

## I. The Arms Trade Treaty

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The 2013 Arms Trade Treaty (ATT) is the first legally binding international agreement to establish standards for regulating the trade in conventional arms and preventing illicit arms transfers.<sup>1</sup> As of 31 December 2018, 100 states were party to the ATT and 35 had signed but had not yet ratified it. Six states ratified the treaty in 2018—Brazil, Cameroon, Chile, Guinea-Bissau, Mozambique and Suriname. This was an increase on 2017, when three states ratified the treaty.

Following two sets of preparatory meetings in Geneva, the Fourth Conference of States Parties (CSP4) to the ATT was held in Tokyo on 20–24 August 2018 under the presidency of Ambassador Nobushige Takamizawa of Japan. CSP4 was attended by 111 states, as well as 39 regional and international organizations, non-governmental organizations (NGOs), research institutes, industry associations and national implementing agencies.<sup>2</sup> The proceedings covered seven areas: (a) treaty implementation; (b) transparency and reporting; (c) treaty universalization; (d) international assistance; (e) the work of the Secretariat; (f) the status of financial contributions to the ATT budget and how the financial situation might be improved; and (g) preparations for CSP5.<sup>3</sup>

In both the run-up to CSP4 and at the conference itself, there were attempts to shift the focus of attention from technical issues concerning the architecture of the ATT to concrete aspects of treaty implementation, such as the links between implementation of the ATT and the Sustainable Development Goals, and preventing and addressing the diversion of conventional arms. However, a significant amount of CSP4 was spent not on these more substantive matters, but on discussing the failure of many states to submit their treaty-mandated national reports or make their assessed contributions towards the financial costs associated with running the treaty, as well as disagreements about the responsibilities of the ATT Secretariat. Moreover, despite the strong focus on universalization and outreach and assistance,

<sup>1</sup> For a summary and other details of the Arms Trade Treaty see annex A, section I, in this volume. The 2001 UN Firearms Protocol is also legally binding but only covers controls on the trade in firearms. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (UN Firearms Protocol), adopted 31 May 2001 as UN General Assembly Resolution 55/255, entered into force 3 July 2005.

<sup>2</sup> CSP4 was attended by 79 of the then 97 states parties and 22 of the then 38 signatories<sup>3</sup> roughly the same proportions as in the 2 previous CSPs. In addition, 8 observer states attended, including China and Canada. Arms Trade Treaty, 4th Conference of States Parties, 'Final report', ATT/CSP4/2018/SEC/369/Conf.FinRep.Rev1, 24 Aug. 2018, pp. 2–4.

<sup>3</sup> Arms Trade Treaty, 4th Conference of States Parties, 'CSP4 provisional annotated programme of work', ATT/CSP4/2018/SEC/350/Conf.AnnPoW, 20 July 2018.

engagement with the ATT remains geographically unbalanced, with greater interest in Europe, sub-Saharan Africa and the Americas than in other regions.

This section summarizes key ATT-related developments and debates in 2018. It first looks at treaty implementation, and particularly the focus on diversion during 2018. It then focuses on treaty mechanics and the shortfalls in states' national reporting and financial contributions, as well as the debates about the responsibilities of the ATT Secretariat. Finally, treaty universalization and assistance are discussed, with a focus on the Middle East and North Africa, where levels of ATT engagement have been particularly low.

### **Treaty implementation**

The issue of diversion—generally defined as the ‘transfer of items from an authorized owner/user to an unauthorized user’—has long been a central focus of the various multilateral export control regimes.<sup>4</sup> However, much of this discussion has concentrated on the implementation of ‘end use’ or ‘end user’ controls, which involve recipient states agreeing to limitations on what they can do with the arms they import.<sup>5</sup> In contrast, the ATT defines diversion as something that can occur at all stages of a transfer. Using this framework as a starting point, the topic of diversion received particular attention both in the run-up to and during CSP4.

The report of the Working Group on Effective Treaty Implementation (WGETI), which was circulated in advance of CSP4, highlights the various potential points of diversion throughout the supply chain of a weapon. The report also highlights how importers, exporters, and transit and transshipment states can limit these risks and proposes measures that states could implement to share information about cases of diversion.<sup>6</sup> These issues were discussed in greater depth at a separate session of CSP4 on the diversion of arms to unauthorized end uses and end users, as well as at many of the side-events that were held in Tokyo.<sup>7</sup> Finally, a resolution adopted by the UN General Assembly later in 2018 endorsing the ATT included specific language

<sup>4</sup> Arms Trade Treaty, Working Group on Effective Treaty Implementation, ‘Addressing diversion of conventional arms’, ATT/CSP4.WGETI/2018/JPN/312/M2.JAPArt11, 25 May 2018, p. 1.

