral forums, such as the WA and the EU Working Party on Conventional Arms Exports (COARM).¹⁰¹ The functioning of these mechanisms relies heavily on the high level of mutual confidence that has developed among a narrower and less varied group of actors than the 110 ATT states parties. Even in these circumstances, major difficulties persist (e.g. among EU member states) in reaching a common understanding of agreed standards.¹⁰² Furthermore, even in these closed contexts the levels of engagement and willingness to share vary across countries.¹⁰³ In addition, a particular feature of the discussions and work of these groups is that they are covered by a high level of confidentiality. The ATT has made the promotion of transparency one of its main purposes. Replicating in the context of the ATT the conditions that apply to information sharing in the frameworks of the WA and COARM would thus be problematic (see also chapter 4).

Steps taken and proposals made

Sharing good practices and developing guidance

There have been initiatives in the context of the ATT intended to increase information sharing on issues related to the implementation of risk assessment or to provide relevant guidance. In the light of states parties' different experiences and the varying levels of resources available to implement these provisions, the sub-working group on articles 6

⁹⁸ United Nations, General Assembly, Human Rights Council, 'Situation of human rights in Yemen, including violations and abuses since September 2014', Report of the Group of Eminent International and Regional Experts on Yemen, A/HRC/45/6, 28 Sep. 2020, pp. 5, 16–17; Amnesty International, *Amnesty International Report 2020/21: The State of the World's Human Rights* (Amnesty International: London, 2021), pp. 53–54; and United Nations, Security Council, 'Final report of the Panel of Experts on Yemen', S/2019/83, 25 Jan. 2019, paras 135–44.

⁹⁹ Pytlak, 'Nothing ventured, nothing gained' (note 93).

¹⁰⁰ Beijer (note 3), pp. 17–18.

¹⁰¹ Beijer (note 3), pp. 10–13.

¹⁰² Webinar participant (note 50). On divergences in the application of the EU Common Position see e.g. Bromley, M., 'The review of the Common Position on arms exports: Prospects for strengthened controls', Non-proliferation Paper no. 7, EU Non-proliferation Consortium, Jan. 2012.

¹⁰³ Webinar participant (note 50).

Table 3.1. Policy options on implementation of prohibitions and the risk-assessment criteria of the Arms Trade Treaty

Policy option
1. <i>Increase transparency and information sharing</i>
1.1. States parties could be more transparent on aspects of the implementation of articles 6 and 7 that could be discussed in a public setting (e.g. aspects on which they already share information publicly; issues that emerge from their statements; issues that they are willing to discuss at side events)
1.2. States parties could raise issues related to arms transfers to a destination of concern (e.g. a country in conflict) by calling extraordinary meetings under Article 17(5) or in their statements in regular ATT meetings
2. <i>Improve the quality of existing discussions</i>
2.1. States parties should involve professional and technical experts on transfer controls in ATT-relevant meetings, including in the meetings of the Working Group on Effective Treaty Implementation (WGETI) sub-working group on articles 6 and 7
2.2. The WGETI sub-working group on articles 6 and 7 could promote exchanges on states' general practices and policies covering non-controversial aspects of articles 6 and 7
2.3. The WGETI sub-working group on articles 6 and 7 should complement its 'unpacking' exercise with exchanges on the practical applications of these provisions (e.g. case studies)
2.4. The WGETI sub-working group on articles 6 and 7 should make sure that drafting the voluntary guide to implementing articles 6 and 7 builds on existing work
2.5. The WGETI sub-working group on articles 6 and 7 could discuss the implementation of other aspects of these provisions that have received less attention

and 7 recognized the importance of sharing relevant national practices and the need to develop more guidance and identify useful sources.¹⁰⁴ In the context of these meetings, several states parties (e.g. Bulgaria, Jamaica, Japan, Serbia and Sweden) elaborated on their own control systems or their procedures in implementing specific provisions.¹⁰⁵ The sub-working group has also produced a guidance document on implementing Article 6(1) and a list of possible sources of relevance for risk assessment under articles 6 and 7.¹⁰⁶ Drafting a voluntary guide to implementing articles 6 and 7 is also part of its multi-year work programme for 2020–23.¹⁰⁷

These efforts are complemented by the work of international and regional organizations, NGOs, and other stakeholders that are active in providing relevant assistance and producing guidance documents.¹⁰⁸ For instance, NGOs have been particularly responsive to the need to produce more guidance on the implementation of risk-assessment criteria related to gender-based violence and have also provided relevant training to licensing officers.¹⁰⁹ Organizations involved in the development of guidance material have also been given the opportunity to present their work during meetings of the sub-working group or at side events.¹¹⁰

'Unpacking' key treaty concepts

In order to stimulate an exchange of national practices and discussion on the interpretation of key terms, in 2020 the sub-working group on articles 6 and 7 launched an

¹⁰⁴ Arms Trade Treaty, ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep (note 43), paras 17–22; and Arms Trade Treaty, ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep (note 44), paras 9–10, 17–20.

¹⁰⁵ ATT Secretariat, 'Working Group on Effective Treaty Implementation (WGETI)', [n.d.]

¹⁰⁶ Arms Trade Treaty, ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep (note 43), annex E; and Arms Trade Treaty, ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep (note 44), annex B.

¹⁰⁷ Arms Trade Treaty, Working Group on Effective Treaty Implementation, 'Multi-year workplan for the WGETI sub-working group on articles 6 & 7 (prohibitions & export and export assessment)', Mar. 2021.

¹⁰⁸ Beijer (note 3), pp. 9–10.

¹⁰⁹ See e.g. SIPRI Mapping ATT-Relevant Cooperation and Assistance Activities database, 'Control Arms Central and Eastern European regional training on the gender-based violence (GBV) criteria in the Arms Trade Treaty (ATT)', 14–16 May 2019; and Gerome, R., *Preventing Gender-based Violence through Arms Control: Tools and Guidelines to Implement the Arms Trade Treaty and UN Programme of Action* (Women's International League for Peace and Freedom: Geneva, Apr. 2016).

¹¹⁰ Beijer (note 3), p. 16; Control Arms, 'How to use the Arms Trade Treaty to address gender-based violence: A practical guide for risk assessment', Presentation to the WGETI meeting during the CSP5 preparatory process, 2019; and International Committee of the Red Cross (ICRC), 'GBV and IHL', Presentation to the WGETI meeting during the CSP5 preparatory process, 2019.

‘unpacking’ exercise, inviting states parties to submit their views on key concepts such as ‘facilitate’, ‘serious violations’ of international humanitarian law or international human rights law, and mitigation measures, among others.¹¹¹

However, this has prompted scepticism and raised concerns among some states parties and also representatives of NGOs.¹¹² For instance, the United Kingdom and France, stressing that the implementation of the ATT is a national prerogative, cautioned against setting “‘prescriptive’ definitions’ that would go beyond the text of the ATT.¹¹³ Similarly, Japan noted that providing a written interpretation of these key concepts could have ‘serious legal implications’ and ‘should not be perceived as establishing new norms’.¹¹⁴ Other stakeholders have raised concerns over the possibility that this exercise may undermine existing legal protections. For instance, Costa Rica noted that it is unnecessary to clarify basic notions that are already enshrined in international humanitarian law.¹¹⁵ Representatives of NGOs made similar observations and also argued that the exercise launched by the sub-working group, including the drafting of the voluntary guide to implementing articles 6 and 7, should rather build on efforts already undertaken by lawyers and legal scholars to clarify relevant language.¹¹⁶

These reactions to the ‘unpacking’ exercise have therefore shown that perhaps dwelling on legal terms—at least when this means re-opening interpretation of concepts that have already been clarified by legal experts—may not be the best way to achieve the goal of promoting a uniform interpretation and implementation of the treaty.¹¹⁷ However, both states parties and NGOs have welcomed the inclusion of mitigation measures in discussions on key treaty terms. In particular, NGOs have encouraged the exchanging of information on concrete cases where mitigation measures have not proved particularly effective.¹¹⁸

Policy options

The following policy options (summarized in table 3.1) address the problematic aspects and limitations related to the implementation of prohibitions and the risk-assessment criteria of the ATT. Some complement relevant steps or proposals already made.

Increase transparency and information sharing

As outlined above, discussing the substantial implementation of provisions related to prohibitions and risk assessment in the context of the ATT is difficult. Nonetheless, in addition to the initiatives that states parties have already taken, some more steps could be made to increase information sharing and transparency in this particular area of the ATT’s implementation.¹¹⁹

¹¹¹ Arms Trade Treaty, 6th Conference of States Parties, Working Group on Effective Treaty Implementation, Letter from the chair, ATT/CSP6.WGETI/2020/CHAIR/584/M1.LetterWorkPlans.Rev1, 20 Jan. 2020, annex A, para. 4; and Arms Trade Treaty, 7th Conference of States Parties, Working Group on Effective Treaty Implementation, Letter from the chair, ATT/CSP7.WGETI/2021/CHAIR/655/M.LetterWorkPlans, 31 Mar. 2021, annex A, pp. 8–10.

¹¹² Arms Trade Treaty, 7th Conference of States Parties, Working Group on Effective Treaty Implementation, Chair’s draft report, ATT/CSP7.WGETI/2021/CHAIR/675/Conf.Rep, 22 July 2021, para. 10; Pytlak, A. and Geyer, K., ‘A whole lot of unpacking going on’, *ATT Monitor*, vol. 13, no. 2 (11 Feb. 2020), p. 1; Geyer, K., ‘Summary: Sub-working group on articles 6 and 7’, *ATT Monitor*, vol. 13, no. 2 (11 Feb. 2020), pp. 3–4; Greyer, K. and Pytlak, A., ‘News in brief’, *ATT Monitor*, vol. 13, no. 4 (27 Aug. 2020), pp. 5–6; and Rafferty, J., ‘Summary: Sub-working group on articles 6 and 7’, *ATT Monitor*, vol. 14, no. 2 (5 May 2021), pp. 8–11.

¹¹³ Pytlak and Geyer (note 112), p. 1.

¹¹⁴ Pytlak, A., ‘One more time for the people in the back—transparency (still) matters!’, *ATT Monitor*, vol. 13, no. 4 (27 Aug. 2020).

¹¹⁵ Pytlak and Geyer (note 112); and Geyer (note 112).

¹¹⁶ Geyer (note 112).

¹¹⁷ Ebbs, C., Non-governmental expert, Control Arms, Interview with authors, 11 May 2021.

¹¹⁸ Greyer and Pytlak (note 112).

¹¹⁹ Pytlak, ‘Nothing ventured, nothing gained’ (note 93); and Vestner (note 71), pp. 15–16.

As a first step in this direction, states parties could focus both on finding aspects of the implementation of articles 6 and 7 that are already being discussed in a public setting while also seeking to be more ambitious in the sharing of information on arms transfer decisions. Many states continue to withhold information on arms export decisions from the public on the basis of commercial confidentiality or security concerns.¹²⁰ However, there are also states, including ATT states parties, that have become more open in this regard. For example, some states already publicly share information about the number of denials of transfer licences, their intended recipients, the equipment involved and, sometimes, the grounds for refusal.¹²¹ Others, as mentioned above, have actively participated in discussions on specific arms transfers in events organized by NGOs on the sidelines of ATT meetings. While delivering their statements during CSPs, some states parties and signatory states have also been vocal and open about the humanitarian and security impact in their own country or region of poorly regulated or illicitly transferred weapons.¹²² Over time, sharing such experiences from both suppliers and recipients of arms in ATT forums could therefore contribute to normalizing such exchanges and reducing the level of perceived sensitivity around them. As arms transfer decisions are often subject to national scrutiny in several ATT states parties that are arms exporters, these states should be ready to argue in favour of the legitimacy of their decisions in public forums such as those provided by the ATT. The relevant expertise of NGOs could also contribute to such exchanges. There is significant knowledge within NGOs on these issues, as demonstrated by the inclusion of their publications in the list of references issued by the WGETI's sub-working group on articles 6 and 7.¹²³

As a second step, states parties could raise concerns on arms transfers to a certain destination in ATT forums. The call to halt transfers to Venezuela during CSP3 shows how the ATT could provide a platform for groups of states to call on all states parties to take action where there is no prospect of the UN Security Council addressing the matter.¹²⁴ States parties could address this and other similar discussions in two ways. They could consider triggering Article 17(5), which allows for the calling of extraordinary meetings of the CSP. One of the stakeholders interviewed for this study argued that the rationale behind this provision was to allow states parties to discuss halting transfers to specific regions and in specific contexts (e.g. the outbreak or escalation of a conflict).¹²⁵ Alternatively, states parties and signatory states could use their statements in the regular ATT meetings to raise this type of concern, which may be more feasible.

Improve the quality of existing discussions

Several measures could be taken to enhance the functioning and impact of existing relevant discussions on prohibitions and risk assessments in ATT forums, including the WGETI's sub-working group on articles 6 and 7, among others.

¹²⁰ Beijer (note 3), p. 18.

¹²¹ E.g. Cops, D., Duquet, N. and Gourdin, G., *Towards Europeanized Arms Export Controls? Comparing Control Systems in EU Member States* (Flemish Peace Institute: Brussels, 15 June 2017), p. 154; Canadian Government, *2020 Annual Report to Parliament on the Administration of the Export and Import Permits Act* (Canadian Government: Ottawa, [2021]); and European External Action Service (EEAS), 'Denials', COARM Online Database, accessed 6 Oct. 2021, <<https://webgate.ec.europa.eu/eeasqap/sense/app/75fd8e6e-68ac-42dd-a078-f616633118bb/sheet/7fc5dd59-4b93-4dde-9f19-49da4d37a3c3/state/analysis>>.

¹²² E.g. Mexican Government, Statement at CSP6, 17–21 Aug. 2020; Bajou, T., Libyan statement at CSP6, 17–21 Aug. 2020; and Burkina Faso, Statement at CSP3, 11–15 Sep. 2017 (in French).

¹²³ These include e.g. resources produced by Control Arms and the International Committee of the Red Cross (ICRC), the annual reports of Amnesty International and Human Rights Watch, and reports of UN panels or groups of experts. Arms Trade Treaty, ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep (note 44), annex B; and Arms Trade Treaty, ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep (note 43), annex E.

¹²⁴ Bromley and Brockmann (note 91).

¹²⁵ Pollard (note 48).

For instance, states parties should encourage the participation of national transfer control professionals and technical experts in the meetings of this group (alongside diplomats with humanitarian and human rights expertise). This could be arranged in a remote format, which has become more familiar and acceptable due to the Covid-19 pandemic.¹²⁶

Other options are aimed at making the ‘unpacking’ exercise initiated within the sub-working group on articles 6 and 7 more effective. In order to do so, states parties should promote exchanges based on empirical and concrete cases, on national approaches or on the practical applications of these provisions—for example, through the presentation of case studies.¹²⁷

Side events and NGO-organized activities could help build trust and confidence between states in this area. It may be inevitable that states’ exchanges on arms export decisions on the most sensitive concrete cases will, at some point, be kept confidential, and so working group meetings can occur in a closed format in such circumstances (see chapter 4). Nonetheless, states parties should still use the forum provided by the sub-working group on articles 6 and 7 to allow uncontroversial issues to be discussed in public. These may include matters related to policy and general practice such as, for instance, the information on which states base their risk assessments and the approach they take if not enough reliable information is available; whether their assessment varies based on the items exported; how the process of cancelling or suspending a licence works; and how the impact of mitigation measures is assessed.

