

# ARMS TRADE TREATY ASSISTANCE: IDENTIFYING A ROLE FOR THE EUROPEAN UNION

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## I. INTRODUCTION

The adoption of the Arms Trade Treaty (ATT) in the United Nations General Assembly in April 2013 represented the successful conclusion of years of deliberations and negotiations among UN member states. During the process of negotiating the ATT a large number of states in the Global South stressed the need for the treaty to include provisions for financial, technical and material assistance aimed at helping states to fulfil treaty obligations. In particular, states stressed the need for assistance to draft legislation, build enforcement capacities and provide training to customs and law enforcement agencies.<sup>1</sup> The challenges for states that do not have robust transfer control systems and which have limited capacities to implement the ATT were acknowledged by states in the Global North, which also indicated potential areas where assistance could be provided, such as establishing and strengthening legislative and administrative frameworks, and licensing and enforcement capacities.<sup>2</sup>

Many states are likely to require assistance in carrying out assessments of their existing systems. However, many of the commitments laid down in the ATT—including enforcing national export control systems, applying relevant criteria to arms export decisions, maintaining national records, submitting annual reports and cooperating with

<sup>1</sup> United Nations, Arms Trade Treaty Preparatory Committee, 'Statements on an arms trade treaty, <<http://www.un.org/disarmament/convarms/ATTPrepCom/Statements.html>>. See e.g. Statement by Bangladesh, 15 Feb. 2012; Statement by Fiji, 11 July 2011; Statement on behalf of the Caribbean Community and Common Market (CARICOM), 28 Feb.–3 Mar. 2011; and Statement on behalf of the African Group, 11 July 2011.

<sup>2</sup> United Nations (note 1). See e.g. Statement by Australia, 2 Mar. 2011; Statement by Japan, Feb./Mar. 2011; Statement by New Zealand, 2 Mar. 2011; and Statement by the United Kingdom, 11 July 2011.

## SUMMARY

The Arms Trade Treaty (ATT) includes provisions for 'legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance' to help states fulfil treaty commitments after entry into force. However, many states will also need assistance before ratifying the ATT.

The European Union (EU) funds separate assistance projects to tackle trafficking of small arms and light weapons (SALW), and to develop and implement controls on transfers of dual-use items and conventional arms. The EU is therefore uniquely placed to share lessons learned from these projects.

The EU is willing to provide assistance to states that want to sign and ratify the ATT, and has established a dedicated ATT implementation support programme (Council Decision 2013/768/CFSP). If the EU's existing transfer control assistance models are to form the basis for ATT assistance, partner states are expected to have some key elements of a transfer control system already in place. Based on needs and expertise, the EU ATT assistance programme could address: (a) outreach to support parliamentary processes; (b) assessments of national legislation; (c) drafting national legislation; (e) training licensing officers, customs and border officials; (f) record keeping and reporting; (g) developing effective risk assessment mechanisms; (h) developing import, transit, trans-shipment and brokering controls; and (i) facilitating South–South cooperation and assistance.

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**Box 1. Key commitments under the Arms Trade Treaty**

The main obligations in the Arms Trade Treaty (ATT) for a state-party are outlined below. These obligations could be used by states as the basis for a checklist before signature and ratification to assess their compliance with the treaty.