<sup>5</sup> Wassenaar Arrangement, ‘Introduction to end-user/end-use controls for exports of military-list equipment’, Agreed by the plenary, 3 July 2014.

<sup>6</sup> Arms Trade Treaty, ATT Working Group on Effective Treaty Implementation, ‘Chair’s draft report to CSP4’, ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep, 20 July 2018, Annex D; and Bromley, M., ‘The state of the Arms Trade Treaty: Advancing efforts on international assistance and illicit diversion’, SIPRI, WritePeace blog, 29 Aug. 2018.

<sup>7</sup> Arms Trade Treaty, Working Group on Effective Treaty Implementation (note 4).

encouraging states to ‘prevent and tackle diversion of conventional arms and ammunition to unauthorized end uses and end users’.<sup>8</sup>

The work on diversion constituted only one part of the WGETI’s considerable programme of work in the two sets of preparatory meetings and in intersessional discussions facilitated by the working group and sub-working group chairs. The WGETI’s sub-working groups on Article 11 (Diversion), Articles 6 and 7 (Prohibitions and Export and Export Assessment), and Article 5 (General Implementation) concluded that sustained efforts will be needed to work towards effective treaty implementation. These efforts should include exchanges of experience of national control systems, more work on gender-based violence and a continued focus on the numerous aspects of diversion, as well as specific risk assessments.<sup>9</sup>

One issue discussed throughout the year was the availability and provision of resources for states parties and signatories to facilitate effective treaty implementation. To this end, the respective sub-working groups compiled lists of possible reference documents to assist with the general implementation of the treaty, conducting risk assessments, compliance with obligations under Article 6 on prohibitions of arms exports under certain conditions, and addressing diversion.<sup>10</sup> In addition, the states parties took the first steps to develop a list of key elements of guidance on the establishment of a national trade control system and to define the elements of a ‘welcome pack’ for new states parties in order to facilitate treaty implementation.<sup>11</sup>

As in previous years there were concerted efforts by NGOs to shift the focus of discussion at both the preparatory meetings and CSP4 on to questions about particular arms transfers and whether these were in line with treaty provisions. At CSP4, however, the tensions between states parties and NGOs over specific arms exports by states parties, particularly those to states and non-state groups involved in the ongoing war in Yemen, were more muted than at the two previous CSPs.<sup>12</sup>

### **Treaty mechanics**

Despite the substantive work carried out in Tokyo, discussions at CSP4 also highlighted significant future challenges for the ATT. In particular, the proportion of states parties making submissions to the treaty’s two reporting instruments continues to fall.

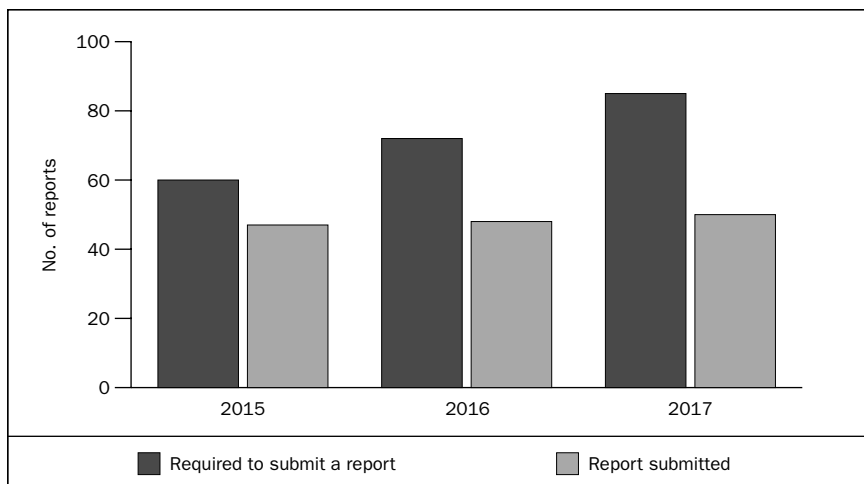
<sup>8</sup> United Nations, General Assembly, ‘The Arms Trade Treaty’, Resolution 73/36, adopted 5 Dec. 2018, A/RES/73/36, 11 Dec. 2018.