It is also crucial that states build on and make use of available guidance. More time could thus be allowed for the presentation of this material in ATT meetings and not just side events. The WGETI sub-working group on articles 6 and 7 should make sure that drafting the voluntary guide to implementing articles 6 and 7 builds on this and other existing work.¹²⁸

Finally, much of the attention on articles 6 and 7 has, legitimately, been devoted to the application of the risk-assessment criteria to prevent arms transfers that could be used to commit violations of human rights or international humanitarian law. However, it is also important that the discussions of states parties within the WGETI sub-working group on articles 6 and 7 address the implementation of other aspects of these provisions that have received less attention. These include those referring to the risk that arms exports could be used to commit or facilitate an act of terrorism or transnational organized crime.¹²⁹

¹²⁶ Beijer (note 3), p. 19. On broader participation of national transfer controls professionals in ATT-related work see also chapters 2 and 4 in this volume.

¹²⁷ Ebbs (note 117); and Macdonald, A., Former director of Control Arms, Interview with authors, 24 Feb. 2021.

¹²⁸ Beijer (note 3), p. 16.

¹²⁹ Rafferty, J., Kirkham, E. and Isbister, R., *Arms Exports, Terror and Crime: Reducing Risk under the Arms Trade Treaty*, ATT Expert Group Briefing no. 7 (Saferworld: London, Apr. 2021).

4. Processes and forums

The Conference of States Parties is the main body governing the Arms Trade Treaty. Under Article 17, the CSP has many prerogatives: it must review the implementation of the treaty, including developments in the field of conventional arms; consider and adopt recommendations regarding the implementation and operation of the treaty, in particular the promotion of its universality; consider amendments; and consider issues arising from the interpretation of the treaty.¹³⁰ It must also consider and decide the tasks and budget of the ATT Secretariat, established under Article 18 to assist states parties in the effective implementation of the treaty and facilitate the work of the CSP.¹³¹

The CSP has established several subsidiary bodies. Three are largely administrative: the bureau, comprising the CSP president and the four regional vice-presidents; the management committee, which provides oversight on financial matters; and the VTF selection committee, which allocates funds to requesting states parties that require international assistance to implement the ATT.¹³² Three working groups have also been established, reflecting areas of work that the states parties prioritize: the Working Group on Transparency and Reporting, the Working Group on Treaty Universalization (WGTU) and the Working Group on Effective Treaty Implementation.¹³³ The WGETI is further subdivided into three sub-working groups that focus on specific provisions of the treaty: articles 6 and 7, Article 9, and Article 11 (a fourth sub-working group, on Article 5, was discontinued after CSP5).¹³⁴ In 2020, CSP6 created a new subsidiary body: the Diversion Information Exchange Forum (DIEF), a unique body that allows informal voluntary exchanges between states parties and signatory states on concrete cases of detected or suspected diversion and for sharing concrete, operational information related to diversion.¹³⁵

The CSP has met annually since 2015 for five days around the end of August. Its default location is Geneva, the seat of the secretariat, but it can meet elsewhere: CSP1 was held in Cancun, Mexico, and CSP4 in Tokyo. Participants in the CSPs are the states parties and signatory states, although the latter have no voting rights. Non-party states, intergovernmental organizations and NGOs are also allowed to attend the CSPs as observers. Each CSP is prepared during the intersessional period by two sets of informal preparatory meetings, lasting four days, when working groups also meet.

The costs of organization of the CSPs and the core tasks of the secretariat are supported by assessed contributions of states parties and the attendance fees of attending signatory and observer states.¹³⁶

¹³⁰ Arms Trade Treaty (note 1), Article 17.

¹³¹ Arms Trade Treaty (note 1), Article 18. According to Article 18(3), the secretariat has a 'minimized structure'. See also Arms Trade Treaty, 7th Conference of States Parties, 'ATT provisional budget estimates for the financial year 2022', ATT/CSP7/2021/SEC.FIN/661/Conf.2022Bud, 4 June 2021.

¹³² Arms Trade Treaty, 1st Conference of States Parties, 'Rules of procedure', ATT/CSP1/CONF/1, 25 Aug. 2015, Rule 42; Arms Trade Treaty, 1st Conference of States Parties, 'Terms of reference: The management committee', ATT/CSP1/CONF/4, 25 Aug. 2015; Arms Trade Treaty, 2nd Conference of States Parties, 'Terms of reference for the ATT Voluntary Trust Fund', ATT/CSP2/2016/WP.3/Rev.1, 24 Aug. 2016; and ATT Secretariat, 'Subsidiary bodies', [n.d.].

¹³³ Arms Trade Treaty, 2nd Conference of States Parties, Final report, ATT/CSP2/2016/5, 26 Aug. 2016, paras 26–28. See also Arms Trade Treaty, 3rd Conference of States Parties, Final report, ATT/CSP3/2017/SEC/184/Conf. FinRep.Rev1, 15 Sep. 2017, paras 21, 23, 24.

¹³⁴ Arms Trade Treaty, ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep (note 44).

¹³⁵ ATT Secretariat, 'Diversion Information Exchange Forum (DIEF)', [n.d.]. See also Arms Trade Treaty, 6th Conference of States Parties, Working Group on Transparency and Reporting, 'Terms of Reference (ToR) concerning the Diversion Information Exchange Forum', ATT/CSP6.DIEF/2020/CHAIR/632/Conf.DIEFToRS, 23 July 2020.

¹³⁶ Arms Trade Treaty, 1st Conference of States Parties, 'Financial rules for the Conferences of States Parties and the Secretariat', ATT/CSP1/CONF/2, 25 Aug. 2015.

Problematic aspects and limitations

The current arrangement of ATT meetings comprises the annual CSP, lasting five days, and two sets of preparatory meetings, lasting about four days each. Provision is also made for extraordinary intersessional meetings. This differs from the practices of other arms control instruments. The ATT architecture does not currently include review conferences or expert meetings, while it accommodates longer intersessional meetings than other regimes. The ATT is a distinct international instrument entitled to its own pattern, yet it is worth asking whether the format for meetings is appropriate and efficient in helping and enabling states parties to implement the treaty.¹³⁷ It is also important to assess whether this pattern is inclusive enough to allow for the participation of all stakeholders and whether it is financially sustainable.

Meeting efficiency

Previous reflections from states parties and findings from this project seem to indicate that the time allocated to meetings in the ATT framework is sufficient. Costa Rica and Mexico reflected this in a working paper in which they suggested maintaining the ‘pace and cadence’ of the work in the intersessional period.¹³⁸ Similarly, all but one state respondent to the project survey agreed that the length, format and timing of ATT meetings are appropriate for their purpose. The exception wanted more meetings. The intersessional meetings have been notably praised. Likewise, the working group format has been seen as helpful for allowing ‘more concrete work . . . than would likely have been possible through a single annual meeting’.¹³⁹ In addition, one stakeholder argued that intersessional work alleviates pressure on the CSP and builds community and relationships.¹⁴⁰

While most stakeholders seem to agree that the time allocated is appropriate, the content of meetings and their efficiency is, conversely, questioned. Balancing procedure and substance has indeed been a long-running theme in ATT discussions, and this is also reflected in the findings of this project.¹⁴¹ One survey respondent noted the problem of a ‘diplomatic process that seems to be somewhat disconnected from national transfer control work’ and another noted the participation of ‘Geneva representatives’ who ‘tend to speak of procedural or political matters’. Likewise, some stakeholders interviewed in the course of the project regretted the amount of meeting time spent on bureaucratic matters at the expense of substantive issues.¹⁴²

One factor limiting meeting efficiency might be the role of participants who attend them. ATT meetings are usually attended by states’ representatives in Geneva, who often lack expertise on or are not involved in daily decisions related to transfers control.¹⁴³ As one stakeholder noted, discussions are most effective when national experts make presentations on their concrete work to implement the treaty.¹⁴⁴ A survey respondent reflected this view and called for more case studies and interactive discussions in meetings.

¹³⁷ Dondisch (note 14).

¹³⁸ Arms Trade Treaty, 5th Conference of States Parties, ‘Reflections on the process of the Conference of State Parties’, Working paper by Costa Rica and Mexico, ATT/CSP5/2019/CRI.MEX/538/Conf.WP, 27 Aug. 2019, para. 5.

¹³⁹ Pytlak, A., ‘Are Arms Trade Treaty meetings being used to their full potential?’, *Global Responsibility to Protect*, vol. 12, no. 2 (May 2020).

¹⁴⁰ Webinar participant (note 50).

¹⁴¹ Pytlak (note 139).

¹⁴² Macdonald (note 127); Finaud, M., Non-governmental expert and former national official, Geneva Centre for Security Policy, Interview with authors, 5 Feb. 2021; and Stohl, R., Non-governmental expert, Stimson Center, Interview with authors, 18 Dec. 2020.

¹⁴³ Beijer (note 3); Dondisch (note 14); and Control Arms, ‘Ways to increase states’ participation in ATT meetings’, 30 May 2017.

¹⁴⁴ Macdonald (note 127).

Another factor potentially limiting meeting efficiency is their public nature. The issue has been discussed in some CSPs and, according to one stakeholder, the public nature of the meetings can at times make it difficult to share information or to reach agreement on sensitive decisions.¹⁴⁵ The CSPs and working groups are public by default but can be closed on an exceptional basis, through a state party request agreed on by the CSP.¹⁴⁶

Inclusivity

The majority of survey respondents agreed that the ATT meetings ensure proper representation of states as well as proper participation of experts, stakeholders and civil society representatives from different regions of the world. However, participation is usually higher in the CSPs than in intersessional meetings.¹⁴⁷ For example, 25 per cent of states parties that attended CSP3 did not attend earlier intersessional working groups meetings; the equivalent figures for African (41 per cent) and Asian (33 per cent) states parties are higher.¹⁴⁸ The size of delegations also varies: at CSP5, the average delegation of the 86 states parties in attendance comprised 4 delegates, but 11 parties had more than 7 delegates while 21 had fewer than 3.¹⁴⁹ Moreover, attendance does not always equate to active participation: at CSP5, for example, 57 of the 86 states in attendance delivered statements during discussions.¹⁵⁰

Restrictions related to the Covid-19 pandemic had an impact on the organization of CSP6 and CSP7. CSP6 was held through a silence procedure—proposals were submitted to states parties and considered to be accepted by all if there was no objection. Although side events were held online, no formal meetings took place during the CSP week and stakeholders participated through written interventions. This organization had some faults: it lacked interactivity, NGO participation was limited and some decisions were rejected because of the silence procedure, which did not permit exchanges between states parties during meetings.¹⁵¹ During the CSP7 cycle, a single set of preparatory meetings was held in April 2021, and informal consultations were held in June 2021, both in online format, while CSP7 itself was held in a hybrid format combining virtual and in-person meetings. Many stakeholders have made it clear that virtual meetings can never fully replace in-person meetings and the diplomatic work undertaken through informal talks and personal contacts.¹⁵² Digital access and a secure Internet connection can also be difficult for some delegations to obtain, which can impede their participation.

¹⁴⁵ Beijer (note 6).

¹⁴⁶ Arms Trade Treaty, ATT/CSP1/CONF/1 (note 132), rules 13, 42; Arms Trade Treaty, 3rd Conference of States Parties, Working Group on Transparency and Reporting, Co-chairs' draft report, ATT/CSP3.WGTR/2017/CHAIR/159/Conf.Rep, 31 July 2017, annex C; Arms Trade Treaty, 3rd Conference of States Parties, Working Group on Treaty Universalization, Co-chairs' draft report, ATT/CSP3.WGTU/2017/CHAIR/160/Conf.Rep, 31 July 2017, annex A; and Arms Trade Treaty, ATT/CSP3.WGETI/2017/CHAIR/158/Conf.Rep (note 82), annex A.

¹⁴⁷ Pytlak (note 139).

¹⁴⁸ Arms Trade Treaty, ATT/CSP3/2017/SEC/184/Conf.FinRep.Rev1 (note 133), para. 11; ATT Secretariat, 'ATT working groups' meetings, 29–31 May 2017, Geneva: Attended states, international organizations, civil society organizations, industry', May 2017; and ATT Secretariat, 'ATT working groups' meetings, 6–9 February 2017, Geneva: Registered/attended states, international organizations, civil society organizations', Feb. 2017.

¹⁴⁹ Arms Trade Treaty, 5th Conference of States Parties, 'List of participants', ATT/CSP5/2019/SEC/535/Conf.PartList, 6 Sep. 2019.

¹⁵⁰ Arms Trade Treaty, 5th Conference of States Parties, Final report, ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1, 30 Aug. 2019; and Arms Trade Treaty, 'CSP5 statements', 26–30 Aug. 2019.

¹⁵¹ Pytlak (note 114); and Hwang, Y., Delegation of France, Email to the ATT Secretariat, 17 Aug. 2020.

¹⁵² Lomónaco, J., Former CSP president, Interview with authors, 11 Feb. 2021; Prins (note 48); Ebbs (note 117); and Villegas, F., Former CSP president, Interview with authors, 9 Feb. 2021.

The financial situation

The ATT has faced a concerning financial situation since CSP3 caused by partially or delayed payment of assessed contributions.¹⁵³ In 2018 the management committee reported that the ATT was building a budget deficit of about 15 per cent per annum. If this trend were to continue, it could result in a reduction in the length of each CSP, in the number of preparatory meetings, or in the number of subsidiary bodies and their scale of effort.¹⁵⁴ Those are not idle threats: in other instruments, unpaid assessed contributions have led to cases where the length of meetings had to be reduced and document translation and in-session interpretation cut back.¹⁵⁵ Likewise, the feasibility of any potential change in the ATT processes and forums will depend on the payment of assessed contributions.

Steps taken and proposals made

Improved meeting efficiency

From CSP3 onwards, the successive CSP presidents have proposed a theme to guide discussions during their CSP cycle. This practice has been praised as it allows a certain topic to gain attention and sheds light on issues that otherwise might not have been discussed in the working groups. Furthermore, it enables expert inputs, specific training and the production of ‘concrete deliverables for the integral implementation of the Treaty’.¹⁵⁶ For example, CSPs have adopted recommendations made in the president’s working papers, which often encourage states parties to implement specific practices related to gender-based violence, diversion or stockpile management.¹⁵⁷

Costa Rica and Mexico have suggested a better distribution of meetings throughout the calendar year, which would allow for ‘a deeper analysis of the documents and proposals, further sharing of views among the different actors at the national, sub-regional, and regional levels, and with other delegations’.¹⁵⁸ They also proposed that more work be advanced at regional level through ‘the development of informal consultations among sub-regional and regional groups, with the support of the vice-presidencies’.¹⁵⁹ A similar approach is encouraged by the ATT Regional Actor Project of Control Arms, a coalition of NGOs; this project ‘aims to explore pathways for regional organizations to further encourage ATT accession and to take a leading role in its effective implementation’.¹⁶⁰

¹⁵³ Arms Trade Treaty, 7th Conference of States Parties, Final report, ATT/CSP7/2021/SEC/681/Conf.FinRep.Rev1, 2 Sep. 2021, para. 31; Arms Trade Treaty, ATT/CSP3/2017/SEC/184/Conf.FinRep.Rev1 (note 133), para. 33; Arms Trade Treaty, 4th Conference of States Parties, Final report, ATT/CSP4/2018/SEC/369/Conf.FinRep.Rev1, 24 Aug. 2018, para. 35; and Arms Trade Treaty, ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1 (note 150), para. 34.

¹⁵⁴ Arms Trade Treaty, 4th Conference of States Parties, Management Committee, ‘Draft proposal: Unpaid financial contributions’, ATT/CSP4.MC/2018/MC/353/Conf.UnpaidContr, 20 July 2018, para. 5.