- Establish and maintain an effective national system for controlling or regulating the export, import, transit, trans-shipment and brokering activities (all defined as transfers in the ATT) related to the eight categories of conventional arms covered by the ATT, as well as exports of related ammunition and of parts and components that are used for assembling conventional arms covered by the treaty (Articles 3, 4 and 5.2)
- Establish and maintain a national control list (Article 5.3) and make it available to other states parties (Article 5.4)
- Designate competent national authorities responsible for maintaining this system (Article 5.5)
- Designate at least one national contact point responsible for exchanging information related to the implementation of the ATT (Article 5.6)
- Prohibit transfers of conventional arms, ammunition, or parts and components for the eight categories of conventional arms covered by the ATT that would violate obligations under Chapter VII of the United Nations Charter or international agreements relating to the transfer or trafficking of conventional arms, or where there is knowledge that the items will be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, or other war crimes (Article 6)
- Review applications for exports of the eight categories of conventional arms covered by the treaty and conduct a national export assessment on the risk that the exported arms could have ‘negative consequences’ for peace, security and human rights. Exports shall not be authorized if the assessment determines that there is an overriding risk that the exported arms will be used to commit or facilitate a serious violation of international humanitarian or human rights law or offences under international conventions or protocols relating to terrorism or international organized crime. Take into account the risk of the exported arms being used to commit or facilitate serious acts of gender-based violence or violence against women and children (Article 7)
- Take measures, where necessary, to regulate conventional arms imports (Article 8)
- When importing arms, provide information to assist the exporting state party in conducting its national export assessment, including by providing documentation on the end use or end user (Article 8)
- Take measures, where necessary and feasible, to regulate the transit and trans-shipment of conventional arms (Article 9)
- Take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction (Article 10)
- Take measures, including risk assessments, mitigation measures, cooperation and information sharing, to prevent the diversion of conventional arms to the illicit market or for unauthorized end use and end users (Article 11)
- Maintain national records for each export authorization or delivery of conventional arms for at least 10 years (Article 12)
- Provide annual reports to the secretariat on export and import authorizations or deliveries of conventional arms to be distributed to states parties (Article 13)
- Submit a report to the ATT secretariat shortly after ratification, providing information on how the country is implementing the ATT (Article 13)
- Take appropriate measures to enforce national laws and regulations to implement the treaty (Article 14)
- Cooperate with other states parties in order to implement the ATT effectively (Article 15)

Source: Holtom, P. and Bromley, M., ‘Next steps for the Arms Trade Treaty: securing early entry into force’, *Arms Control Today*, June 2013.

other states—will require an open-ended commitment on the part of states parties. As a result, many states will require ongoing assistance in order to maintain and implement their transfer control systems.<sup>3</sup> The European Union (EU) took a significant step towards meeting such calls for assistance with the adoption on

16 December 2013 of Council Decision 2013/768/CFSP on EU activities in support of the implementation of the Arms Trade Treaty, in the framework of the European Security Strategy.<sup>4</sup> The Council Decision provides over €5 million of funding for a number of activities to be carried out over a 36-month period. The international

<sup>3</sup> For more information see ‘Implementing the Arms Trade Treaty: next steps’, Report from the European Union Non-Proliferation Consortium seminar, Geneva, 17–18 June 2013, <<http://www.nonproliferation.eu/adhoc/report2.pdf>>.

<sup>4</sup> 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*, L341, 18 Dec. 2013.

community will welcome ATT-related assistance provided by the EU, which is uniquely placed to share lessons learned from past outreach and assistance efforts in the field of transfer controls and to develop programmes specifically aimed at helping states to sign, ratify and implement the ATT.

Section II provides a brief summary of states' obligations and commitments contained in the ATT and its assistance provisions. Section III contains an overview of existing outreach and assistance programmes and lessons learned, and of expertise on strengthening transfer controls provided by international and regional organizations, states and non-governmental organizations (NGOs). Section IV outlines recommendations for the implementation of the EU's outreach and assistance efforts to support effective implementation of the ATT and considers the potential partners, issues and activities that could be addressed as part of these outreach and assistance activities.

## II. STATES' COMMITMENTS AND ASSISTANCE PROVISIONS IN THE ARMS TRADE TREATY

The ATT outlines a number of commitments for states parties to fulfil in order to regulate their international arms transfers and prevent and combat illicit trade (see box 1). Prior to their signature and ratification of the treaty, states will need to assess the extent to which their national laws and regulations allow them to fulfil these commitments. For many states, this process will result in the identification of gaps that need to be addressed to ensure effective implementation of the ATT. The ATT does not provide details on how states should meet the commitments and the approach may vary from one country to another. National experience demonstrates that there is no 'one-size-fits-all' approach in the field of arms export controls, and states can and do use different mechanisms to achieve the same goal. Determining what type of arms transfer control system is most suitable for a particular state will depend on a range of factors. These include a state's 'size, geography, industrial structure, trading patterns, legal system, institutional set-up, administrative traditions and the state of development of its existing trade control system (if there is one)'.<sup>5</sup>

<sup>5</sup> Bauer, S., 'Arms trade control capacity building: lessons from dual-use trade controls', SIPRI Insights on Peace and Security no. 2013/2, Mar. 2013, <<http://books.sipri.org/files/insight/SIPRIInsight1302.pdf>>.