<sup>9</sup> Arms Trade Treaty, ATT Working Group on Effective Treaty Implementation (note 6).

<sup>10</sup> Arms Trade Treaty, ATT Working Group on Effective Treaty Implementation (note 6), annexes A, B, C, D, E and G.

<sup>11</sup> Arms Trade Treaty, ATT Working Group on Effective Treaty Implementation (note 6), Annex F.

<sup>12</sup> Bromley (note 6).



**Figure 10.1.** Number of Arms Trade Treaty states parties submitting annual reports, 2015–17

*Note:* Years are the year in which transfers took place, not the year in which reporting occurred.

*Source:* ATT Secretariat, 'Annual reports'.

Within one year of ratification, each state party is obliged to provide the ATT Secretariat with an initial report detailing the 'measures undertaken in order to implement this Treaty'.<sup>13</sup> As of 17 October 2018, 28 per cent of the states that were due to submit an initial report had failed to do so.<sup>14</sup> While disappointing, this represents an improvement on March 2018, when 32 per cent of such states had failed to report.<sup>15</sup> However, despite the fact that a number of states noted improvements made in their national control systems at CSP4, only one state—Sweden—appears to have updated its initial report since it was first submitted.

States parties to the ATT are also required to submit an annual report on their arms imports and exports.<sup>16</sup> Despite the strong focus on understanding the challenges entailed in reporting and the work carried out to overcome these throughout 2018, particularly in the Working Group on Transparency and Reporting (WGTR), the proportion of states submitting these reports continued to fall. As of 9 January 2019, 47 of the 60 states (78 per cent) required to report on transfers in 2015 had submitted a report for transfers in 2015, compared with 50 of the 85 states (59 per cent) required to report on transfers in 2017 (see figure 10.1).<sup>17</sup>

<sup>13</sup> Arms Trade Treaty (note 1), Article 13(1).

<sup>14</sup> ATT Secretariat, 'Initial reports: Status as of 17 Oct. 2018'.

<sup>15</sup> Bromley, M. and Brockmann, K., 'The Arms Trade Treaty', *SIPRI Yearbook 2018*, pp. 405–12.

<sup>16</sup> Arms Trade Treaty (note 1), Article 13(1).

<sup>17</sup> ATT Secretariat, 'Annual reports: Status as of 9 Jan. 2019'. On states' reports on arms transfers under the ATT and other international instruments see chapter 5, section IV, in this volume.

All the ATT states parties and signatories, as well as states attending CSPs as observers, are required to make financial contributions to cover the costs of organizing the CSPs and the work of the ATT Secretariat. However, a significant number of states are failing to pay their assessed contributions.<sup>18</sup> As of 14 November 2018, 64 of the 140 states that are obliged to make contributions were behind with their payments, creating an accumulated deficit of \$338 572.<sup>19</sup> If this trend continues, it will undermine both the credibility of the ATT and the ability of the ATT Secretariat to carry out its work. The final report of CSP4 ‘called on States that have not done so to address their financial obligations in a prompt and timely manner’ and highlighted the risks to the functioning of the ATT if the situation is not addressed.<sup>20</sup>

The final day of CSP4 saw disagreement over who should administer the sponsorship programme that seeks to enable participation in CSPs by states from the developing world. CSP1 decided that the United Nations Development Programme (UNDP) should administer the programme. However, early in 2018 it was agreed that the ATT Secretariat was now in a position to take over.<sup>21</sup> Nonetheless, a group of states led by Mexico sought to prolong UNDP’s control of the programme, arguing that the ATT Secretariat lacked the resources required to manage the process.<sup>22</sup> Despite these efforts, states ultimately agreed to transfer responsibility to the ATT Secretariat.<sup>23</sup> Apart from this disagreement—and a disagreement involving Australia, Japan and New Zealand over geographical regions and the composition of the management committee—CSP4 was largely free of tension. States agreed on a detailed outcome document that outlines a comprehensive programme of work until CSP5, which is set to take place on 26–30 August 2019. Latvia has assumed the presidency of the ATT for the period 2018–19, up to and including CSP5, led by Ambassador Jānis Kārklīņš. Work to prevent gender-based violence as part of the implementation of the treaty in all of its aspects will be a focus theme of the Latvian presidency.<sup>24</sup>

<sup>18</sup> On the challenges generated by states failing to make their assessed contributions in support of other international arms control regimes see Davis, I. and Verbruggen, M., ‘The Convention on Certain Conventional Weapons’, *SIPRI Yearbook 2018*, p. 383.