¹⁵⁵ Convention on Cluster Munitions, 9th Meeting of States Parties, ‘Possible measures to address financial predictability and sustainability of the Convention on Cluster Munitions’, CCM/MSP/2019/5, 1 July 2019, para. 3; Anti-Personnel Mine Convention, 4th Review Conference, ‘Financial predictability and sustainability of UN assessed contributions’, APLC/CONF/2019/WP.17, 4 Oct. 2019, para. 6; and Organisation for the Prohibition of Chemical Weapons, Executive Council, ‘Cash situation and the use of the Working Capital Fund for the financial year to 31 August 2020’, Note by the Director-General, EC-95/DG.21, 25 Sep. 2020; Convention on Cluster Munitions, 2nd Review Conference, ‘Elements on possible measures to address the financial predictability and sustainability of United Nations assessed contributions’, CCM/CONF/2020/11, 28 Sep. 2020; and Anti-Personnel Mine Convention, 18th Meeting of the States Parties, Final report, APLC/MSP.18/2020/10, 27 Nov. 2020.

¹⁵⁶ Arms Trade Treaty, ATT/CSP5/2019/CRI.MEX/538/Conf.WP (note 138), para. 2. See also Pytlak (note 139). A similar point was also raised by Macdonald (note 127).

¹⁵⁷ Arms Trade Treaty, ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1 (note 150), para. 22; and Arms Trade Treaty, ATT/CSP7/2021/SEC/681/Conf.FinRep.Rev1 (note 153), para. 21, 28.

¹⁵⁸ Arms Trade Treaty, ATT/CSP5/2019/CRI.MEX/538/Conf.WP (note 138), para. 1.

¹⁵⁹ Arms Trade Treaty, ATT/CSP5/2019/CRI.MEX/538/Conf.WP (note 138), para. 5; and Webinar participant (note 50).

¹⁶⁰ Control Arms, *Arms Trade Treaty Regional Actor Study* (Control Arms: New York, 2021), p. 4.

Proposals on closed meetings have been debated since CSP2, when the United Kingdom proposed the establishment of a working group on implementation that could be closed if necessary. This proposal was dismissed during consultations.¹⁶¹ This issue was again raised at CSP3, when New Zealand inconclusively proposed an amendment to the WGETI's terms of reference whereby states requesting a closed meeting would be required to provide a justification.¹⁶² The president of CSP4 held informal consultations on the procedure for holding closed meetings of the working groups. Participants generally shared the view that the current terms of reference of the working groups formed a good basis, including the option of closing meetings on exceptional bases, but this should not be abused.¹⁶³ Participants in this project also highlighted how NGOs have been instrumental in the negotiation and implementation of the treaty, notably in providing expertise that some delegations might lack, and should therefore continue to be involved in meetings.¹⁶⁴

The establishment of the Dief creates a precedent for sharing sensitive information among ATT states parties in a closed format. Unlike the working groups, Dief meetings are only open to states parties and signatories (although non-state experts can be invited and participate under a confidentiality obligation).¹⁶⁵ Its establishment attracted criticism from NGOs because of its confidential nature. The disruption caused by the Covid-19 pandemic has meant that the Dief has not yet been able to convene.¹⁶⁶ At CSP7 states decided that 'the usefulness' of this body 'will be reviewed at the first CSP following two cycles of Dief meetings'.¹⁶⁷ The work of the Dief in the next years could thus provide some indication on whether a balance can be found between efficiency and inclusiveness. It could indicate whether the public nature of ATT meetings constitutes an actual hindrance to efficiency and the discussion of particularly sensitive issues related to the treaty's implementation. At the time of writing, it remains unclear whether this experiment will be successful and what the criteria will be for assessing its results. As such, the usefulness and effectiveness of conducting meetings in a closed format in terms of building confidence and sharing meaningful information and whether such a model could provide some lessons to apply in relation to other aspects of the treaty is yet to be seen.

The participation of technical experts has also been discussed. The British proposal on working groups foresaw the participation of national technical experts alongside invited industry experts.¹⁶⁸ The Dief's terms of reference strongly recommend that enforcement officers attend its meetings.¹⁶⁹ Participants in this project were in agreement on the need for more technical input: three state respondents supported the idea of increasing the involvement and participation of 'experts involved in the licensing process', 'arms export practitioners with hands-on experience in the field of export control' or 'capital experts' in some working groups. Other stakeholders added that

¹⁶¹ Arms Trade Treaty, 2nd Conference of States Parties, 'Working paper to consider the establishment on a working group on "national implementation"', Submitted by the United Kingdom, ATT/CSP2/2016/OP.1, 7 July 2016; and Acheson, R., 'Struggling for the soul of the ATT', *ATT Monitor*, vol. 9, no. 6, 26 Aug. 2016.

¹⁶² Arms Trade Treaty, ATT/CSP3/2017/SEC/184/Conf.FinRep.Rev1 (note 133), para. 25; and Pytlak, A., 'Sliding into norm erosion', *ATT Monitor*, vol. 10, no. 6 (18 Sep. 2017).

¹⁶³ Arms Trade Treaty, ATT/CSP4/2018/SEC/369/Conf.FinRep.Rev1 (note 153), para. 28; and Arms Trade Treaty, 4th Conference of States Parties, 'Summary of the informal consultation on the provisions of the terms of reference of the ATT Working Groups regarding the holding of closed meetings', Non-paper issued by the president, ATT/CSP4/2018/PRES/362/Conf.ClosedMeet, 27 July 2018.

¹⁶⁴ Dondisch (note 14); and Macdonald (note 127).

¹⁶⁵ Arms Trade Treaty, ATT/CSP6.DIEF/2020/CHAIR/632/Conf.DIEFTORS (note 135), paras 6, 8, 15.

¹⁶⁶ Arms Trade Treaty, ATT/CSP7/2021/SEC/681/Conf.FinRep.Rev1 (note 153), para. 27.

¹⁶⁷ Arms Trade Treaty, ATT/CSP7/2021/SEC/681/Conf.FinRep.Rev1 (note 153), para. 27.

¹⁶⁸ Arms Trade Treaty, ATT/CSP2/2016/OP.1 (note 161).

¹⁶⁹ Arms Trade Treaty, ATT/CSP6.DIEF/2020/CHAIR/632/Conf.DIEFTORS (note 135).

the work done by diplomats also needs to be complemented by the input of technical experts.¹⁷⁰

Inclusive representation

The sponsorship programme, financed through voluntary contributions, has been designed to ‘maximize the scale and diversity of participation of experts from States to ensure representative and participatory discourse and decision-making’.¹⁷¹ States listed as recipients of official development assistance (ODA) can apply for travel and accommodation for one delegate.¹⁷² Between 2014 and 2018, 497 delegates (including state delegates and NGO representatives) were sponsored.¹⁷³ CSP5 also called on states to strive for gender balance in their delegations and recommended that the sponsorship programme consider gender balance as one of its selection criteria.¹⁷⁴ More delegates are sponsored to attend CSPs than intersessional meetings, but that might be because more states parties request sponsorship for attending CSPs.¹⁷⁵ The eligibility criteria mean that not all applicants receive sponsorship, and total voluntary contributions have often exceeded the amount disbursed, particularly during the CSP6 and CSP7 cycles when some meetings were cancelled or held online.¹⁷⁶

To increase the participation of states from the Global South in ATT meetings, Sweden and Control Arms suggested in 2017 that meetings be held outside Geneva.¹⁷⁷ One stakeholder also suggested holding a CSP in a country particularly negatively affected by diversion and poorly regulated arms transfers, in order to encourage more understanding of the issues at stake there.¹⁷⁸ Notably, this was one reason advanced during CSP1 for locating the ATT Secretariat in Trinidad and Tobago.¹⁷⁹

Solutions to the financial situation

CSP5 adopted some measures recommended by the management committee to address financial problems: closing the accounts at a later stage; exceptionally rolling-over the total credits that are due to states that paid their contributions; and establishing a reserve fund sourced from voluntary contributions.¹⁸⁰ The management committee also considered, but did not recommend, other measures that have been adopted in the frameworks of the 1997 APM Convention, the 1981 CCW Convention and the 1972 Biological Weapons Convention (BWC): no longer invoicing signatory and observer states for attendance in preceding years; limiting the expenditure for a financial year to an amount based on the average collection rate of the preceding three years; invoicing

¹⁷⁰ Beijer (note 6); Drew (note 46); Pollard (note 48); and Dondisch (note 14).

¹⁷¹ Arms Trade Treaty, 5th Conference of States Parties, ‘Report on the ATT Sponsorship Programme for the period 2018/2019’, ATT/CSP5/2019/SEC/530/SponProgRep, 26 July 2019, annex A, Draft Administrative Guidelines, para. 3. See also Arms Trade Treaty, ATT/CSP1/CONF/2 (note 136), Rule 5.5.

¹⁷² Arms Trade Treaty, 4th Conference of States Parties, ‘ATT Sponsorship Programme’, ATT/CSP4/2018/UNDP/361/Conf.SponsRep, 20 July 2018.

¹⁷³ Arms Trade Treaty, ATT/CSP4/2018/UNDP/361/Conf.SponsRep (note 172). See also Arms Trade Treaty, ATT/CSP5/2019/SEC/530/SponProgRep (note 171); Arms Trade Treaty, 6th Conference of States Parties, ‘Report on the ATT Sponsorship Programme for the period 2019/2020’, ATT/CSP6/2019/SEC/613/Conf.SponProgRep, 17 July 2020; Arms Trade Treaty, 7th Conference of States Parties, ‘Report on the ATT Sponsorship Programme for the period 2020/2021’, ATT/CSP7/2021/SEC/679/Conf.SponProgRep, 30 July 2021; and Stohl (note 14).

¹⁷⁴ Arms Trade Treaty, ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1 (note 150), para. 22.

¹⁷⁵ See e.g. Arms Trade Treaty, ATT/CSP5/2019/SEC/530/SponProgRep (note 171).

¹⁷⁶ Arms Trade Treaty, ATT/CSP4/2018/UNDP/361/Conf.SponsRep (note 172); Arms Trade Treaty, ATT/CSP5/2019/SEC/530/SponProgRep (note 171), para. 26; Arms Trade Treaty, ATT/CSP6/2019/SEC/613/Conf.SponProgRep (note 173), para. 28; and Arms Trade Treaty, ATT/CSP7/2021/SEC/679/Conf.SponProgRep (note 173), para. 12.

¹⁷⁷ Control Arms (note 143).

¹⁷⁸ Macdonald (note 127).

¹⁷⁹ Chile, Statement at CSP1, 24–27 Aug. 2015 (in Spanish).

¹⁸⁰ Arms Trade Treaty, ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1 (note 150), para. 37.

Table 4.1. Policy options on processes and forums of the Arms Trade Treaty

Policy option
1. <i>Improve meeting efficiency</i>
1.1. The Working Group on Effective Treaty Implementation (WGETI) sub-working groups should increase the participation of technical experts in their meetings
1.2. ATT stakeholders could consider having a more regular exchange by scheduling intersessional meetings earlier in the Conference of States Parties (CSP) cycle or through regional consultations
1.3. States parties and ATT stakeholders should develop follow-up mechanisms and activities to ensure implementation of recommendations made under thematic discussions
2. <i>Ensure inclusive participation</i>
2.1. States parties could expand the scope and funding of the sponsorship programme
2.2. The CSP could consider holding its annual meeting outside Geneva
2.3. The CSP should adopt an annual meeting plan
3. <i>Use virtual tools</i>
3.1. States parties and ATT stakeholders could consider holding some meetings in hybrid or virtual format
3.2. States parties could have consultations on how to improve the use of the internal messaging system and establish a messaging system for the WGETI sub-working groups

arrears for unpaid contributions based on the initial assessment amount; and creating a 15 per cent contingency provision in the budget.¹⁸¹

States parties also discussed the issue of sanctions in cases where states fail to pay their assessed contributions. According to Financial Rule 8(1)(d), ‘Any State Party whose contributions are in arrears for two or more years that has not entered into arrangements with the Secretariat in relation to the discharge of its financial obligations shall have its voting rights suspended, not be eligible to nominate a representative as an office-holder, nor become a member of any committee or subsidiary body of the CSP.’¹⁸²

There was a debate at CSP5 over whether states parties in arrears should be able to access the sponsorship programme and VTF assistance. Some states parties noted that this would further impede ATT implementation and universalization, as without those programmes it would be harder for those states to implement provisions of the treaty and for stakeholders in non-party states to argue for more support for the treaty.¹⁸³ At CSP7, states parties adopted a process for making financial arrangements contemplated in Financial Rule 8(1)(d) on the basis of a document prepared by the management committee.¹⁸⁴

Policy options

ATT stakeholders and states parties can consider the following policy options (summarized in table 4.1) related to the processes and forums of the ATT. Given the financial situation of the treaty, these options build on existing and established ATT processes and forums rather than suggesting radical changes to the current structure.¹⁸⁵

¹⁸¹ Arms Trade Treaty, 5th Conference of States Parties, ‘Draft proposal to address problems related to financial liquidity’, ATT/CSP5.MC/2019/MC/534/Conf.PropFinLiq.Rev1, 30 Aug. 2019; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (APM Convention), opened for signature 3 Dec. 1997, entered into force 1 Mar. 1999; and Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (Biological Weapons Convention, BWC), opened for signature 10 Apr. 1972, entered into force 26 Mar. 1975, British Foreign and Commonwealth Office, Treaty Series no. 11 (1976).

¹⁸² Arms Trade Treaty, ATT/CSP1/CONF/2 (note 136), Rule 8(1)(d).

¹⁸³ Acheson (note 8); and Acheson, R. and Pytlak, A., ‘Turning from the final report to implementation, let’s make the ATT a treaty that save lives’, *ATT Monitor*, vol. 12, no. 9 (30 Aug. 2019).

¹⁸⁴ Arms Trade Treaty, ATT/CSP7/2021/SEC/681/Conf.FinRep.Rev1 (note 153), para 32; and Arms Trade Treaty, Management Committee, ‘Draft elements for a procedure regarding Rule 8 (1) D’, Revised version, ATT/CSP7.MC/2021/MC/674/Conf.PropFinArr8(1), 16 July 2021.

¹⁸⁵ For a more radical proposal see Dondisch (note 14).

Improve meeting efficiency

One way to increase the efficiency of meetings would be to find ways to enable more national technical experts to attend meetings, notably of the WGETI sub-working groups.¹⁸⁶ Some arms control instruments can be viewed as good examples of equilibrium between technical and political discussions. In the CCW framework, for example, in addition to review conferences and annual meetings, meetings of military experts are seen as ‘valuable in identifying and clarifying issues’.¹⁸⁷ In the Wassenaar Arrangement, technical experts meet regularly to review the control list, and participating states adopt decisions in the annual plenary.¹⁸⁸

Similarly, licensing, customs and enforcement officers should, respectively, attend the WGETI sub-working groups on articles 6 and 7, Article 9, and Article 11. They are well-placed to discuss national practices and ways to improve them, as well as to develop guidance or instruments that would facilitate their work. They could discuss new measures during the intersessional period and put forward proposals to the CSP. Geneva diplomats would then only meet once a year at the CSP to adopt decisions drafted by technical experts. To achieve this, the CSP should encourage states parties to send national officers to intersessional meetings of the WGETI, and its terms of reference could be amended in line with those of the Dief. However, national experts would have to travel to Geneva, where the WGETI meetings are held as a rule, which could be cumbersome for some delegations.¹⁸⁹ Ways of increasing participation of technical experts in such meetings include adjusting the sponsorship programme to support their participation in intersessional meetings and relying more on virtual tools and hybrid meetings (see also other policy options proposed below).