Many of the states that have signed the ATT do not produce or export items covered by the treaty. These states may not have the need or, in many cases, the resources to create and maintain a complex arms transfer control system. At the same time, they are likely to be involved in the international arms trade as either import, transit or trans-shipment states, or may host entities involved in arms brokering or related activities.<sup>6</sup> Although these states may not need to create complex systems for controlling arms exports, they may seek to strengthen their transfer control systems and border controls, legislation and enforcement powers to enable the prevention, investigation and prosecution of illicit arms transfers.

### Assistance provisions under the Arms Trade Treaty

Article 16 of the ATT notes that states may request 'legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Such assistance may include stockpile management, disarmament, demobilization and reintegration programmes, model legislation, and effective practices for implementation'. States 'in a position to do so shall provide such assistance, upon request'. Such assistance may be offered and received via 'the United Nations, international, regional, subregional or national organizations, non-governmental organizations, or on a bilateral basis'.<sup>7</sup> The text also states that a voluntary trust fund will be set up to assist states with treaty implementation. Article 18 notes that the secretariat charged with assisting states parties in the effective implementation of the treaty will, among other actions, carry out the 'matching of offers of and requests for assistance for Treaty implementation'.<sup>8</sup> The preamble to the ATT also notes that regional organizations can assist states parties in implementing the treaty, and that civil society can also support implementation, in recognition of its role in strengthening transfer controls.

<sup>6</sup> Bromley, M. and Holtom, P., 'Import controls and an arms trade treaty', SIPRI Background Paper, July 2011, <[http://books.sipri.org/product\\_info?c\\_product\\_id=428](http://books.sipri.org/product_info?c_product_id=428)>; and Holtom, P. and Bromley, M., 'Transit and trans-shipment controls in an arms trade treaty', SIPRI Background Paper, July 2011, <[http://books.sipri.org/product\\_info?c\\_product\\_id=427](http://books.sipri.org/product_info?c_product_id=427)>.

<sup>7</sup> Arms Trade Treaty, signed 2 Apr. 2013, <[http://treaties.un.org/doc/Treaties/2013/04/2013041012-01PM/Ch\\_XXVI\\_08.pdf#page=21](http://treaties.un.org/doc/Treaties/2013/04/2013041012-01PM/Ch_XXVI_08.pdf#page=21)>, Article 16.

<sup>8</sup> Arms Trade Treaty (note 7), Article 18.

**Box 2.** Ongoing or planned Arms Trade Treaty-related assistance efforts

- The United Nations Office for Disarmament Affairs has produced a guide for states, detailing how to sign and ratify the Arms Trade Treaty (ATT).<sup>a</sup>
- The Small Arms Survey and the Geneva Academy of International Humanitarian Law and Human Rights are preparing a legal commentary on the ATT, to be published in 2014.<sup>b</sup>
- The Stimson Center is preparing a project to assist states to understand the measures they need to take in order to ensure effective implementation of the ATT, as well as a baseline survey of states' ability to do this.
- SIPRI has produced a summary of obligations contained in the ATT to help states identify gaps in their national control systems.<sup>c</sup>
- New Zealand is planning to draft and disseminate minimal model legislation for states in the Pacific region.
- In May 2013 Parliamentarians for Global Action (PGA) organized a workshop for parliamentarians in Dar es Salaam, Tanzania, on ATT ratification.<sup>d</sup>
- PGA has published a parliamentary toolkit on the ATT.<sup>e</sup>
- Mexico and PGA are planning a series of workshops for parliamentarians in Latin America and the Caribbean to discuss ratification-related issues.<sup>f</sup>
- The European Union (EU) has set up an ATT-related implementation assistance programme.
- The Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA) is planning an African regional meeting.<sup>g</sup>
- Control Arms is planning a series of regional meetings and will develop an implementation assistance website.<sup>h</sup>
- Saferworld will carry out national assessments in a limited number of countries to identify the different types of ATT-related implementation assistance that will be needed.<sup>i</sup>
- The Geneva Forum is working on needs assessment seminars.<sup>j</sup>
- The Small Arms Survey is looking at the interface between the ATT and other existing instruments such as the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (POA) and the UN 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).<sup>k</sup>
- The participating states of the Wassenaar Arrangement have announced that they are 'ready to share their experience and expertise with other states, as suggested in the ATT'.<sup>l</sup>
- The International Committee of the Red Cross is planning to update its guidelines on international humanitarian law and arms transfer controls.<sup>m</sup>
- Amnesty International is planning to update its guidelines on human rights and arms export controls.<sup>n</sup>