<sup>19</sup> ATT Secretariat, ‘Status of contributions to ATT budgets as at 14 November 2018’.

<sup>20</sup> Arms Trade Treaty, 4th Conference of States Parties, ‘Final report’, ATT/CSP4/2018/SEC/369/Conf.FinRep.Rev1, 24 Aug. 2018, p. 8.

<sup>21</sup> Arms Trade Treaty, 4th Conference of States Parties, ‘The ATT Sponsorship Programme: Review of the current arrangements’, ATT/CSP4.MC/2018/MC/354/Conf.SponsProgr, 20 July 2018, p. 1.

<sup>22</sup> Reaching Critical Will, ‘Summary’, *ATT Monitor*, vol. 11, no. 5 (26 Aug. 2018).

<sup>23</sup> Arms Trade Treaty, 4th Conference of States Parties (note 20).

<sup>24</sup> Arms Trade Treaty, ‘President’.

**Table 10.1.** Arms Trade Treaty ratifications, accessions and signatories, by region, as of 31 December 2018

Region	No. of states	No. of parties	No. of signatories	No. of non-signatories
Africa	53	25	14	14
Americas	35	26	3	6
Asia	29	3	7	19
Europe	48 <sup>a</sup>	41	2	5 <sup>a</sup>
Middle East	16 <sup>b</sup>	1 <sup>b</sup>	5	10
Oceania	14	4	4	6
Total	195	100	35	60

*Note:* The treaty was open for signature until it entered into force in Dec. 2014. Existing signatories may accept, approve or ratify the treaty in order to become a state party. A non-signatory state must now directly accede to the treaty in order to become a state party.

<sup>a</sup> This figure includes the Holy See.

<sup>b</sup> This figure includes Palestine.

*Source:* United Nations, Treaty Collection.

### Treaty universalization and international assistance

Increasing the number of signatories and states parties remains a key priority for the ATT. As it stands, ATT participation is geographically uneven. The Middle East and Asia are particularly under-represented in terms of signatories and states parties (see table 10.1).

During CSP4, states discussed possible strategies for promoting the treaty. In particular, on the basis of a report submitted by the co-chairs of the Working Group on Treaty Universalization (WGTU), states parties agreed a number of related initiatives to be taken forward by the WGTU in the run-up to CSP5.<sup>25</sup> These include the development of a ‘universalization toolkit’ that would, among other things, clarify the scope of the ATT and provide an overview of the challenges that states face in joining the treaty.<sup>26</sup> The final report of CSP4 welcomed the WGTU’s recommendation on engaging with parliamentarians ‘on a continuous basis’ in order to ‘facilitate domestic ratification processes’.<sup>27</sup> Finally, CSP4 stressed the importance of targeting the regions with the lowest numbers of states parties. This was also emphasized

<sup>25</sup> Arms Trade Treaty, ATT Working Group on Treaty Universalization, ‘Co-chairs draft report to CSP4’, ATT/CSP4.WGTU/2018/CHAIR/356/Conf.Rep, 20 July 2018; and Arms Trade Treaty, 4th Conference of States Parties (note 20).

<sup>26</sup> Arms Trade Treaty, ATT Working Group on Treaty Universalization (note 25); and Arms Trade Treaty, 4th Conference of States Parties (note 20).

<sup>27</sup> Arms Trade Treaty, 4th Conference of States Parties (note 20).

by the WGTU in the session on treaty universalization, where its co-chairs recommended a particular focus on Africa and Asia.<sup>28</sup>

As noted above, levels of participation remain particularly low in the Middle East and North Africa.<sup>29</sup> None of the four states in North Africa is party to the treaty and only Libya has signed it. Among the 15 countries in the Middle East, Palestine is the only ATT state party, while Bahrain, Israel, Lebanon, Turkey and the United Arab Emirates have signed it. The Lebanese Parliament approved ratification of the ATT in September 2018 but, as of 31 December 2018, no instrument of ratification had been deposited.<sup>30</sup> This low level of participation reflects the concerns that many states in the region have about the treaty. Several states in the Middle East and North Africa were dissatisfied with the outcome of the ATT negotiations. Egypt, Iran and Syria were particularly vocal about its potential to undermine their national defence needs.<sup>31</sup> However, the Middle East and North Africa is one of the regions in greatest need of effective controls on arms transfers and SALW, in the light of the wide range of security-related challenges that countries in the region face linked to arms proliferation and arms transfer dynamics. These include diversion and stockpile leakage in post-conflict settings and arms transfers to non-state actors.<sup>32</sup>