ATT stakeholders can also consider options to favour a more regular exchange. In line with the suggestion made by Costa Rica and Mexico at CSP5, state parties could explore the possibility of distributing meetings throughout the calendar year and scheduling intersessional meetings earlier in the CSP cycle, subject to room availability and the timetable of other official disarmament events.¹⁹⁰ Likewise, states parties could consider—and evaluate the possible practical, financial and political implications of—advancing some of the work of the intersessional period through regional consultations.

As some stakeholders recommended maintaining the practice of a thematic focus, state parties and ATT stakeholders should develop follow-up mechanisms and activities to ensure that states parties implement recommendations made during those thematic discussions.¹⁹¹ This would ensure that commitments made under a specific theme are implemented and do not ‘get lost in the move to a new thematic focus the following year’, but instead become part of effective discussions on substantial issues and are followed up with concrete action.¹⁹²

¹⁸⁶ Increased participation of technical experts in ATT work would also favour some of the policy options proposed on the scope of the treaty in chapter 2 in this volume.

¹⁸⁷ Solomon, S. A., ‘The United Nations Convention on Certain Conventional Weapons of 1980: Its recent development and increasing significance’, *Yearbook of International Humanitarian Law*, vol. 6, 2003 (T.M.C. Asser Press: The Hague, 2006), p. 347.

¹⁸⁸ Brockmann, K., *Challenges to Multilateral Export Controls: The Case for Inter-regime Dialogue and Coordination* (SIPRI: Stockholm, Dec. 2019); Griffiths, P., Head of Wassenaar Arrangement Secretariat, ‘Updates from the Wassenaar Arrangement’, Statement delivered to the SMI Defence Exports Conference 2019, Amsterdam, 25–26 Sep. 2019; and Bauer, S. and Maletta, G. ‘The export control regimes’, *SIPRI Yearbook 2017: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2017), p. 609.

¹⁸⁹ Arms Trade Treaty, ATT/CSP3.WGETI/2017/CHAIR/158/Conf.Rep (note 82), annex A.

¹⁹⁰ Arms Trade Treaty, ATT/CSP5/2019/CRI.MEX/538/Conf.WP (note 138).

¹⁹¹ Pytlak (note 139).

¹⁹² Pytlak, A., ‘Preventing the diversion of attention’, *ATT Monitor*, vol. 14, no. 2 (5 May 2021), p. 2. See also Arms Trade Treaty, ATT/CSP5/2019/CRI.MEX/538/Conf.WP (note 138).

Ensure inclusive participation

One option to ensure further inclusive participation would be to expand the sponsorship programme to cover more countries or more than one delegate per country.¹⁹³ The latter expansion would help national technical experts to travel to Geneva to participate in intersessional meetings (see above). The sponsorship programme could also cover the acquisition of electronic tools to ensure the participation of delegations that currently lack the means to take part in virtual meetings. This would require amendment of the sponsorship programme's terms of reference and, in the long term, an increase in voluntary contributions. In the short term, the accumulated uncommitted voluntary contributions could be used.

A second option that ATT stakeholders can consider to ensure more inclusive participation is to host the CSP outside Geneva, in line with the proposal advanced by Sweden and Control Arms in 2017. In the framework of the 2008 Convention on Cluster Munitions (CCM), meetings of states parties have been held in 'affected' countries and these had a 'positive impact in terms of ownership and visibility'.¹⁹⁴ The practical feasibility and the implications for participation of this proposal would need to be explored. According to the ATT rules of procedures, a state party willing to host a CSP has to submit an offer to the secretariat, which has to prepare a financial report that is then submitted to the CSP for decision. In case the organizational costs are more than the estimated cost of a CSP in Geneva, the state can offer to cover the difference. If this might be difficult for some countries, the CSP could consider the option to share the burden among states parties. This has happened for instance in the framework of the Missile Technology Control Regime (MTCR), where pairs of countries have co-hosted meetings to share costs.¹⁹⁵

Wherever the CSP is hosted, it should consider adopting an annual meeting plan, as suggested by Control Arms and Sweden, instead of scheduling meetings on an ad hoc basis during the year.¹⁹⁶ In its final report, the CSP could specify the dates and locations of the next CSP and the intersessional meetings. This measure would be in line with the practice of other Geneva-based instruments, which plan in advance the time and place of their next cycle of preparatory and annual meetings.¹⁹⁷

Use virtual tools

A final series of options could build on the lessons from the Covid-19 pandemic to consider the advantages and limitations of virtual tools and explore the possibility of conducting some ATT work virtually.

One possible measure that states parties and ATT stakeholders could consider is to continue to hold some hybrid or virtual meetings even when physical meetings resume. Virtual meetings have some advantages: they enable attendance of stakeholders from capitals who can provide information on ATT implementation but usually do not travel to Geneva; and they allow some countries that lack resources for travel to participate or to be represented by a bigger delegation.¹⁹⁸ At the same time, all-virtual meetings also present problems as noted above. For these reasons, CSPs could be held in a hybrid

¹⁹³ The option was raised by some survey respondents; and Finaud (note 142).

¹⁹⁴ Convention on Cluster Munitions, 2nd Review Conference, 'Reflections and options regarding the Convention's machinery', Submitted by the President, CCM/CONF/2020/10, 28 Sep. 2020, para. 7; and Convention on Cluster Munitions, opened for signature 3 Dec. 2008, entered into force 1 Aug. 2010.

¹⁹⁵ Webinar participant (note 50). Luxemburg and the Netherlands co-chaired the MTCR in 2015–16, and Ireland and Iceland co-chaired the MTCR in 2017–18.

¹⁹⁶ Control Arms (note 143).

¹⁹⁷ E.g. Biological Weapons Convention, 2019 Meeting of the States Parties, Report, BWC/MSP/2019/7, 11 Dec. 2019, para. 28; Certain Conventional Weapons Convention, Meeting of the High Contracting Parties, Final report, CCW/MSP/2018/11, 28 Dec. 2018, para. 40; and Convention on Cluster Munitions, 9th Meeting of the States Parties, Final report, CCM/MSP/2019/13, 18 Sep. 2019, para. 69.

¹⁹⁸ Ebbs (note 117).

format, to allow for both virtual attendance and in-person diplomatic interactions. Similarly, some intersessional meetings could be held virtually or in a hybrid format, in particular to enable technical experts to attend working group meetings. However, one stakeholder reflected that hybrid meetings might induce a hierarchy in which delegates in the room have more information than delegates attending online.¹⁹⁹ Likewise, the differences in time zones among participants could constitute a further challenge to participation from experts remaining in their capital. The advantages and limitations of the in-person, virtual and hybrid options should therefore be carefully considered when implementing possible measures linked to this policy option.

Two state respondents to the project's survey suggested using an internal messaging system for points of contact to share relevant information and conduct consultations. States parties can already share information through the restricted area of the ATT Secretariat website. Since the Covid-19 pandemic limited the possibility of in-person interaction, and more officials and delegates became used to information technology and to online meetings and information exchange, consultations among states parties on how to possibly improve such functionality should be promoted. For instance, a possible improvement could be the establishment of a messaging system for each WGETI sub-working group that could allow for information sharing between technical experts, in addition to formal physical or virtual meetings. However, this would exclude other stakeholders (signatories, non-party states, intergovernmental organizations and NGOs) from taking part in consultations as they are denied access to this function of the website.

¹⁹⁹ Webinar participant (note 50).

5. Promoting universalization

The preamble to the Arms Trade Treaty notes ‘the desirability of achieving universal adherence’ to the treaty.²⁰⁰ The Conference of States Parties is tasked with promoting universalization and CSP2 created the Working Group on Treaty Universalization, which was formally endorsed as a standing working group by CSP3.²⁰¹ The WGTU is co-chaired by the president of the ongoing CSP and the president of the previous CSP and is supported by the ATT Secretariat. The CSP, the WGTU and also individual states parties and NGOs have invested significant efforts in expanding treaty membership.²⁰²

The ATT currently has 110 states parties and a further 31 signatories. Although the ATT is still a young treaty and its rate of ratification compares well with other instruments (see figure 5.1), it is still far from being universal. The pace of accession has slowed down over the years—from 85 new states parties in the first three years after its adoption, to only 25 in the following five years.²⁰³ ATT membership also lacks key actors in the arms trade: it has not been joined by the two major arms exporters—the United States and Russia—or by 17 of the top 25 importers over the period 2016–20, including the three major importers—Saudi Arabia, India and Egypt.²⁰⁴ Moreover, geographical representation remains unbalanced. In particular, states of Asia and Oceania and the Middle East continue to be under-represented.²⁰⁵

Problematic aspects and limitations

Two main impediments to accession can be identified: a lack of capacity and a lack of political will. Although any problems encountered are specific to individual countries—notably depending on their region and their role in the global arms trade—this categorization can help determine strategies to respond to those challenges.

A lack of capacity to implement the treaty means that some countries do not join the ATT or delay their accession for fear of their national transfer control system not being in compliance with the treaty.²⁰⁶ Some of these states, for example in Africa, are also concerned that they will not receive the assistance they need to implement the treaty once they join it.²⁰⁷ To comply with obligations under the ATT requires resources and technical expertise that not all countries have and, thus, some states have expressed concerns that joining the ATT would create economic burdens.²⁰⁸

A lack of political will can have several causes. Some national political actors may be sceptical about the ATT. For instance defence ministries have sometimes shown reluctance about specific treaty obligations (such as annual reporting on arms transfers).²⁰⁹ This is particularly relevant for countries embedded in complex regional security contexts, where states are hesitant to reveal details, and potentially

²⁰⁰ Arms Trade Treaty (note 1), preamble.

²⁰¹ Arms Trade Treaty (note 1), Article 17(4)(b); Arms Trade Treaty, ATT/CSP2/2016/5 (note 133), para. 28; and Arms Trade Treaty, ATT/CSP3/2017/SEC/184/Conf.FinRep.Rev1 (note 133), para. 24.

²⁰² Stohl (note 14).

²⁰³ ATT Secretariat, ‘Treaty status’, [n.d.].

²⁰⁴ Wezeman et al. (note 10).

²⁰⁵ Stohl (note 14), table 1. The ATT Secretariat uses a different, broader definition of Asia that encompasses 48 states, including many that are usually considered to be part of the Middle East or Europe.

²⁰⁶ Control Arms, ‘Achieving ATT universalization in Africa’, Aug. 2016; Persi Paoli, G. and Kytomaki, E., *Towards a Universal Arms Trade Treaty: Understanding Barriers and Challenges in South-East Asia* (RAND Corp.: Santa Monica, CA, 2016), p. 29; and Control Arms Secretariat, *ATT Monitor Report 2018* (Control Arms: New York, 20 Aug. 2018), p. 21.

²⁰⁷ Matala, D., Zambian Ministry of Defence, Interview with authors, 10 June 2021.

²⁰⁸ Albrecht, I., German Federal Office for Economic Affairs and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA), Interview with authors, 18 Feb. 2021; and Stohl (note 14), p. 13.

²⁰⁹ Maletta and Bauer (note 14), p. 11.

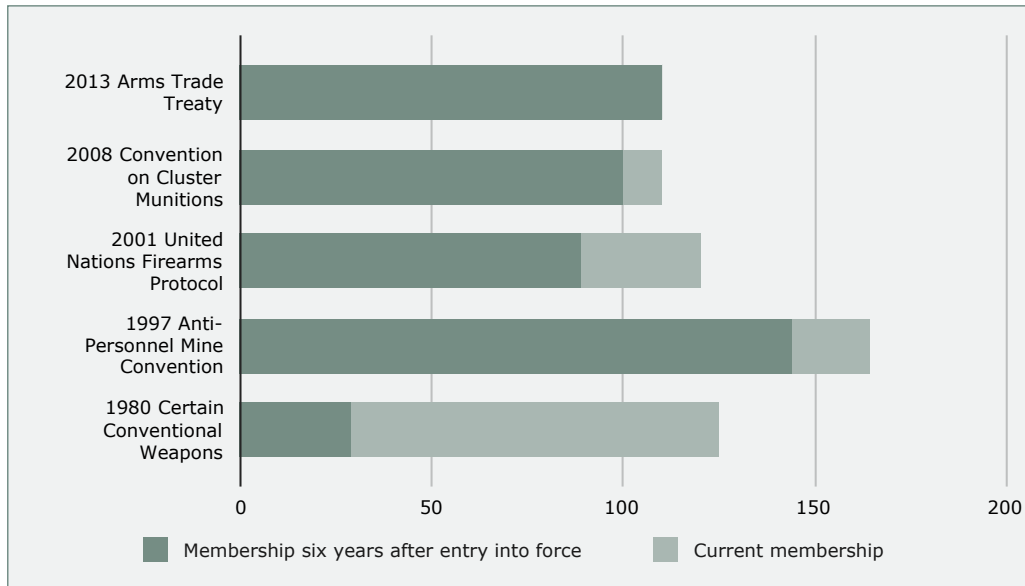


Figure 5.1. Membership of select arms control instruments six years after entry into force

Sources: United Nations Treaty Collection, ‘Multilateral treaties deposited with the secretary-general: Status of treaties’, as of 19 Oct. 2021.

weaknesses, of their national capabilities.²¹⁰ Further, some states, especially in Asia, remain distrustful towards a regime that they perceive as biased towards traditional arms-exporting states and, as such, seen as likely to impede their ability to import weapons.²¹¹ For states that are ‘eager to stay outside the treaty’, the fact that major arms exporters such as the USA have so far decided not to become parties to the ATT has not provided incentives to join.²¹² Lack of political will within a country may also be explained by the existence of competing national priorities.²¹³ A lack of regional organizations that had established common standards or mechanisms on arms controls prior to the ATT might also explain low membership rates, as in the case of Asia.²¹⁴

Even when there is capacity and will to join the ATT, procedural and bureaucratic hurdles in internal procedures can slow down accession.²¹⁵ As an example of this, one respondent to the project’s survey noted that ‘crafting legislative amendments and new regulations can be a long and labour-intensive process’. This may explain why some states signed the treaty more than eight years ago but still have not ratified it. Some of these signatory states have shown their political will to join the treaty by consistently attending ATT meetings and being involved in capacity-building assistance. Yet, other signatories might have lost interest in or capacity to join the ATT.

Finally, some countries remain opposed to the ATT, as indicated by their consistent abstention on the annual UN General Assembly resolutions on the ATT or their refusal to reference the ATT in other forums, such as the POA.²¹⁶

²¹⁰ Bromley and Brockmann (note 91).

²¹¹ Persi Paoli and Kytomaki (note 206), pp. 30–31; Control Arms Secretariat (note 206), p. 20; and Sharma, G. and Finaud, M., *The Arms Trade Treaty (ATT) and Asia’s Major Power Defiance—India, China, Pakistan, and Indonesia*, Strategic Security Analysis no. 6 (Geneva Centre for Security Policy: Geneva, May 2019).

²¹² Stohl (note 14), p. 2.

²¹³ Control Arms (note 206), pp. 5–7.

²¹⁴ Brockmann, K., Bromley, M. and Maletta, G., ‘Promoting effective implementation of the Arms Trade Treaty: Mapping outreach and assistance in East and South East Asia’, WritePeace blog, SIPRI, 25 May 2018.

²¹⁵ Stohl (note 14), p. 13.