<sup>a</sup> UN Office for Disarmament Affairs, 'Signature and ratification, Arms Trade Treaty, robust standards for responsible transfers', <[http://www.un.org/disarmament/ATT/docs/ATT\\_info\\_kit.pdf](http://www.un.org/disarmament/ATT/docs/ATT_info_kit.pdf)>.

<sup>b</sup> Geneva Academy of International Humanitarian Law and Human Rights, Arms Trade Treaty Project, <<http://www.geneva-academy.ch/policy-studies/ongoing/arms-trade-treaty-project-in-weapons-in-international-law>>.

<sup>c</sup> Holtom, P. and Bromley, M., 'Next steps for the Arms Trade Treaty: securing early entry into force', *Arms Control Today*, June 2013.

<sup>d</sup> Parliamentarians for Global Action (PGA), 'PGA regional parliamentary workshop on the Arms Trade Treaty—the role of parliamentarians', 29–30 May 2013, <<http://www.pgaction.org/activity/2013/pga-regional-parliamentary-workshop-on-the-att.html>>.

<sup>e</sup> Parliamentarians for Global Action, 'Parliamentary toolkit on the Arms Trade Treaty', 24 July 2013, <<http://www.pgaction.org/pdf/englishpgaparltoolkitatt.pdf>>.

<sup>f</sup> 'Parliamentarians actively promoting PGA ATT signature/ratification campaign in 45 countries worldwide', 24 July 2013, <<http://www.pgaction.org/activity/2013/mps-actively-promoting-pga-att-signature-and-ratification.html>>.

<sup>g</sup> Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA), <<http://www.recsasec.org/>>.

<sup>h</sup> Control Arms, <<http://www.controlarms.org/>>.

<sup>i</sup> Saferworld, 'Arms Trade Treaty', <<http://www.saferworld.org.uk/what/arms-trade-treaty->>.

<sup>j</sup> Geneva Forum <<http://www.genevaforum.ch/>>.

<sup>k</sup> Small Arms Survey, <<http://www.smallarmssurvey.org/>>.

<sup>l</sup> Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, 'Public statement by the Wassenaar Arrangement on the Arms Trade Treaty (ATT)', 3 June 2013, <[http://www.wassenaar.org/publicdocuments/2013/PublicStatementbytheWassenaarArrangementontheArmsTradeTreaty\(ATT\).pdf](http://www.wassenaar.org/publicdocuments/2013/PublicStatementbytheWassenaarArrangementontheArmsTradeTreaty(ATT).pdf)>.

<sup>m</sup> International Committee of the Red Cross (ICRC), <<http://www.icrc.org/eng/>>; and ICRC, *Arms Transfer Decisions: Applying International Humanitarian Law Criteria* (ICRC: Geneva: June 2007).

<sup>n</sup> Amnesty International, 'Arms control and human rights', <<http://www.amnesty.org/en/campaigns/control-arms>>.

The ATT's provisions exclusively relate to assisting states with treaty implementation after it enters into force; the text does not elaborate on how states will be helped to prepare to put in place systems to fulfil treaty commitments before the ATT enters into force. A number of states, international and regional organizations and NGOs have already indicated that they are willing to provide assistance to states prior to the treaty's entry into force (see box 2). Many states, NGOs and international organizations are already engaged in a range of efforts aimed at strengthening transfer controls that are of relevance for effective implementation of the ATT (see section III).<sup>9</sup>

The UN Office for Disarmament Affairs (UNODA), together with Australia, Denmark, Germany, the Netherlands and Spain, has established an interim 'trust facility' to provide support for early ratification and entry into force of the ATT. The UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR) initiative sought project proposals during September and October 2013 for projects to be undertaken in 2014 that would support early ratification of the treaty by as many countries as possible via the provision of legislative and technical assistance.<sup>10</sup>