Another goal of the ATT is to facilitate the provision of assistance aimed at supporting states to improve or establish national arms transfer control systems. To this end, the ATT envisages the creation of a Voluntary Trust Fund (VTF) to help states parties request international assistance to implement the treaty.<sup>33</sup> The VTF was officially established by CSP2 in 2016 and is managed by the ATT Secretariat with the support of a VTF selection committee.<sup>34</sup> Since its establishment, the VTF has undergone two cycles, in 2017 and 2018, and provided funding for 24 projects.<sup>35</sup> A call for project proposals for a third

<sup>28</sup> Arms Trade Treaty, 4th Conference of States Parties (note 20); and Control Arms, 'Daily summary: Day three, 22 August 2018', Fourth Conference of States Parties to the ATT, Tokyo, 20–24 Aug. 2018. For details of the status of the ATT in Asia and an overview of the relevant assistance implemented in the region see Bromley and Brockmann (note 15).

<sup>29</sup> For the purposes of this chapter the Middle East comprises Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, Syria, the United Arab Emirates and Yemen. North Africa comprises Algeria, Libya, Morocco and Tunisia.

<sup>30</sup> Associated Press, 'Lebanon's parliament approves Arms Trade Treaty, angering Hezbollah', *Defense News*, 25 Sep. 2018.

<sup>31</sup> Bromley, M., Maletta, G. and Brockmann, K., 'Arms transfer and SALW controls in the Middle East and North Africa: Mapping capacity-building efforts', SIPRI Background Paper, Nov. 2018, pp. 8–9.

<sup>32</sup> Bromley et al. (note 31).

<sup>33</sup> Arms Trade Treaty (note 1), Article 16(3); and Arms Trade Treaty, 2nd Conference of States Parties, 'Final report', ATT/CSP2/2016/5, 26 Aug. 2016.

<sup>34</sup> ATT Secretariat, 'Terms of reference of the ATT Voluntary Trust Fund', ATT/VTF18/2018/SEC/251/ToR.Cons.Dr.v1.Rev1; and Bromley, M., 'The Arms Trade Treaty', *SIPRI Yearbook 2017*, pp. 583–87.

<sup>35</sup> Arms Trade Treaty, Voluntary Trust Fund, 'Report on the work of the ATT Voluntary Trust Fund (VTF) for the period August 2017 to July 2018', ATT/VTF/2018/CHAIR/359/Conf.Rep, 20 July 2018. For an overview of VTF projects see Arms Trade Treaty, 'Voluntary Trust Fund'.

cycle (VTF cycle 2019) was issued in October 2018.<sup>36</sup> During CSP4, states parties reiterated their support for implementation of the VTF and continued to discuss ways to improve its functioning and management by, among other things, developing guidance on VTF project evaluation, as recommended by the VTF selection committee.<sup>37</sup> The terms of reference of the VTF specify that ‘overlap/duplication with projects funded by UNSCAR [the UN Trust Facility Supporting Cooperation on Arms Regulation], by states parties on a bilateral basis or through other channels, shall be avoided’.<sup>38</sup> However, the wide range of assistance activities taking place may challenge the ability of the VTF to build on work that is already being carried out. To try to address this issue, options for avoiding duplication of effort by the VTF and the European Union (EU) Partner-to-Partner ATT Outreach Project were discussed by representatives of the ATT Secretariat and EU member states, including in the run-up to CSP4.<sup>39</sup> The ATT Secretariat also regularly liaises with UNSCAR to avoid duplication during the pre-screening phase of the VTF selection process.<sup>40</sup>

<sup>36</sup> Arms Trade Treaty, Voluntary Trust Fund (note 35).

<sup>37</sup> Arms Trade Treaty, 4th Conference of States Parties (note 20); Arms Trade Treaty (note 35).

<sup>38</sup> ATT Secretariat (note 34).

<sup>39</sup> Arms Trade Treaty, Voluntary Trust Fund (note 35).

<sup>40</sup> Arms Trade Treaty, Voluntary Trust Fund, ‘Report on the work of the ATT Voluntary Trust Fund (VTF) for the period August 2016 to August 2017’, ATT/VTF/2017/CHAIR/163/Conf.Rep, 29 Aug. 2017; and Maletta, G., ‘Coordinating arms transfer and SALW control assistance: What role for the Arms Trade Treaty?’, SIPRI WritePeace Blog, 27 Mar. 2019.