²¹⁶ See the voting records, for UN General Assembly resolutions 75/64, 7 Dec. 2020; 74/49, 12 Dec. 2019; 73/36, 5 Dec. 2018; 72/44, 4 Dec. 2017; 71/50, 5 Dec. 2016; 70/58, 7 Dec. 2015; 69/49, 2 Dec. 2014; and 68/31, 5 Dec. 2013. See also Geyer, K., Rafferty, J. and Pytlak, A., ‘Reporting on statements’, *Small Arms Monitor*, vol. 11, no. 2 (4 Aug. 2021), pp.18–19.

Steps taken and proposals made

Assistance to committed non-party states

ATT stakeholders have assumed a non-discriminatory approach to universalization: any state can join the treaty, regardless of the maturity of its national control system. The ATT provides states parties with instruments to improve their control system. These tools, presented below, are offered to signatories and other non-party states under specific circumstances.²¹⁷

The sponsorship programme has been used since CSP1 to facilitate the participation of state representatives in ATT meetings and to contribute to strengthening universalization.²¹⁸ The programme provides travel and accommodation support to the delegates of states parties, and about 20 per cent of its funds are provided to signatories and other non-party states.²¹⁹

The Voluntary Trust Fund offers assistance to signatory states and other states that have ‘shown clear and unambiguous political commitment to accede to the ATT’.²²⁰ In each of its annual funding cycles, around 20 per cent of VTF-financed projects have involved signatories or other non-party states.²²¹ However, the use of the VTF to promote universalization is limited: its primary objective is to assist the implementation of the ATT by states parties. This entails that, in case of scarce funding, priority is given to states parties.²²²

The European Union contributes to universalization through the EU ATT Outreach Project, which has provided signatory states with assistance on capacity-building.²²³ In addition, several non-party states and signatories have benefited from NGO-led projects funded through the UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR).²²⁴

Outreach efforts by the WGTU, states parties and NGOs

Over the years, WGTU co-chairs have undertaken various outreach activities. They have participated in events such as the First Committee of the UN General Assembly, the preparatory committee for the third POA Review Conference and the Conference on Disarmament.²²⁵ In December 2016, foreign ministers of Finland (then holding the CSP3 presidency), Australia, Bulgaria, Guatemala and Sierra Leone (holding the four

²¹⁷ On these tools see Maletta and Bauer (note 14); and chapters 4 and 6 in this volume.

²¹⁸ Arms Trade Treaty, ATT/CSP5/2019/SEC/530/SponProgRep (note 171), annex A, Draft Administrative Guidelines, para. 2. On the sponsorship programme see also chapter 4 in this volume.

²¹⁹ For CSP3, the figure was 26%; for CSP5, 13%; and for the CSP6 preparatory meeting in Feb. 2020, 26%. Arms Trade Treaty 3rd Conference of States Parties, ‘ATT sponsorship programme’, ATT/CSP3/2017/UNDP/186/Conf.SponsRep, 8 Sep. 2017; Arms Trade Treaty, ATT/CSP5/2019/SEC/530/SponProgRep (note 171), para. 23; and Arms Trade Treaty, ATT/CSP6/2019/SEC/613/Conf.SponProgRep (note 173), para. 21. On the VTF see also chapter 6 in this volume.

²²⁰ Arms Trade Treaty, Voluntary Trust Fund, ‘Terms of reference’, ATT/VTF18/2018/SEC/251/ToR.Cons.Dr.v1.Rev1, 2018.

²²¹ ATT Secretariat, ‘1st Voluntary Trust Fund cycle (2017): Overview of projects approved for ATT VTF funding’, 8 Nov. 2017; ATT Secretariat (note 58); and Arms Trade Treaty, 6th Conference of States Parties, ‘Report on the work of the ATT Voluntary Trust Fund (VTF) for the period August 2019 to August 2020’, ATT/VTF/2020/CHAIR/614/Conf.Rep, 17 July 2020.

²²² Arms Trade Treaty, ATT/CSP2/2016/WP.3/Rev.1 (note 132), para. 2.

²²³ Council of the European Union, Council Decision (CFSP) 2017/915 of 29 May 2017 on Union outreach activities in support of the implementation of the Arms Trade Treaty, *Official Journal of the European Union*, L 139, 30 May 2017; and Council of the European Union, Council Decision 2013/768/CFSP of 16 December 2013 on EU activities in support of the implementation of the Arms Trade Treaty, in the framework of the European Security Strategy, *Official Journal of the European Union*, L 341, 18 Dec. 2013.

²²⁴ Stohl (note 14), table 4. On the EU, UNSCAR and other assistance activities, see also chapter 6 in this volume.

²²⁵ Arms Trade Treaty, 4th Conference of States Parties, Working Group on Treaty Universalization, Co-chairs’ draft report, ATT/CSP4.WGTU/2018/CHAIR/356/Conf.Rep, 20 July 2018; and Arms Trade Treaty, 6th Conference of States Parties, Working Group on Treaty Universalization, Co-chairs’ draft report, ATT/CSP6.WGTU/2020/CHAIR/608/Conf.Rep, 17 July 2020.

vice-presidencies) published a letter promoting the ATT in the *Financial Times*.²²⁶ During the CSP4 and CSP5 cycles, the WGTU produced an ATT universalization toolkit and a welcome pack for new states parties.²²⁷ The CSP6 presidency launched a media campaign with an ATT outreach video uploaded on YouTube.²²⁸ The WGTU also undertook more targeted outreach activities: the WGTU co-chairs have met with representatives of non-party states in New York, Geneva and Japan and have conducted country visits where they met with government officials and other key actors.²²⁹ President Julius Maada Bio of Sierra Leone wrote personalized letters to the heads of states of 53 non-party states, 24 of which were hand delivered by the CSP7 president, Lansana Gberie of Sierra Leone.²³⁰

Universalization is not solely the responsibility of the WGTU chairs, and states parties have promoted universalization through several means. They have sponsored an annual UN General Assembly resolution calling on ‘all States that have not yet done so to ratify, accept, approve or accede to the Treaty’ since 2013.²³¹ The Republic of Korea (South Korea) translated the WGTU documents into several Asian languages and the EU printed the toolkit in the six UN languages.²³²

NGOs have also promoted universalization. They have organized events to which non-signatories were invited in order to raise awareness about the treaty and to address some possible fears and misunderstanding.²³³ They have conducted research and round-table meetings to understand the problems that prevent countries joining the treaty.²³⁴ They have also translated the treaty text into local languages of non-party states.²³⁵

Regional approaches have been recommended since CSP2 by the WGTU. These have been undertaken in several ways, including through engagement with regional organizations, use of regional events to conduct outreach activities, production of region-specific policy resources, and identification of countries that are influential in a region and subsequent use of their assistance to facilitate access to high-profile stakeholders.²³⁶

Apart from government officials, outreach activities have also targeted parliamentarians and industry representatives. The WGTU has contacted parliamentarians

²²⁶ Soini, T. et al., ‘The Arms Trade Treaty is at a dynamic stage—but more support is needed’, *Financial Times*, 23 Dec. 2016.

²²⁷ Arms Trade Treaty, 5th Conference of States Parties, Working Group on Treaty Universalization, Co-chairs’ draft report, ATT/CSP5.WGTU/2019/CHAIR/532/Conf.Rep, 26 July 2019.

²²⁸ ATT Secretariat, ‘Arms Trade Treaty (ATT): A short video introduction’, YouTube, 30 Mar. 2020.

²²⁹ Arms Trade Treaty, ATT/CSP4.WGTU/2018/CHAIR/356/Conf.Rep (note 225). For further detail of universalization outreach activities see Stohl (note 14).

²³⁰ Arms Trade Treaty, 7th Conference of States Parties, ATT Working Group on Treaty Universalization, Co-chairs’ draft report, ATT/CSP7.WGTU/2021/CHAIR/677/Conf.Rep, 27 July 2021, para. 8.

²³¹ UN General Assembly resolutions 75/64, 74/49, 73/36, 72/44, 71/50, 70/58, 69/49 and 68/31 (note 216).

²³² These languages are Bengali, Hindi, Korean, Malaysian, Mongolian, Thai, Turkish, Urdu, Uzbek, and Vietnamese. Arms Trade Treaty, ATT/CSP6.WGTU/2020/CHAIR/608/Conf.Rep (note 225), para. 8(e); ATT Secretariat, ‘Tools and guidelines’, [n.d.]; and European External Action Service, ‘Treaty universalisation’, EU statement at CSP7, 30 Aug.–3 Sep. 2021.

²³³ Examples from the Mapping ATT-relevant Cooperation and Assistance Activities database include ‘EU-ATT OP regional seminar to support the implementation of the ATT for African countries (except West Africa)’, 23–24 Sep. 2015; ‘GCSP course on building capacities for effective implementation of the Arms Trade Treaty (ATT) for African countries’, 10–14 Dec. 2018; and ‘ATT Academy in Southern Africa—Workshop 1’, 9–12 Dec. 2019.

²³⁴ Examples from the Mapping ATT-relevant Cooperation and Assistance Activities database include ‘Control Arms roundtable on promoting universalization and strengthening implementation of the Arms Trade Treaty in South Asia’, 17–18 May 2018. See also Control Arms (note 206); and Persi Paoli and Kytomaki (note 206).

²³⁵ Arms Trade Treaty, 5th Conference of States Parties, ‘Universalization & translation’, Working paper by the Republic of Korea, ATT/CSP5/2019/ROK/537/Conf.WP, 25 Aug. 2019.

²³⁶ Arms Trade Treaty, 2nd Conference of States Parties, ‘Promotion of Arms Trade Treaty universalization’, Working paper by the president, ATT/CSP2/2016/WP.4/Rev.1, 25 Aug. 2016; Arms Trade Treaty, ATT/CSP4.WGTU/2018/CHAIR/356/Conf.Rep (note 225). For region-specific policy resources see e.g. New Zealand Government and Small Arms Survey, *Arms Trade Treaty Model Law* (New Zealand Government: Wellington, 2014); and Coetzee, B., *Arms Trade Treaty: Ratification and Implementation Guide for African States* (Institute for Security Studies: Pretoria, 2014).

Table 5.1. Policy options on promoting universalization of the Arms Trade Treaty

Policy option
1. <i>Fund and promote capacity building for non-party states</i>
1.1. Donor states should continue to fund programmes for capacity-building assistance for signatories and other non-party states
1.2. States that have benefitted from the ATT Voluntary Trust Fund (VTF) could contribute to outreach initiatives, reach out to non-party states, provide testimonials and promote the VTF to their peers
1.3. VTF donors could send letters to non-party states about access to assistance
2. <i>Improve the Working Group on Treaty Universalization (WGTU) system</i>
2.1. The chair of the WGTU could appoint former presidents of the Conference of States Parties (CSP) as WGTU co-chairs for two years instead of one
2.2. The CSP could enhance the role of the ATT Secretariat in activities related to universalization
2.3. The CSP could consider appointing a figure of high political standing as CSP president
2.4. The WGTU should adopt a workplan
2.5. The WGTU should establish regional universalization coordination teams with key states parties or vice-presidencies
3. <i>Implement good outreach practices</i>
3.1. The various actors that implement outreach activities should involve key actors such as high-level officials, industry representatives, parliamentarians and the leaders of national non-governmental organizations in their activities
3.2. The various actors that implement outreach activities should involve countries at different stages of ATT implementation or accession in outreach activities
3.3. The various actors that implement outreach activities should hold virtual outreach events open to all to engage with non-party states
3.4. ATT stakeholders should continue to translate the ATT documents in different languages
4. <i>Adopt a targeted universalization strategy</i>
4.1. The WGTU could concentrate universalization efforts on countries that have indicated an interest in the treaty (e.g. countries that voted in favour of adoption of the ATT in the United Nations General Assembly in 2013, countries involved in similar regional agreements, or signatory states)
4.2. The WGTU could focus on key countries such as key regional players or large exporters that have not joined the treaty

during country visits.²³⁷ UNSCAR has funded parliamentary campaigns to promote ATT ratification in specific regions.²³⁸ The EU ATT Outreach Project has also engaged parliamentarians in signatory states, where it has supported awareness-raising efforts.²³⁹ Parliamentarian organizations themselves have produced advocacy resources and they actively undertake universalization efforts.²⁴⁰ The WGTU has engaged with industry representatives during country visits and the EU ATT Outreach Project has conducted industry outreach events.²⁴¹ One industry representative body, the Aerospace and Defence Industries Association of Europe (ASD), has also advocated for the ATT because its diversion-preventing measures are ‘important in ensuring that legitimate trade [is not] tarnished in any way’.²⁴²

Policy options

The previous section shows how ATT stakeholders, the WGTU, states parties and NGOs have already undertaken many universalization efforts. They have provided

²³⁷ Arms Trade Treaty, ATT/CSP4.WGTU/2018/CHAIR/356/Conf.Rep (note 225).

²³⁸ UN Office for Disarmament Affairs (UNODA), ‘Promoting the signing, ratification and implementation of the ATT in the Pacific Islands and Latin America’, [2015]; and UN Office for Disarmament Affairs (UNODA), ‘Parliamentary campaign to promote ratification & implementation of the ATT in lusophone states and the MENA region’, [2016].

²³⁹ Parquet, C., Expertise France official, Interview with authors, 19 Feb. 2021.

²⁴⁰ Parquet (note 239). Examples from the Mapping ATT-relevant Cooperation and Assistance Activities database include ‘ATT seminar for legislators in Benin’, 4 Mar. 2015. See also Inter-Parliamentary Union, ‘Interactive panel of experts on the potential of parliamentary processes to advance the universalization of the ATT’, 2 Sep. 2021.

²⁴¹ Arms Trade Treaty, ATT/CSP4.WGTU/2018/CHAIR/356/Conf.Rep (note 225). Examples from the Mapping ATT-relevant Cooperation and Assistance Activities database include ‘EU P2P ATT OP II fourth roadmap activity in the Philippines—Outreach to industry’, 27–28 June 2019; and ‘Philippines—ATT Outreach Project roadmap activity, industry outreach event’, 20–21 Oct. 2016.

²⁴² Aerospace and Defence Industries Association of Europe (ASD), ‘ASD supports the role of industry in the UN Arms Trade Treaty process’, 12 Sep. 2017.

capacity-building assistance to signatory and non-party states committed to joining the treaty and have conducted outreach activities to raise awareness and to sensitize different national actors. The following series of policy options (summarized in table 5.1) can build on these initiatives and further improve universalization of the treaty.

Fund and promote capacity-building assistance for non-party states

Although it is difficult to firmly establish a causal link between specific universalization efforts and treaty ratifications, instruments such as the sponsorship programme, the VTF, the EU ATT Outreach Project and UNSCAR have definitely contributed to raising awareness around the scope and objectives of the ATT. As such, they may have been instrumental in enabling some countries to join the treaty. Thus, donor states should continue to fund the programmes that rely on their voluntary contributions and make sure that all these programmes continue to provide capacity-building assistance for signatories and other non-party states.

One state respondent noted that one of the benefits of being an ATT state party is to have access to opportunities for international cooperation, to the VTF and to other useful tools to fulfil obligations. States that have benefitted from the VTF could therefore contribute to outreach initiatives and efforts to address some of the above-mentioned concerns about becoming an ATT party by making contact with non-party states to provide testimonials and promote the VTF. States that donate voluntary contributions to the VTF could also participate in these efforts by sending letters to non-party states highlighting the benefits enjoyed by states parties following their accession, as has been done under the APM Convention.²⁴³

Improve the WGTU system

The current system whereby the WGTU is co-chaired by the former and current CSP presidents has been recognized as working well and being helpful to ensure continuity of efforts.²⁴⁴ However, some measures could still be taken to further strengthen it and improve its structure and activities.

