

# An Arms Trade Treaty: Will It Support or Supplant the PoA?

The UN calendar for 2012 includes important markers in international arms control, with eight weeks of UN meetings assigned to two separate processes: the Arms Trade Treaty (ATT) and the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA). During the UN Conference on the ATT, states will seek to 'elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms' (UNGA, 2009, para. 4). At the 2<sup>nd</sup> Review Conference, 11 years after adoption of the PoA, they will assess progress made in the implementation of the instrument (UNGA, 2008a, para. 14).

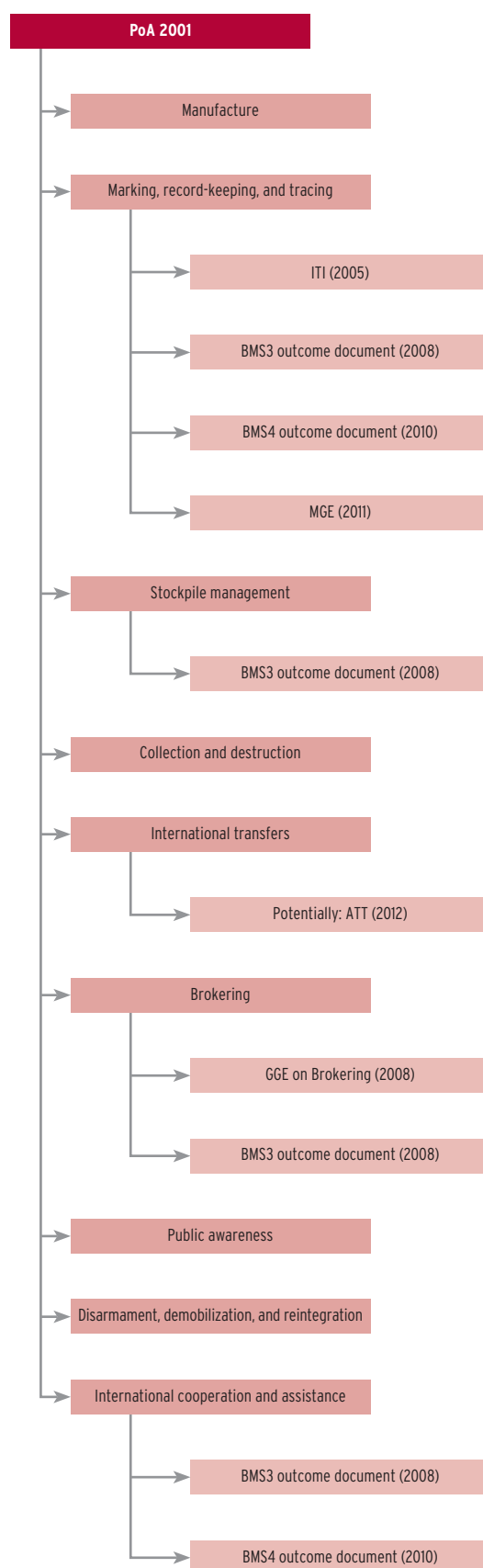
The fact that both processes include arms control measures has led some diplomats and members of the arms control community to speculate as to the relationship between the two and the future role of the PoA should an ATT be agreed. This paper explores and discusses the relationship between the processes, examining a prospective ATT's relevance to and potential impact on the PoA. Specifically, it asks:

- How do the two processes relate to and complement each other?
- Where do they overlap and where are the synergies and links between them?
- Where do they potentially compete with or contradict one another?

## What is the relationship between the PoA and the ATT?

The PoA is a framework document that establishes a normative framework for small arms control and covers a broad spectrum of issue areas and activities. While many of the PoA provisions are crafted in fairly general language, benchmarks for assessing PoA implementation efforts are evolving. Since it was adopted in 2001, the PoA provisions have been supplemented and expanded on through the International Tracing Instrument (ITI), the Group of Governmental Experts (GGE) on Brokering, the outcome documents of the Third and Fourth Biennial Meetings of States (BMS<sub>3</sub> and BMS<sub>4</sub>),

Figure 1 Evolution of PoA themes



and the *Chair's Summary* of the Meeting of Governmental Experts (MGE) in 2011 (see Figure 1).<sup>1</sup> In addition, recent regional agreements also contribute to commitments in this area.

Assuming it includes small arms and light weapons, the ATT could supplement and expand on the PoA provisions that relate to international transfer controls (export, import, transit, and retransfer).