### III. ONGOING OUTREACH AND ASSISTANCE EFFORTS OF RELEVANCE TO THE ARMS TRADE TREATY AND POTENTIAL LESSONS

#### Ongoing outreach and assistance efforts

Outreach and assistance are two methods for seeking to strengthen the transfer controls of a state. Outreach refers to informing states about particular practices, principles or standards in the field of transfer controls and to encourage their adoption. States can conduct outreach in several ways. First, websites can provide information on principles, standards, activities, practices and recent developments. Second, bilateral or multilateral activities (e.g. seminars, workshops, study visits or consultations) can raise awareness about particular standards and practices. Assistance

<sup>9</sup> 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, <[http://books.sipri.org/product\\_info?c\\_product\\_id=447](http://books.sipri.org/product_info?c_product_id=447)>.

<sup>10</sup> For more information see UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR), UN Office for Disarmament, <<http://www.un.org/disarmament/UNSCAR/>>.

refers to helping states to implement particular practices, principles or standards in the field of transfer controls.<sup>11</sup> It can include helping states (a) to review, revise or draft transfer control laws and regulations; (b) to enhance national capacity and awareness in administrative structures; (c) to promote inter-agency cooperation and coordination; and (d) to strengthen government relations with relevant areas of industry and improve the latter's awareness of relevant regulations.<sup>12</sup> It can also include material assistance to help with inter-agency cooperation for licensing and enforcement. In both cases, efforts involve a wide range of ministries and government agencies, such as those that deal with foreign affairs, defence, internal affairs, justice and economy.

Since the early 1990s Japan, the United States and European states have been involved in a range of outreach and assistance efforts aimed at strengthening the transfer controls of other countries, primarily in Central and Eastern Europe and in Asia.<sup>13</sup> Regional organizations such as the EU, the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS) and various UN agencies have also provided assistance, often using governmental and non-governmental experts. The primary motive for most efforts in recent years has been to prevent the proliferation of weapons of mass destruction, often in the context of helping states to implement obligations under UN Security Council Resolution 1540.<sup>14</sup> As a result, the focus of most outreach and assistance efforts has been improving controls on transfers of dual-use goods and technologies.<sup>15</sup>

Other efforts have focused on helping states in Africa, Asia and the Pacific, Europe and Latin America to counter small arms and light weapons (SALW) trafficking, often in the context of helping states to

<sup>11</sup> Holtom, P. and Mićić, I., 'European Union arms export control outreach activities in Eastern and South Eastern Europe', Non-proliferation Papers no. 14, EU Non-proliferation Consortium, Apr. 2012, <<http://www.nonproliferation.eu/activities/activities.php>>.

<sup>12</sup> See e.g. US State Department, 'The EXBS program', [n.d.], <<http://www.state.gov/t/isn/ecc/c27911.htm>>; and German Federal Office of Economics and Export Control (BAFA), 'General project information', [n.d.], <[http://www.bafa.de/eu\\_outreach/coe5/general\\_project\\_information/index.html](http://www.bafa.de/eu_outreach/coe5/general_project_information/index.html)>.

<sup>13</sup> Bauer (note 5).

<sup>14</sup> UN Security Council Resolution 1540, 28 Apr. 2004.

<sup>15</sup> Dual-use items have both civil and military applications, in contrast to military equipment and technology, which are items specially designed, developed or modified for military use. For more information see Bauer (note 5).

implement the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (POA) and regional instruments.<sup>16</sup> In many states the laws, administrative procedures, agencies and staff responsible for transfer controls for dual-use goods and technologies overlap with those for conventional arms, including SALW. As a result, outreach and assistance aimed at improving controls on dual-use goods or SALW transfers is also of relevance for ATT-related efforts.