To help reinforce the WGTU, France and Italy have proposed establishing a troika formed of the incoming, current and immediate past presidents.²⁴⁵ This would be difficult to introduce as it would require that the incoming president is elected one year in advance. In order to improve consistency in the work of the WGTU, the former CSP president could instead be appointed as WGTU co-chair for two years instead of one. In this way, the WGTU would be co-chaired by three people: the current CSP president and his or her two predecessors.

States parties could also consider ways to further improve and reinforce the current work and profile of the WGTU. One possible option in this direction could be to enhance the role of the ATT Secretariat in activities related to universalization and supporting the CSP president; for instance, the head of the Secretariat could accompany the CSP president in universalization démarches.²⁴⁶ In the framework of the 1993 Chemical Weapons Convention (CWC), an officer of the Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons (OPCW) acts as the

²⁴³ Galli, T., 'Universalization of the Convention on the Prohibition of Antipersonnel Mines—Its foundations, current status and the future', *Zbornik Pravnog fakulteta u Zagrebu*, vol. 57, no. 2 (2007), p. 375.

²⁴⁴ Korhonen, K., Former CSP president, Interview with authors, 10 Feb. 2021; and Beijer (note 6).

²⁴⁵ Arms Trade Treaty, 2nd Conference of States Parties, 'Increasing predictability for ATT CSP chairs: Proposal for a "troika" system', Food for thought paper by Italy and France, ATT/CSP2/2016/OP.4, 17 August 2016.

²⁴⁶ Villegas (note 152).

focal point for universalization efforts.²⁴⁷ Such a figure would be helpful in the ATT Secretariat, but it would also require an increase in budget funding and capacity, since the secretariat already deals with numerous tasks. As a second possible option, states can consider appointing as CSP president a person with higher political standing, such as a former foreign minister. A CSP president with a high enough public profile would have more opportunities to engage with the media and could be more successful in reaching out to non-party states.²⁴⁸ However, the public relations capacity of the CSP presidents as co-chair of the WGTU must be balanced with their ability to undertake the other, substantial work of the CSP presidency.²⁴⁹

Some measures could also be taken to better ensure continuity of efforts by the WGTU. Specifically, like the other working groups, the WGTU should adopt a workplan. This would help to set a framework and benchmarks for reaching universalization, and to build on previous work and avoid duplication of efforts.²⁵⁰ The establishment of a workplan could be discussed, alongside outreach strategies and good practices, during the WGTU meetings.

Representatives of organizations that have been involved in assistance and outreach efforts have noted that it is easier to convince countries to join the ATT if their neighbours are already parties.²⁵¹ Therefore, the WGTU should continue to identify states parties able to conduct outreach in specific regions and could give them an official role in regional universalization coordination teams, as has been recommended in the CCM framework.²⁵² Alternatively, this role could be given to the four regional vice-presidencies. The region of the CSP president could be the particular focus for universalization each year, as CSP2 recommended, following the existing informal regional rotation of the presidency. Meetings could be held in that region, instead of Geneva.²⁵³

Implement good outreach practices

An important aspect of universalization is the involvement in outreach activities of key actors such as high-level officials, industry representatives, parliamentarians and national NGOs. Involving high-level officials in outreach activities can be instrumental in overcoming certain political and bureaucratic hurdles.²⁵⁴ Apart from government officials, such activities should also include industry representatives and parliamentarians. Parliamentarians vote for the ratification of international treaties and they can also be involved during implementation, since they draft and pass new or revised laws and vote on budgets, notably for transfer control systems.²⁵⁵ Industry representatives must be engaged too, since they are influential in facilitating accession to the ATT.²⁵⁶ Industry representatives can potentially impede accession to the ATT by lobbying government officials and parliamentarians if they fear that the treaty would

²⁴⁷ Organisation on the Chemical Weapons Convention, Executive Council, 'Decision: Action plan for the universality of the Chemical Weapons Convention', EC-M-23/DEC.3, 24 Oct. 2003; and Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention, CWC), opened for signature 13 Jan. 1993, entered into force 29 Apr. 1997.

²⁴⁸ Korhonen (note 244).

²⁴⁹ Webinar participant (note 50).

²⁵⁰ Webinar participant (note 50); and Stohl (note 14)

²⁵¹ Albrecht (note 208).

²⁵² Convention on Cluster Munitions, 4th Meeting of States Parties, 'Universalisation of the Convention on Cluster Munitions', Working paper by Portugal and Ghana, CCM/MSP/2013/WP.6, 19 Sep. 2013; and Convention on Cluster Munitions, 1st Review Conference, 'Exchange of views on a post-first Review Conference programme of meetings and machinery', Working paper by the president-designate, CCM/CONF/2015/PM.1/WP.5, 19 Dec. 2014, para. 7.

²⁵³ Arms Trade Treaty, ATT/CSP2/2016/WP.4/Rev.1 (note 236). See also the policy options in chapter 4 in this volume.

²⁵⁴ Muresan, R., Non-governmental expert, Control Arms, Interview with authors, 12 Mar. 2021.

²⁵⁵ Webinar participant (note 50).

²⁵⁶ Korhonen (note 244).

lead to the imposition of new regulations on the arms industry.²⁵⁷ It is also important that national NGOs continue to be involved in outreach efforts as they can support capacity-building and awareness-raising activities tailored to national contexts and needs. The inclusion in outreach activities of countries at different stages of ATT implementation is perceived by NGOs to facilitate cooperation and information exchange among relevant counterparts.²⁵⁸

As a consequence of the Covid-19 pandemic, many outreach events have been organized in a remote format. Actors involved in the implementation of these activities have argued that, in some circumstances, virtual events have proved to be a good tool to engage with non-party states, with no specific assistance partnership or obligations attached. This simpler way of engaging with non-party states through virtual outreach events should be maintained and used to complement traditional engagement methods.²⁵⁹ However, bilateral exchanges on the sidelines of CSP-related meetings remain key to initiating a dialogue with potential beneficiaries of outreach or assistance activities, which is something that cannot be reproduced through online interactions.²⁶⁰

One survey respondent highlighted that states parties can also advance universalization through multilingualism. For countries that withhold their ratification or accession until they have fully analysed the treaty and compared it with their national legislation, translation can ease and speed-up this process.²⁶¹ ATT stakeholders should continue to translate the ATT documents—the treaty text, the universalization toolkit and the welcome pack—into different languages.²⁶²

Adopt a targeted universalization strategy

With 31 signatories and 54 other non-party states to reach, a strategy of targeted universalization could be pursued. There are several criteria that can be considered to determine which of these countries to target.

One possible approach would be to concentrate universalization efforts on countries that have expressed an interest in the treaty. These include the non-party states that voted in favour of adopting the ATT in the original UN General Assembly vote in 2013.²⁶³ Importantly, universalization initiatives should also involve signatory states that initially signalled a political interest in ratifying the treaty by participating in ATT meetings, but whose attendance at such events has fallen in recent years.

In specific regions or subregions, such as in Africa and Latin America, universalization efforts should build on states' adherence to other relevant instruments in the field of SALW controls. These include the 1997 Inter-American Convention Against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives and Other Related Material (CIFTA), the 2001 Southern African Development Community (SADC) Firearms Protocol, the 2004 Nairobi Protocol and the 2010 Kinshasa Con-

²⁵⁷ Pollard (note 48).

²⁵⁸ Muresan (note 254).

²⁵⁹ Parquet (note 239).

²⁶⁰ Parquet (note 239).

²⁶¹ Persi Paoli and Kytomaki (note 206), pp. 30–31.

²⁶² Arms Trade Treaty, ATT/CSP6.WGTU/2020/CHAIR/608/Conf.Rep (note 225), para. 8(e).

²⁶³ Prins (note 48).

vention.²⁶⁴ However, even in circumstances where states could already rely on existing standards, there might be regional or subregional circumstances, as in the case of sub-Saharan African countries, that would require a different level of engagement and efforts to promote the universalization of the ATT.²⁶⁵

Similarly, building synergies and exchanging lessons learned on promoting adherence or universalization with other related international instruments (e.g. the WA, the CCW Convention and others) would also be relevant and helpful to enhance the ATT's universalization efforts.²⁶⁶

Another possible approach could be to focus on important regional players to use their significant diplomatic resources to encourage treaty accession. More specifically, the accession of China in 2020 could help to overcome the reluctance of other Asian states to join the treaty.²⁶⁷ Another option, also pointed out by a survey respondent and two stakeholders interviewed for this study, could be to focus on the largest exporters that have not yet joined the treaty.²⁶⁸ The USA for instance has signed but not yet ratified the ATT. As a presidential candidate, President Joe Biden committed to push for the ratification of the treaty; however, this would require a two-thirds majority in the US Senate, which would be hard to achieve.²⁶⁹ A first step would be for the USA to send a new note to the UN secretary-general, replacing the one sent by the previous administration in 2019, to acknowledge its status as a signatory state and the obligations arising from it.²⁷⁰ It is worth noting that during a CSP7 session on universalization, the US representative announced that the Biden administration is revising its conventional arms transfer policy, which involves 'determining the proper relationship of the United States to the Arms Trade Treaty'.²⁷¹

²⁶⁴ Prins (note 48); Inter-American Convention Against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives and Other Related Material (CIFTA), adopted 14 Nov. 1997, entered into force 1 July 1998; Protocol on the Control of Firearms, Ammunition and Other Related Material in the Southern African Development Community Region (SADC Firearms Protocol), adopted 14 Aug. 2001, entered into force 8 Nov. 2004; Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (Nairobi Protocol), adopted 21 Apr. 2004, entered into force 5 May 2005; and Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components That Can Be Used For Their Manufacture, Repair and Assembly (Kinshasa Convention), adopted 30 Apr. 2010, entered into force 8 Mar. 2017. At CSP7, Gambia stated its intention to accede to the ATT, joining the other member states of ECOWAS, which are already party to the ATT. See Gambia, Statement at CSP7, 30 Aug. 2021.

²⁶⁵ Control Arms Secretariat, *ATT Monitor Report 2016* (Control Arms: New York, 22 Aug. 2016), pp. 30–32.

²⁶⁶ Stohl (note 14), p. 17; Griffiths, P., Head of the Wassenaar Arrangement Secretariat, Presentation to the 3rd ATT Conference of States Parties, 11–15 Sep. 2017; and Vestner, T., *Synergies between the Arms Trade Treaty and the Wassenaar Arrangement*, Strategic Security Analysis no. 5 (Geneva Centre for Security Policy: Geneva, May 2019).

²⁶⁷ Maletta and Bromley (note 91), p. 524; Vestner, T., 'The new geopolitics of the Arms Trade Treaty', *Arms Control Today*, vol. 50, no. 10 (Dec. 2020); Saferworld, 'China's accession to the ATT: Opportunities and challenges', 15 July 2020; and ATT Secretariat, 'President', [n.d.].

²⁶⁸ Villegas (note 152); and Lomónaco (note 152).

²⁶⁹ US Democratic National Committee, '2020 Democratic Party platform', 18 Aug. 2020.

²⁷⁰ United Nations, Communication of 18 July 2019 from the United States, Reference C.N.314.2019.TREATIES-XXVI.8 (Depositary Notification), 19 July 2019. See also Olabuenaga P. A., 'Why the Arms Trade Treaty matters—and why it matters that the US is walking away', *Just Security*, 8 May 2019.

²⁷¹ United States, Statement to CSP7, 30 Aug.–3 Sep. 2021.

6. Supporting implementation

Article 16 of the Arms Trade Treaty promotes the provision of international assistance for treaty implementation. The treaty text reflects the importance that states attached to providing the necessary tools to support and promote the effective implementation of the treaty.²⁷² Article 16 outlines the form and focus that assistance could have (i.e. ‘legal or legislative’ or ‘technical, material or financial’ assistance or ‘institutional capacity-building’) and, although it does not recognize a specific right to claim assistance, it does impose an obligation on states that are ‘in a position to do so’ to follow up on relevant requests.²⁷³ The ATT also provides that states parties can ‘request, offer or receive assistance’ through the United Nations, other international and regional organizations, bilaterally, or through NGOs, among other sources, thus recognizing the need to build on and cooperate with other relevant frameworks.²⁷⁴ Finally, Article 16 requires the establishment of a voluntary trust fund to which states parties are encouraged to contribute.²⁷⁵ This links to other provisions of the treaty, notably Article 18, which tasks the ATT Secretariat with facilitating ‘the matching of offers of and requests for assistance for Treaty implementation’.²⁷⁶

Following the adoption of the ATT, funding instruments and programmes were established to support states’ implementation of the treaty and also to promote its universalization (see chapter 5). Three main instruments were created, in the contexts of the European Union, the United Nations and the ATT itself. In 2013 the EU launched its ATT Outreach Project to support non-EU states to strengthen their national control systems either as a part of a longer-term road map of activities or through tailored ad hoc initiatives. That same year, the UN Office for Disarmament Affairs (UNODA) established UNSCAR, a multi-donor funding mechanism launched to support conventional arms regulation that initially focused on financing assistance projects supporting states in signing and ratifying the ATT. Finally, in 2016 the ATT states parties created the ATT Voluntary Trust Fund, which provides financial support for projects assisting states parties and, under certain conditions, non-party states to implement the treaty.

NGOs and international and regional organizations also deliver assistance activities specifically aimed at supporting implementation of the ATT or raising awareness of its role and objectives. These include, among others, the ATT Academy run by Control Arms, the ATT executive courses organized by the Geneva Centre for Security Policy (GCSP), and the work of UNODA regional offices. These initiatives are often financially supported by UNSCAR or the VTF.²⁷⁷

In addition, several initiatives (at the national, regional and international levels) provide assistance directly relevant to the implementation of the ATT without specifically being linked to the treaty. These include assistance activities in the field of arms transfers and SALW controls more generally; assistance to sustain the implementation of other relevant instruments (e.g. the POA, the UN Firearms Protocol and regional conventions on SALW control); and programmes that support states in enhancing their transfer control systems and enforcement capacities for dual-use items. Many of these

²⁷² Bauer, S., ‘Article 16: International assistance’, eds da Silva and Wood (note 20).

²⁷³ Arms Trade Treaty (note 1), Article 16(1). See also Casey-Maslen et al. (note 22), pp. 423–31, 434.

²⁷⁴ Arms Trade Treaty (note 1), Article 16(2).

²⁷⁵ Arms Trade Treaty (note 1), Article 16(3).

²⁷⁶ Arms Trade Treaty (note 1), Article 18(3)(c). See also Maletta and Bauer (note 14).

²⁷⁷ For more details on the assistance funding instruments and programmes that provide ATT-focused assistance see Maletta and Bauer (note 14). See also Mapping ATT-relevant Cooperation and Assistance Activities database, ‘Control Arms ATT Academy in Latin America, second in-person training’, 12–14 Sep. 2018; ‘Building capacity on effective implementation of the Arms Trade Treaty’, 11–15 Dec. 2017; and ‘UNLIREC Arms Trade Treaty implementation course in Santo Domingo’, 11–14 Feb. 2019.

initiatives were already in place before the adoption of the ATT and could potentially offer a foundation on which to build synergies with ATT-specific assistance programmes and activities.²⁷⁸

Problematic aspects and limitations

The experiences of the dedicated funding mechanisms and international assistance programmes that have been launched in the eight years since the adoption of the ATT point to both major achievements and significant challenges. These involve all stakeholders engaged in ATT assistance, from the donors and funding instruments that financially support assistance activities, via the local, regional and international organizations, including NGOs, that implement them, to the states that benefit from these initiatives.