## To what extent would the PoA and the ATT overlap?

Although the precise provisions of an ATT remain to be determined, a few observations and predictions can be made based on the draft paper of the chair of the Third Preparatory Committee Meeting of July 2011 (Moritán, 2011).

### Scope: arms

While the PoA only covers small arms and light weapons, the ATT is to cover the full range of conventional weapons and, potentially, ammunition, parts and components, and technology and equipment for all arms categories (Moritán, 2011, paras. IV.1; see Figure 2). Accordingly, the ATT potentially has a very important role to play in terms of filling in one of the gaps of the PoA, which does not clearly cover ammunition.<sup>2</sup>

### Scope: transactions

Although the PoA may be narrow in terms of the types of arms it covers, it includes a broad range of control measures and activities. In contrast, the ATT is likely to cover a broader range of conventional arms but will

only deal with two main aspects of the control system—international transfers (including export, import, transit, and retransfer) and brokering (see Figure 3). It may also address technology transfer and manufacture under foreign licence (Moritán, 2011, para. IV.2).

### Implementation: shared commitments

In addition to shared elements of *scope*, the two instruments may contain similar or complementary *commitments*. As noted above, the PoA includes commitments with respect to international transfers and offers examples of national-level commitments that are of relevance to and could be stipulated in an ATT (see Box 1). Some of the ATT commitments may closely mimic

Figure 2 The PoA and the ATT: scope regarding arms

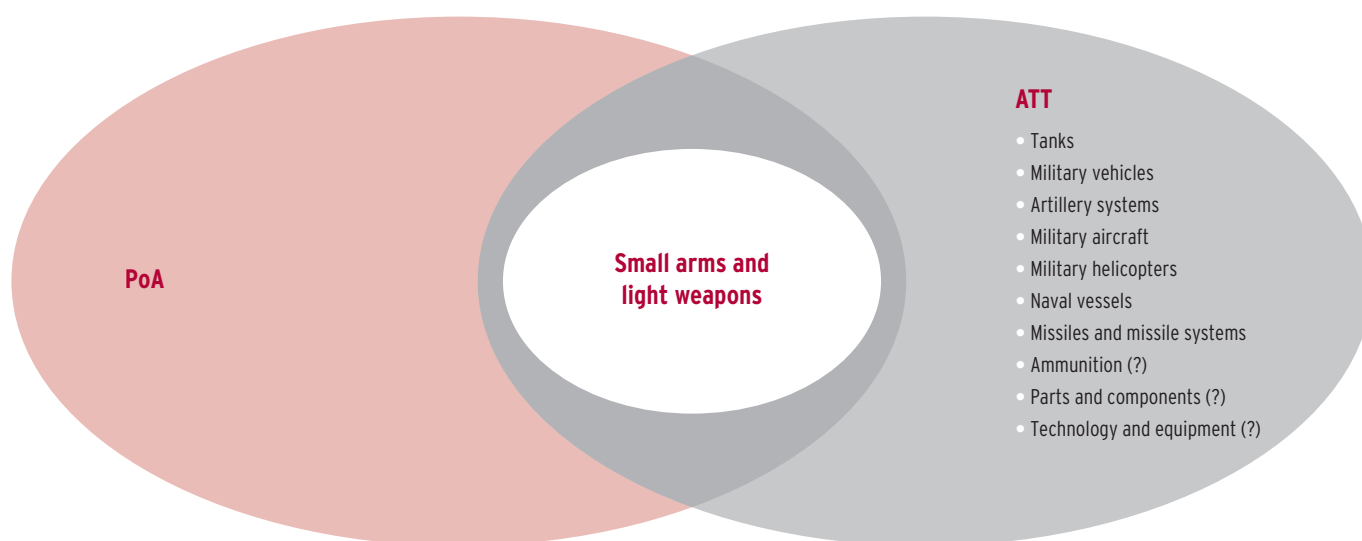
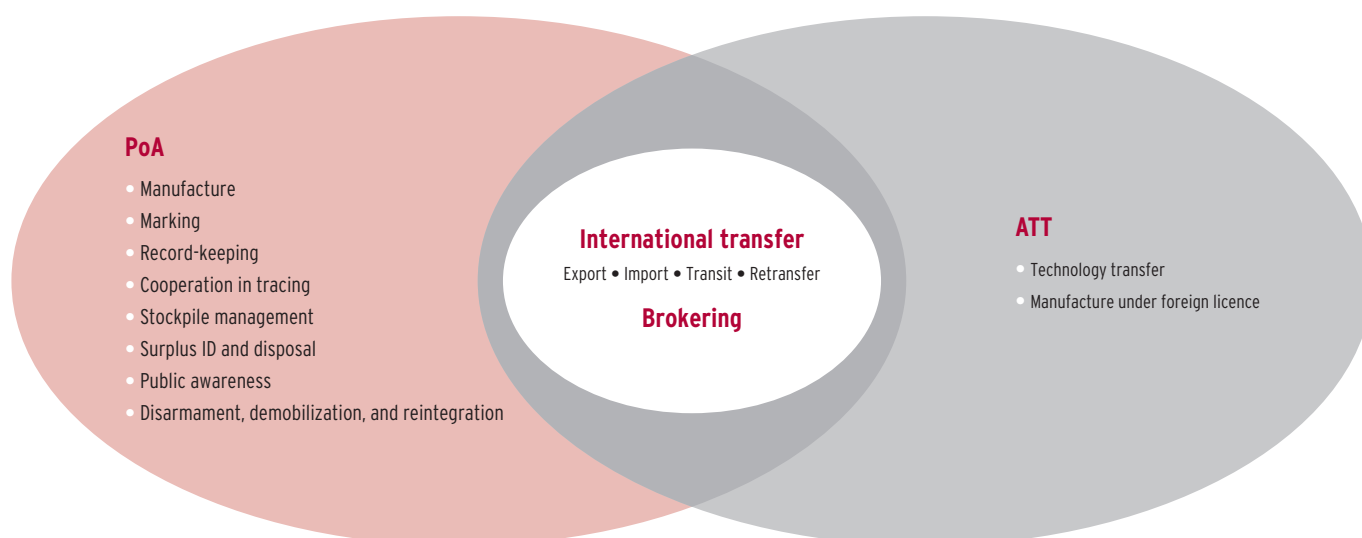