In practical terms, existing outreach and assistance efforts provide valuable lessons that could be usefully applied to future ATT-related efforts. In certain cases, they provide guidelines, model legislation and templates for use in ATT-related assistance efforts. In other cases, they constitute an ongoing series of seminars or workshops to which ATT-related elements can be added. This is equally true for ATT-related outreach and assistance efforts provided both before and after the ATT's entry into force. Examples of transfer control outreach and assistance activities by states and international and regional organizations are provided below. However, they only represent an indicative list. Currently, no central repository exists where information on all such activities is collected. Mapping the full range of ongoing outreach and assistance activities in the field of transfer control assistance would be of great benefit to those now engaged in such programmes and for future ATT-related efforts.<sup>17</sup>

#### *Outreach and assistance efforts by states*

Japan has engaged in a range of outreach activities aimed at strengthening transfer controls via high-level forums, such as the annual Asian Senior-level Talks on Non-Proliferation (ASTOP), for senior government officials in Asia to foster common understandings and further cooperation for non-proliferation.<sup>18</sup> Assistance activities include the annual Asian Export Control Seminar, which is aimed at strengthening export controls via sharing experiences and practices.<sup>19</sup> Japan also sponsors training workshops and seminars on

dual-use transfer controls for Asian governments, which are carried out by the Japan International Cooperation Agency (JICA). Japan's Centre for Information on Security Trade Controls (CISTEC) also arranges industry outreach seminars in cooperation with other Asian states.

The USA has been actively engaged in outreach and assistance activities for the development and implementation of arms transfer controls since the early 1990s. A number of agencies carry out these activities. With regards to assistance, the US Government's 'premier initiative' for helping states to 'ensure that their trade control systems meet international standards' is the Export Control and Related Border Security (EXBS) programme.<sup>20</sup> EXBS had a budget of \$55 million for financial year 2013 to conduct activities in 60 countries.<sup>21</sup> Also of relevance are the Department of Energy, which provides export control assistance, and the International Counterproliferation Program, which is implemented by the Defense Threat Reduction Agency (DTRA), managed by the Office of the Secretary of Defense at the Department of Defense.<sup>22</sup> However, it is unclear at the time of writing if the USA will be able to implement ATT-focused programmes. A bill introduced in the US House of Representatives aims to prohibit funds being used by the Department of State to implement the ATT or 'conduct activities relevant to the Arms Trade Treaty', unless the ATT has been signed by the president, has received the advice and consent of the Senate, and has been the subject of implementing legislation by the US Congress.<sup>23</sup> Similar language is contained in the National Defense Authorization Act (NDAA) for financial year 2014.<sup>24</sup> While existing assistance work may indirectly specifically help states

<sup>20</sup> US State Department, 'About us', [n.d.], <<http://www.state.gov/t/isn/ecc/c27910.htm>>.

<sup>21</sup> US State Department (note 12).

<sup>22</sup> Bauer (note 5).

<sup>23</sup> 'United Nations Arms Trade Treaty', Sec. 7080 of a bill making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2014, and for other purposes, 18 July 2013, <<http://appropriations.house.gov/uploadedfiles/bills-113hr-fc-ap-fy2014-ap00-stateforop.pdf>>, p. 191.

<sup>24</sup> 'Limitation on availability of funds to implement the Arms Trade Treaty', Sec. 1262 of H.R. 1960 an act to authorize appropriations for fiscal year 2014 for military activities of the Department of Defense, for military construction, and for defence activities of the Department of Energy, to prescribe military strengths for such fiscal year, and for other purposes, 1113th Congress, 1st Session, <<http://www.gpo.gov/fdsys/pkg/BILLS-113hr1960eh/pdf/BILLS-113hr1960eh.pdf>>, p. 726.

<sup>16</sup> United Nations, 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.

<sup>17</sup> Holtom and Bromley (note 9), p. 15.

<sup>18</sup> Japanese official, Email correspondence with author, 20 June 2012.

<sup>19</sup> Japanese official (note 18).

with the processes of ATT signature, ratification and implementation, it will not focus on this end.

EU member states have conducted outreach and assistance programmes in the fields of dual-use and conventional arms transfers. In recent years, the most active states have been Austria, Germany, Hungary, the Netherlands, Poland, Romania, Spain, Sweden and the United Kingdom.<sup>25</sup> A table containing information on outreach and assistance provided by EU member states has been published in the EU annual report since 2006.<sup>26</sup> The only activity supported by an EU member state and reported in the latest EU annual report—published in December 2012 and covering events during 2011–12—was a seminar on the ATT organized by the Geneva Forum in collaboration with the Dutch Ministry of Foreign Affairs.<sup>27</sup> Licensing officers and government officials from EU member states continue to participate in assistance activities funded by the EU and implemented by the German Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA), discussed below, as well as under the EXBS programme discussed above.