Availability, distribution and use of funding

The very establishment of such instruments as the EU ATT Outreach Project, UNSCAR and the VTF can in itself be seen as one of the tangible and positive results of creating the ATT. These have acted as the main vehicles to provide or fund assistance to support the effective implementation of the treaty.²⁷⁹ Although these instruments have all succeeded in securing funding over the years, there are different views regarding whether financial resources available to support ATT assistance have been adequate to respond to and address existing needs in the field. States that provided feedback on this point to the project survey have different views on the matter.

Interestingly, one respondent stressed the discrepancy between, on the one hand, the wider availability of programmes to strengthen the fight against arms trafficking and, on the other, programmes supporting effective and comprehensive implementation of the ATT. Among those respondents who valued positively the level of resources available, one pointed out that bilateral and regional cooperation can further contribute to assistance goals.

Conversely, some interviewees that have been involved in ATT-assistance activities as either implementers or beneficiaries argued that the funding available to support ATT assistance is not sufficient and that more could be done.²⁸⁰ Funding for ATT assistance—including the EU ATT Outreach Project and contributions to UNSCAR and the VTF—can be financed through development assistance. However, the share of ODA used for the sector ‘reintegration and SALW controls’ (under which funding in support of the ATT can be recorded) remains small—only a handful of donors consistently commit substantial resources in this field, which is often in competition with a wide range of priorities.²⁸¹ Following an increase in the level of ODA for this sector in 2014, possibly as a result of the momentum created by the adoption of the ATT, development spending in this field has shown a decreasing trend in more recent

²⁷⁸ Bauer, S., ‘Arms trade control capacity building: Lessons from dual-use trade controls’, SIPRI Insights on Peace and Security no. 2013/2, Mar. 2013.

²⁷⁹ For an overview of the overall functioning of these instruments see Maletta and Bauer (note 14).

²⁸⁰ Finaud (note 142); Olofsson, K., Parliamentary Forum on Small Arms and Light Weapons, Interview with authors, 17 Feb. 2021; Macdonald (note 127); and Matala (note 207).

²⁸¹ ‘Reintegration and SALW controls’ is defined as referring to both disarmament, demobilization and reintegration (DDR) programmes and ‘technical co-operation to control, prevent and/or reduce the proliferation of [SALW]’. Activities in this category are meant to support the development of relevant regulatory frameworks and institutional structures, SALW-awareness campaigns, regional cooperation, and collection and destruction programmes. See Organisation for Economic Co-operation and Development (OECD), Development Assistance Committee (DAC), Working Party on Development Finance Statistics, ‘Converged statistical reporting directives for the Creditor Reporting System (CRS) and the annual DAC questionnaires: Chapters 1–6’, DCD/DAC/STAT(2018)9/FINAL, 28 May 2018, p. 34. See also Maletta, G. and Robin, L., *Supporting Small Arms and Light Weapons Controls through Development Assistance: The Case of Sub-Saharan Africa* (SIPRI: Stockholm, Feb. 2021).

years.²⁸² While ODA in this sector does not encompass all funding to support the implementation of the ATT, it can be used as an indicator in this context.²⁸³

Other ATT stakeholders have indicated that the problem lies not with the shortage of funding for ATT assistance, but rather with the way in which the funding is distributed. Different actors are engaged in this field but only a limited number of funding tools specifically and systematically support ATT implementation. Of these, UNSCAR maintained a focus on the ATT until 2016; following the establishment and operationalization of the VTF, it has taken a balanced approach among global conventional arms instruments and has shifted its focus to synergies among them.²⁸⁴ Indeed, UNSCAR explicitly encourages applicants interested in projects on ATT implementation to apply to the VTF.²⁸⁵ Channelling resources for ATT assistance towards a dedicated instrument such as the VTF is a valid strategy to prevent duplication of efforts and overlaps among different providers. However, currently only states can submit funding applications to the VTF and the opportunities to fund ATT-implementation projects through UNSCAR—which, in contrast, is open to non-state actors—are now more limited. Combined with the decreasing trend in development spending for ‘reintegration and SALW controls’, this risks limiting the type of projects that NGOs and other international organizations are able to develop and implement and that support more general ATT-assistance activities.²⁸⁶ These include, for example, the production of resources such as handbooks or research reports that are relevant for ATT implementation but do not necessarily fall under the assistance eligible for VTF funding.²⁸⁷

The decision to limit access to VTF funding to states alone has also raised criticism among some assistance-implementing organizations. They have argued that states often lack the experience to directly design and implement ATT projects or do not have the knowledge about which NGOs to partner with.²⁸⁸ Lack of good-quality applications to the VTF from states was also one of the earliest challenges that emerged when this mechanism was launched.²⁸⁹

Another issue that some stakeholders have raised in relation to the way ATT-assistance funding is distributed is the fact that UNSCAR and the VTF both apply a cap on the size of individual projects and are, therefore, limited to funding short-term activities.²⁹⁰ This format has proven particularly successful when focusing on specific components or aspects of treaty implementation and has achieved tangible results. However, beneficiary countries have often embarked on ad hoc or short-term activities with a certain idea of what they needed help with (e.g. to compile the initial report) and then realized that they actually required additional, longer-term support.²⁹¹ In the case of the VTF, projects of a period longer than one year can still be considered

²⁸² This is based on the total ODA to all developing countries for ‘reintegration and SALW controls’ from all members of the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD). Organisation for Economic Co-operation and Development (OECD), Creditor Reporting System (CRS), accessed 5 Oct. 2021, <<https://stats.oecd.org/Index.aspx?DataSetCode=crs1>>.

²⁸³ See Maletta and Robin (note 281).

²⁸⁴ This can be seen by comparing the projects approved for funding in 2013–15 with those approved from 2016. UN Office for Disarmament Affairs (UNODA), ‘UNSCAR: UN Trust Facility Supporting Cooperation on Arms Regulation’, [n.d.]; and UN Office for Disarmament Affairs (UNODA), ‘UNSCAR projects selected in 2017’, [n.d.]. See also Maletta and Bauer (note 14).

²⁸⁵ UN Office for Disarmament Affairs (UNODA), ‘United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR): 2021 call for proposals’, p. 2.

²⁸⁶ Muresan (note 254).

²⁸⁷ Muresan (note 254).

²⁸⁸ Maletta and Bauer (note 14), pp. 11–12; and Stohl (note 142).

²⁸⁹ Arms Trade Treaty, 3rd Conference of States Parties, ATT Voluntary Trust Fund, ‘Report on the work of the ATT Voluntary Trust Fund (VTF) for the period August 2016 to August 2017’, 29 Aug. 2017, pp. 3–4.

²⁹⁰ Prins (note 48); and Matala (note 207). See also Maletta and Bauer (note 14).

²⁹¹ Independent consultant and former national official, Interview with authors, 3 June 2021.

if proper motivations are provided.²⁹² UNSCAR's limited capacity means that it is also only able to support small-scale, short-term, quick-impact projects. In addition, it now sees its role as supplementary to instruments that specifically support ATT implementation.²⁹³

Finally, experts involved in the implementation of ATT-assistance programmes and at least one survey respondent did not question whether funding for ATT assistance is sufficient or effectively distributed, but they did question whether the funds had been used in the most efficient way. That is, they asked whether the assistance provided has been able to deliver results commensurate with the resources invested. This point was raised, for example, in connection with well-resourced programmes such as the EU ATT Outreach Project.²⁹⁴ Others also noted that the medium-to-long-term partnerships format proposed by the EU ATT Outreach Project has proved useful at the initial 'brainstorming phase' of assistance planning, that is, to identify overarching needs and action to be taken by the beneficiary country.²⁹⁵

Finding the right expertise

The dedicated assistance mechanisms mentioned above have been able to provide support both in contexts where the beneficiary needed to build its national control system almost from scratch (e.g. through the drafting of a national control list or the adoption of relevant legislation) or just needed to adjust or reinforce specific aspects of an existing system (e.g. by improving inter-agency coordination or strengthening enforcement and risk-assessment capacities). Nonetheless, the implementation of ATT-assistance activities has encountered a series of recurring problems.²⁹⁶ One of these is related to the shortage and quality of technical expertise available for deployment in some assistance programmes.

The ability to identify the right experts to engage in assistance activities—ideally professionals with proven direct experience in licensing, enforcement or other aspects of transfer controls—is crucial to achieving effective treaty implementation. When done correctly, it has contributed to the success of several assistance initiatives. However, the involvement of less experienced individuals has been one of the shortcomings of certain ATT-assistance activities.²⁹⁷ In some cases, this has been the unintended consequence of donors' rigid regulations to ensure fair procurement of services and avoid conflicts of interest.²⁹⁸ This can make it difficult for the assistance implementer to select the experts that it considers best. In addition, many qualified experts are not always available to join international assistance programmes as they are busy carrying out their transfer control duties in their own countries and they are part of a narrow group of national experts.²⁹⁹

Notwithstanding the importance of involving foreign professionals who have experience in countries with more advanced control systems, beneficiary countries may also profit from the contribution of local experts (e.g. in the legal domain) or professionals from neighbouring countries that have experienced similar difficulties.³⁰⁰ Identifying the right interlocutors in beneficiary countries has also presented a few

²⁹² ATT Secretariat, 'Voluntary Trust Fund: Frequently asked questions (FAQs)', 24 Feb. 2017, p. 5.

²⁹³ Mashiko, T., Programme Officer, UN Office for Disarmament Affairs, Interview with authors, 2 June 2021.

²⁹⁴ Drew (note 46); and Macdonald (note 127).

²⁹⁵ Independent consultant and former national official (note 291).

²⁹⁶ For a more detailed overview see Maletta and Bauer (note 14).

²⁹⁷ Independent consultant and former national official (note 291).

²⁹⁸ Independent consultant and former national official (note 291).

²⁹⁹ Holtom, P. and Bromley, M., 'Implementing an arms trade treaty: Mapping assistance to strengthen arms transfer controls', SIPRI Insights on Peace and Security no 2012/2, July 2012, p. 11.

³⁰⁰ Matala (note 207).

obstacles for implementers.³⁰¹ Failure to find a good focal point who can convene all the right people has in some cases led to poorly planned activities and the waste of useful resources.³⁰²

Coordination of efforts

The experience that existing assistance mechanisms developed in the years following the entry into force of the ATT also allows for a preliminary appraisal of how they have been able to coordinate their activities. In particular, this includes the role played by the ATT Secretariat in this regard and, more broadly, how it has fulfilled its task to ‘facilitate the matching of offers of and requests for assistance’. The secretariat, in its role as administrator of the VTF, has responded to this responsibility by regularly consulting with UNODA and the EU.³⁰³ However, there are limitations to what the secretariat can reasonably achieve in this area without being empowered with adequate infrastructure and resources by the states parties, not least a formal system to collect details of states parties’ assistance needs or offers.³⁰⁴

On a more general level, it could also be argued that donors, beneficiary countries and assistance implementers all have a responsibility to promote synergies and avoid overlaps. In some cases, they have positively contributed to these objectives. However, it is unlikely that a beneficiary country will turn down an offer of assistance if a donor is determined to deliver a certain activity, especially in the context of relevant programmes that they pursue bilaterally.³⁰⁵ This has generated some ‘outreach fatigue’ in beneficiary countries and, thus, lower participation in assistance activities due to recipients being overwhelmed by poorly coordinated initiatives.³⁰⁶

Ensuring broader coordination with other assistance programmes addressing, for instance, SALW controls is made more difficult by the fact that different focal points or even different ministries might handle different arms control and disarmament regimes at the national level.³⁰⁷

Measuring results

Measuring the success of the assistance that has been provided to support the implementation of the ATT is a particularly difficult endeavour. As part of a grant agreement, donors often require evaluation and reporting by assistance-implementing organizations of project-specific and concrete outputs against previously defined indicators (e.g. the submission of the initial report by the beneficiary country or the number of officials trained).³⁰⁸ Relevant developments in the country after the implementation of specific activities has also been monitored to assess the possible results of organizations’ assistance work.³⁰⁹

These systems can, however, present some limitations, for example, in terms of ‘attribution gaps’ when a beneficiary country is involved in several assistance programmes or activities.³¹⁰ Mostly, they are not meant to measure results that depend on long-term and political processes, such as the adoption of relevant legislation, and more generally the long-term impact of assistance work. It is worth mentioning in

³⁰¹ Maletta and Bauer (note 14).

³⁰² Independent consultant and former national official (note 291).

³⁰³ Maletta, G., ‘Coordinating arms transfer and SALW control assistance: What role for the Arms Trade Treaty?’, WritePeace blog, SIPRI, 27 Mar. 2019.

³⁰⁴ Maletta and Bauer (note 14).

³⁰⁵ Independent consultant and former national official (note 291).

³⁰⁶ Independent consultant and former national official (note 291); and Drew (note 46).

³⁰⁷ Matala (note 207).

³⁰⁸ Maletta and Bauer (note 14).

³⁰⁹ Muresan (note 254).

³¹⁰ Maletta and Bauer (note 14).

Table 6.1. Policy options on supporting implementation of the Arms Trade Treaty

Policy option
1. <i>Further support coordination of efforts through the effective implementation of both new and existing tools</i>
1.1. The ATT Secretariat could make use of existing expertise and previous similar experiences when developing new coordination tools
1.2. States parties should support these developments by providing relevant information about the assistance that they have already received or that they can offer
1.3. Implementing organizations, states and donors should contribute to coordination efforts by making use of this information to properly plan and build on existing work
2. <i>Stimulate sharing of relevant information</i>
2.1. States parties could improve the quality of existing dedicated discussions on international assistance at Conferences of States Parties by focusing on specific regional or thematic aspects
2.2. States parties could examine trends emerging from the future assistance database and initial reports as part of these dedicated discussions
3. <i>Embed lessons learned from the Covid-19 pandemic</i>
3.1. When considering the impact of the Covid-19 pandemic on the design and implementation of assistance activities in the medium-to-long term, states parties should more systematically seek the inputs of donors, implementers and beneficiary countries

this regard that donors or assistance providers claiming too much credit for positive results in a beneficiary country may also be counterproductive if, for instance, the beneficiary country does not enjoy this visibility.³¹¹

Steps taken and proposals made

Measures to improve coordination of efforts

A series of initiatives have been undertaken to overcome the lack of a formal mechanism within the ATT to identify states' assistance needs, match them with available assistance initiatives and coordinate simultaneous efforts. To promote synergies and prevent duplication of work, since 2015 SIPRI has collected publicly available data on ATT-relevant cooperation and assistance activities.³¹² Implementing organizations have also made some efforts to better coordinate their work. For example, some have relied on the information provided by beneficiary countries on the assistance that they had already received; consulted publicly available sources (including the SIPRI database); or invited different implementers to participate in each other's activities.

During CSP6, South Africa proposed the creation of 'a subsidiary body that would promote international cooperation and assistance as enshrined in articles 15 and 16'.³¹³ In addition to the consultations that the ATT Secretariat has initiated with UNODA and the EU (see above), the CSPs in 2016–19 (before the disruption created by the Covid-19 pandemic) had a session for the state parties to exchange views on international assistance, including requests and offers.³¹⁴ However, these sessions have often lasted less than the three-hour allocated slot.

Most recently, CSP7 endorsed an amendment proposed by the WGTR to the initial reporting template that added two sections in which a new state party can elaborate at more length on its assistance needs or the assistance that it could provide.³¹⁵ Further, as part of a package of support adopted for the ATT Secretariat in April 2021, the

³¹¹ Bauer (note 278).

³¹² Mapping ATT-relevant Cooperation and Assistance Activities database, 'About the project', 2016.