Figure 3 The PoA and the ATT: scope regarding transactions



existing commitments under the PoA. For example, it is likely that, at a minimum, states parties under an ATT would be required to establish relevant laws, regulations, and administrative procedures to implement the ATT (Moritán, 2011, para. VI.3). Under the PoA, states are committed to establishing laws and administrative procedures to govern export, import, transit, and retransfer as well as brokering (UNGA, 2001, paras. II.2, II.12, II.14). Furthermore, under an ATT states parties may be required to establish a national system of export and import licensing or authorization and to establish measures to control brokering activities, including a system for registering brokers (Moritán, 2011, paras. VI-A, VI-A.5). Such obligations already exist under the PoA with respect to small arms and small arms brokers (UNGA, 2001, paras. II.11, II.14).

#### Box 1 PoA commitments that may be relevant to an ATT

- Put in place adequate laws, regulations, and administrative procedures over export, import, transit, and retransfer (UNGA, 2001, paras. II.2, II.12);
- establish the illegal trade in small arms and light weapons as a criminal offence (para. II.3);
- identify and take action against those engaged in illegal transfer and financing for acquisition (para. II.6);
- adopt measures to prevent transfer of unmarked small arms and light weapons (para. II.8);
- keep records for as long as possible on transfers of small arms and light weapons (para. II. 9);
- assess applications for export authorizations in accordance with national regulations and procedures, consistent with relevant international law (especially the risk of diversion) (para. II.11);
- establish a national system of export and import licensing or authorization (paras. II.11);
- establish measures on international transit (para. II.11);
- notify the original exporting state prior to re-export (para. II.13);
- develop legislation or administrative procedures regulating brokering (including registration, licensing, and appropriate penalties) (para. II.14); and
- take measures against UN Security Council embargo violations (para. II.15).

## What impact could an ATT have on the PoA?

An ATT could help create benchmarks and elaborate on some of the PoA commitments that lack specificity. For example, the PoA requires states to assess export authorizations according to national regulations that are ‘consistent with existing responsibilities of States under relevant international law’ (UNGA, 2001, para. II.11). It does not, however, specify what criteria or considerations should be applied when making the assessment—other than the risk of diversion into the illegal trade (UNGA, 2001, para. II.11). An ATT would identify some of these ‘existing responsibilities’ and provide a list of the criteria states would need to consider when assessing export authorizations.