³¹³ Greyer and Pytlak (note 112).

³¹⁴ Arms Trade Treaty, 2nd Conference of States Parties, 'CSP2 draft annotated provisional programme of work', ATT/CSP2/2016/3/Rev.1, 22 June 2016; Arms Trade Treaty, 3rd Conference of States Parties, 'CSP3 provisional annotated programme of work', ATT/CSP3/2017/SEC/152/Conf. AnnPoW, 13 July 2017; Arms Trade Treaty, 4th Conference of States Parties, 'CSP4 provisional annotated programme of work', ATT/CSP4/2018/SEC/350/Conf. AnnPoW, 20 July 2018; and Arms Trade Treaty, 5th Conference of States Parties, 'CSP5 provisional annotated programme of work', ATT/CSP5/2019/SEC/525/Conf. AnnPoW, 26 July 2019.

³¹⁵ Arms Trade Treaty, ATT/CSP7/2021/SEC/681/Conf. FinRep. Rev1 (note 153), para. 26.

EU agreed to fund the establishment of a database to match assistance needs and resources.³¹⁶

Other relevant initiatives

In order to promote the VTF and mitigate challenges related to the lack of good-quality applications from states, the ATT Secretariat has developed a VTF outreach strategy, undertaken several outreach activities and developed explanatory tools to guide states in the submission of their proposals.³¹⁷

To improve the quality and selection of experts, one of the components of the EU assistance package in support of the ATT Secretariat also foresees the creation of an expert roster to build the capacity of local and regional ATT experts. The aim of this component is to provide advice and training to local and regional experts in order to reduce reliance on international expertise and promote more sustainable and economically efficient capacity-building efforts.³¹⁸

In terms of measures to initiate the evaluation of relevant assistance programmes, the ATT Secretariat has elaborated guidance for VTF project evaluation to ‘better assess the results of VTF-funded projects’.³¹⁹ The guidance is not meant to look into the long-term impact of projects but specifies that this will be considered ‘in due course’.³²⁰ The Covid-19 pandemic has delayed the secretariat’s plans to evaluate the VTF projects of 2017–19 on the basis of this guidance. Its assessment of both the results of previous VTF projects and the usefulness of the guidance are thus yet to be seen.³²¹ The Council of the EU’s decisions in support of the EU ATT Outreach Project also task the EU to provide an impact assessment of the project against a set of specific criteria.³²²

Policy options

The following series of policy options (summarized in table 6.1) can be promoted to further tackle current challenges related to the provision of ATT assistance. The options can contribute to the better harmonization of support of states’ implementation of the ATT.

Further support coordination of efforts through the effective implementation of both new and existing tools

Two recent steps have been taken to address the lack of a formal mechanism within the ATT to match assistance needs and resources and to strengthen the ATT Secretariat’s role in the coordination of ATT international cooperation and assistance: amendments to the initial reporting template; and the EU’s package of support for the secretariat.³²³ To maximize the impact and value of these new tools, during their development the

³¹⁶ Council of the European Union, Council Decision (CFSP) 2021/649 of 16 April 2021 on Union support for activities of the ATT Secretariat in support of the implementation of the Arms Trade Treaty, *Official Journal of the European Union*, L 133, 20 Apr. 2021, annex, section 1.3.

³¹⁷ ATT Secretariat, ‘Voluntary Trust Fund’, [n.d.]; Arms Trade Treaty, 4th Conference of States Parties, ‘Report on the ATT Secretariat’s work for the period 2017/2018’, ATT/CSP4/2018/SEC/351/Conf.SecRep, 20 July 2018; and Arms Trade Treaty, 5th Conference of States Parties, ‘Report on the ATT Secretariat’s work for the period 2018/2019’, ATT/CSP5/2019/SEC/526/Conf.SecRep, 26 July 2019.

³¹⁸ Council of the European Union, Council Decision (CFSP) 2021/649 (note 316), annex, section 1.2.

³¹⁹ Arms Trade Treaty, 5th Conference of States Parties, ‘Report on the work of the ATT Voluntary Trust Fund (VTF) for the period August 2018 to August 2019’, ATT/VTF/2019/CHAIR/531/Conf.Rep, 26 July 2019, para. 20 and annex H, ‘Guidance for the VTF project evaluation’.

³²⁰ Arms Trade Treaty, ATT/VTF/2019/CHAIR/531/Conf.Rep (note 319), annex H.

³²¹ Arms Trade Treaty, 7th Conference of States Parties, ‘Report on the work of the ATT Voluntary Trust Fund (VTF) for the period August 2020 to August 2021’, ATT/VTF/2021/CHAIR/678/Conf.Rep, 20 July 2021, p. 4.

³²² Council of the European Union, Council Decision 2013/768/CFSP (note 223), p. 67; and Council of the European Union, Council Decision (CFSP) 2017/915 (note 223), p. 48.

³²³ Council of the European Union, Council Decision (CFSP) 2021/649 (note 316).

secretariat could make use of existing expertise and previous similar experiences. These include initiatives developed in the context of the POA but also by other actors, such as SIPRI.³²⁴

As noted above, the engagement of beneficiary countries, donors and implementers is also important to promote synergies, maximize available resources and flag potential duplications. It is therefore of key importance that states parties keep supporting these developments by using the new tools to provide relevant and good-quality information about the assistance that they have already received or that they can offer. In addition, implementing organizations, states and donors should contribute to coordination efforts by making use of this information to properly plan and build on existing work. Only these concerted efforts will allow for a proper picture of gaps and deficiencies to develop, including from a financial perspective.

Stimulate sharing of relevant information

Directly linked to the point above is the need in the future to stimulate a more meaningful exchange of information on assistance in support of treaty implementation. In the eight years since the adoption of the ATT, key stakeholders have built up a considerable body of knowledge in this area. They thus have a lot to contribute to the effective implementation of the treaty by sharing their experiences and lessons learned from their participation in several assistance programmes.

As mentioned above, previous CSPs have provided dedicated sessions to discuss international assistance-related issues. Survey responses and interviews for this project have indicated ways in which states parties could enhance the quality of these exchanges. For instance, elaborating on the need to have more cooperation between funders and implementers, some survey respondents suggested having ‘technical meetings’, establishing an ‘institutionalized regular exchange platform’, and the ‘exchange of good practices and standards’ including at the regional level. One representative of a beneficiary country interviewed as part of this study also suggested making use of ATT forums to allow states that need assistance (including signatory states and other non-party states) to elaborate more on their needs and challenges. This could be beneficial not only for states parties that need support but also for other countries that may consider joining the ATT but have concerns regarding the possible lack of support to comply with the treaty’s provisions.³²⁵ Thus, this could also support universalization efforts.

There are therefore different ways through which states parties can make dedicated discussions on assistance at CSPs more appealing. One option for states parties to improve the quality of such dedicated discussions would be to focus such exchanges on specific regional or thematic aspects of international assistance. For instance, these discussions could have a regional or cross-regional focus in order to map available initiatives and expertise and identify common challenges and possible solutions. Thematic exchanges could focus on how to measure the impact of assistance in the long-term and define whether this should strictly take into account the implementation of assistance projects or look into the effects on treaty compliance, diversion or other security-related issues. In the medium-to-long term, as states start making use of the newly amended initial report template and the secretariat develops its own database, this space could be used to discuss trends revealed by the provision and collection of relevant data.

³²⁴ Mapping ATT-relevant Cooperation and Assistance Activities database; and UN Programme of Action on Small Arms and Light Weapons, ‘International assistance’, [n.d.].

³²⁵ Matala (note 207). See also chapter 5 in this volume.

Embed lessons learned from the Covid-19 pandemic

The impact of the Covid-19 pandemic has shown the need to ensure a certain degree of flexibility in the planning and implementation of ATT-assistance activities. Many implementers quickly adjusted to these new circumstances by shifting their activities into a virtual format or rescheduling them to a later date. Donors have, to different degrees, accommodated these and other requests by either allowing for limited adjustments in a project's budget or extending the project's duration to address the delays generated by Covid-related disruptions. In addition, on the sidelines of CSP7 the ATT Secretariat provided some indication of the elements to consider when planning a project during the pandemic that will be taken into account by the VTF selection committee.³²⁶ However, there remains uncertainty over when travel and in-person meetings will resume and under what conditions. This may require further reflection on how to continue to ensure proper assistance in the short and medium terms and how to embed further flexibility in the functioning of assistance mechanisms in the future.

Given the wide range of experience developed in this regard since early 2020 by donors, implementers and beneficiary countries, states parties should find a way to initiate relevant discussions on assistance in support of the ATT. This exercise should involve relevant stakeholders and systematically seek the inputs of all these actors. Their experiences could prove helpful to identify possible areas of focus for future assistance programmes and to orientate relevant funding decisions (e.g. the need to invest in technical facilities or virtual platforms). This exercise could try investigating the major setbacks of moving relevant activities into the virtual space (e.g. lack of active participation and the difficulty of informal discussions) but also its positive aspects (e.g. cuts in costs and greater participation).

³²⁶ Remarks by the ATT Secretariat at the CSP7 side event 'The ATT Voluntary Trust Fund (VTF): VTF projects in the time of Covid', 31 Aug. 2021.

7. Conclusions

Adopted in 2013 and entering into force in December 2014, the Arms Trade Treaty remains the only legally binding international agreement that aims to establish the highest possible common international standards for regulating the international trade in conventional arms, eradicating their illicit trade and preventing their diversion. The purposes of the ATT are, however, broader than those of a trade treaty and include such wider goals as ‘contributing to international and regional peace, security and stability’, ‘reducing human suffering’ and ‘promoting cooperation, transparency and responsible action’ to build ‘confidence among states parties’.³²⁷

Seven years have now passed since the entry into force of the ATT. These years have started to test the strength of the treaty, in particular its capacity to measure up to the expectations of its various stakeholders and the ability of the states parties to effectively transition from a negotiation to an implementation framework.³²⁸ It may be too early to provide a definitive appraisal of the ATT. The very nature of the treaty requires states parties to change their national systems to be able to better deal with problems related to the unregulated trade in arms. Achieving, understanding and gauging progress in this regard and in such a short timeframe might be more complex, depending on the metrics that are used to gauge this success, and would surely require more time.³²⁹

This policy paper—and the broader project—aims to stimulate a discussion among different stakeholders about the content, functioning and implementation of the ATT, to generate new ideas, and to offer some policy options that could strengthen the treaty and its implementation. This stocktaking exercise focuses on five main aspects of the treaty: its scope, the application of its risk-assessment criteria, its processes and forums, promoting its universalization, and supporting its implementation.

Some progress and positive achievements have been made in each of these aspects of the treaty. At the same time, problematic aspects and potential shortcomings—some of them already present at the time of the negotiations of the treaty—remain and have put the regime at an important crossroads. Having analysed these, the above chapters present possible policy options and measures for implementation that, if adopted, could help improve implementation of the treaty. They are founded on numerous interactions with major ATT stakeholders in the form of a survey, interviews and informal exchanges. These measures are summarized in tables 2.1–6.1.³³⁰

In relation to the scope of the ATT, chapter 2 proposes three sets of options. A first proposal calls for the establishment of a platform to regularly exchange views on the scope of the treaty. Such a platform can provide an indication of the willingness of states parties to engage with issues related to scope and can be used to clarify current language and provisions of the treaty on transfers, ammunition and munitions, and parts and components, as well as issues that might arise in the future. The second set of options is aimed at increasing the harmonization of states’ national control lists and includes proposals that build on existing efforts in this direction to provide further guidance and assistance to states parties. A third set of policy options highlights possible steps to establish a mechanism to review and update the scope of the treaty in future years. Such measures might be more difficult to achieve but could have a lasting impact on the treaty. They include the alignment of the scope of the treaty with

³²⁷ Arms Trade Treaty (note 1), Article 1.

³²⁸ Dondisch (note 14).

³²⁹ Stohl (note 142).

³³⁰ See also the accompanying SIPRI policy brief, Varisco, A.E., Maletta, G. and Robin, L., ‘Taking Stock of the Arms Trade Treaty: A Summary of Policy Options’, SIPRI Policy Brief, Dec. 2021.

existing instruments or the creation of processes and mechanisms within the treaty itself to regularly update and review its scope.

In addressing matters related to the effective implementation of the ATT risk-assessment criteria, different views have emerged on what substantive discussions on this topic should focus on. On the one hand, the NGO community has advocated for the most difficult questions related to prohibition and risk-assessment being raised and discussed at Conferences of States Parties or in the context of relevant working groups. These include discussions on the legitimacy of arms transfers to specific destination in the light of the treaty's obligations or on arms transfer decisions more generally. On the other hand, states parties have avoided engaging with these topics and have preferred to focus on the regulatory and more formal aspects of treaty implementation. States and NGOs have both made steps to promote a better application of the risk-assessment criteria. However, challenges and gaps remain. Chapter 3 suggests two main sets of policy options that could address some of these shortcomings. The first aims to increase transparency and information sharing. The second is to improve the quality of the existing discussion on the topic. Acting on these measures would be of paramount importance in maintaining the relevance and value of the ATT as an instrument to regulate arms transfers for the purpose, among other things, of 'reducing human suffering'.

The main challenges and concerns in relation to the processes and forums of the ATT are the need to ensure that all states parties and other stakeholders are able to attend CSPs, that the broader ATT process has sufficient financial resources, and that the focus of CSPs is able to shift from procedural questions to issues of implementation. Chapter 4 provides some concrete policy options that can be implemented with limited changes to the current processes and forums. These include measures aimed at improving the efficiency of current meetings, ensuring more inclusive participation and conducting some ATT work using virtual tools.

In relation to promoting the universalization of the treaty, several positive steps have been taken, but some obstacles remain. Various ATT stakeholders—including the Working Group on Treaty Universalization, states parties and NGOs—have already undertaken many efforts to increase the number of ATT states parties. These included the provision of capacity-building assistance to signatory and other non-party states committed to joining the treaty, or outreach activities to raise awareness and sensitize different national actors in countries where the political will to join the treaty is still lacking. Chapter 5 suggests a series of measures that can build on these existing efforts, aimed at four main goals: supporting capacity-building in signatories and other non-party states, improving the work of the WGTU, implementing good outreach practices, and adopting a targeted universalization strategy.

As universalization of the treaty progresses, supporting states' implementation of the ATT in an effective way builds confidence among the states parties and helps them in their efforts to establish or strengthen national control systems able to prevent and eradicate the illicit trade in conventional arms and their diversion. Numerous initiatives and positive steps have been taken in this respect; chapter 6 highlights three sets of policy options that can further improve states' implementation of the ATT. These measures are aimed at ensuring an even better coordination of efforts through the implementation of new and existing tools; stimulating an exchange of relevant information among stakeholders; and embedding lessons learned from the Covid-19 pandemic in future assistance programmes.

The options presented in this policy paper are the result of a stocktaking exercise among different ATT stakeholders about the content, functioning and implementation of the treaty. Some of the measures proposed might be easier to achieve; others could

be more difficult to agree on, and the policy paper indicates possible sensitivities and difficulties in implementation. Taken together, these measures represent a menu of options for ATT stakeholders—a list of concrete and feasible ideas and solutions for states, NGOs and other ATT stakeholders to draw on as the ATT community discusses how the treaty can be improved and successfully implemented. In this respect, this stocktaking exercise is a first, important step to reflect on the achievements of the treaty and propose ideas that can be adopted, discussed and refined for further implementation (or discarded). It is now falls to the whole ATT community to drawn from this menu of options and adopt measures that can reinforce and strengthen the ATT in the years to come.

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