An ATT could also serve to reinforce certain national-level commitments, such as the requirement to establish laws, regulations, and administrative procedures governing export, import, transit, and retransfer and to set up a system of licensing or authorization. It would turn some of these existing commitments into *legally* binding obligations, which should ostensibly improve states’ adherence to and implementation of their commitments.

It is possible that not all of the ATT provisions would complement or replicate the PoA, which might result in conflicting or inconsistent provisions. It is difficult to predict what these might be, but some examples of potentially inconsistent provisions are already emerging. For example, the ITI requires states to keep records ‘indefinitely’ (to the extent possible), but, at a minimum, records of import and export must be kept for at least 20 years (UNGA, 2005, para. 12). The chair’s draft paper on the ATT, however, indicates that states parties may be required to keep records of arms transfers (including imports and exports) for a minimum of ten years under an ATT (Moritán, 2011, paras. VI-B.1, VI-B.2).

The ATT is to be legally binding and, since it would be agreed subsequent to the PoA, its provisions would take precedence over the PoA in case of overlaps or inconsistencies. If some

Table 1 ATT and PoA meeting dates (2012)

Meeting	Dates
ATT (4th PrepCom)	13-17 February
PoA (PrepCom)	19-23 March
UN Conference on the ATT	2-27 July
PoA 2 <sup>nd</sup> Review Conference	27 August-7 September

of its provisions are *weaker* than their PoA or other equivalents, the discrepancy could lead to an erosion of existing commitments, or of their relevance, and a lowering of emerging benchmarks for small arms control.

An ATT could also detract attention from the PoA process. In this sense the proximity of the ATT negotiations and the 2<sup>nd</sup> Review Conference is unfortunate, to say the least (see Table 1). Interest in and preparation for the Review Conference will certainly be affected by the fact that the ATT negotiations closely precede it, especially for those states with small delegations and limited capacity or resources to cover both processes.

If states perceive the ATT as replacing the PoA or somehow rendering it redundant, their willingness to fulfil PoA commitments—whether in the context of international transfers or more broadly—may suffer. Given that states already complain about reporting fatigue and the burden of reporting on similar issues under different instruments, they may be likely to prioritise reporting under a legally binding ATT at the expense of reporting under the politically binding PoA. More generally, states may turn their efforts to implementing the ATT rather than the PoA.

## Conclusion

The simple truth is that the practical and political impact of the ATT deliberations on the outcome of the 2<sup>nd</sup> Review Conference and the PoA process as a whole cannot be accurately predicted. What is clear, however, is that while the ATT has the potential to enhance and supplement the PoA provisions relating to international transfers, it cannot and should not be viewed

as replacing the PoA in its entirety. International transfer controls are but one aspect of the PoA amid a broad range of arms control measures to which UN member states have committed themselves. The PoA offers a platform in terms of existing small arms control measures that could and should be built on in an ATT, and care should be taken to avoid contradiction and ensure complementarity between the two instruments. The PoA process also provides some lessons learned, including a lack of specificity and benchmarks that make implementation difficult to assess, and the absence of an extensive follow-up mechanism.

What must not be overlooked is the fact that—even if an ATT that includes small arms and light weapons is agreed in July 2012—the PoA will remain the sole *universal* framework for small arms control unless the ATT is signed and ratified by all UN member states. ■

## Sourcing

This *Research Note* was written by Sarah Parker and is based on a presentation she made at a Geneva Process meeting in Geneva on 8 June 2011 and at a meeting of the Group of Interested States in New York on 17 October 2011. For additional information about international measures, please visit <<http://www.smallarmssurvey.org/?international>>.

## Notes

- 1 See McLay (2011) and UNGA (2005; 2007; 2008b; 2010).
- 2 The PoA mentions ammunition in the context of destruction techniques (UNGA, 2001, para. II.19); some states include information on ammunition stockpiles and destruction in their national reports (Cattaneo and Parker, 2008, p. 82).
- 3 One of the comments some states make in their national reports is that the PoA commitments would be taken more seriously at the national level, and would be better implemented, if the PoA were legally binding.

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## Credits

Author: Sarah Parker

Copy-editing: Tania Inowlocki

Design and layout: Richard Jones (rick@studioexile.com)

## Contact details

Small Arms Survey  
Graduate Institute of International and Development Studies  
47 Avenue Blanc  
1202 Geneva  
Switzerland

**t** +41 22 908 5777

**f** +41 22 732 2738