Other states are also willing and able to provide assistance to strengthen transfer control systems in third states.<sup>28</sup> For example, 43 states have offered assistance to help such states implement UN Security Council Resolution 1540.<sup>29</sup> Thirteen of these states have explicitly mentioned their willingness to provide assistance on export controls—10 EU member states and Norway, Russia and the USA. Additionally, expertise, training and financial assistance have been offered by states in Africa, Asia and Latin America that do not have established programmes for export control assistance.

New Zealand has provided assistance to South Pacific states with regard to supporting the promotion

<sup>25</sup> See EU annual reports according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L335, 13 Dec. 2008.

<sup>26</sup> Eighth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, *Official Journal of the European Union*, C250, 16 Oct. 2006, pp. 345–46.

<sup>27</sup> Fourteenth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, C386, 14 Dec. 2012, p. 430.

<sup>28</sup> In EU context, 'third states' are non-EU member states.

<sup>29</sup> United Nations, Security Council, 1540 Committee, 'Summary offers of assistance from member states', <<http://www.un.org/en/sc/1540/assistance/offers-of-assistance/states.shtml>>.

of the POA, but is careful to 'only offer assistance when requested to do so by the states concerned'.<sup>30</sup> This statement highlights the added value of collating the different approaches that potential donors take when considering the provision of assistance.

Several states in Africa have reported providing training to their neighbours to combat SALW trafficking and prevent diversion. For example, Côte d'Ivoire has supported two regional programmes for specialist training on small arms stockpile management and security in Mali and Nigeria, while Ghana has provided training to combat SALW proliferation at the Kofi Annan International Peace-keeping and Training Centre to Liberian immigration and border officers to enable them to perform their work better, including the detection and seizure of SALW.<sup>31</sup> Australia has played an important role in facilitating this kind of 'South–South' sharing of experience with regard to the ATT and the POA. For example, in February–March 2012 Australia hosted a workshop on the ATT for Pacific Islands states on the ATT and the POA. Representatives of Caribbean states attended to share their experiences on the challenges of the illicit SALW trade from the perspective of small island developing countries in another part of the world.<sup>32</sup>

#### *Outreach and assistance efforts by United Nations agencies*

Various UN agencies have been involved in providing or commissioning experts to develop best practice guidelines and software tools, training of licensing and customs officials and reviews of national laws and regulations. UNODA and its regional centres in Lima, Peru (UN Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean, UNLIREC), in Kathmandu, Nepal (UN Regional Centre for Peace and Disarmament in Asia and the Pacific, UNRCPD) and in Lomé, Togo (UN Regional Centre for Peace and Disarmament in Africa, UNREC)

<sup>30</sup> United Nations, Programme of Action, Implementation Support System: PoA-ISS, New Zealand, Implementation of the International Tracing Instrument and Programme of Action, Feb. 2010. This and other country reports are available at <<http://www.poa-iss.org/NationalReport/NationalReports.aspx>>.

<sup>31</sup> Report of Côte d'Ivoire on implementation of the United Nations Programme of Action (note 30), p. 13; and Report submitted by the Republic of Ghana for the Fourth Biennial Meeting of States, 14–18 June 2010, New York, 2010 (note 30).

<sup>32</sup> Australia, National report on the Programme of Action, 2012 (note 30), p. 10.

**Box 3. The Wassenaar Arrangement and the Arms Trade Treaty**

The Wassenaar Arrangement promotes transparency and the exchange of information and views on transfers of conventional arms and related dual-use goods and technologies.<sup>a</sup> It encourages responsible behaviour and seeks to prevent ‘destabilising accumulations’ of such items.<sup>b</sup> Membership of the Wassenaar Arrangement is open to all states that are in compliance with its agreed standards and criteria.<sup>c</sup> Mexico became the 41st Wassenaar Arrangement member in January 2012.<sup>d</sup> Applications from several other states are pending.

The Wassenaar Arrangement regularly produces publicly accessible best practice guidelines on different aspects of controlling transfers of dual-use goods and conventional arms and also maintains and updates controls lists in the field of conventional arms and dual-use goods which are mandatory for all participating states and have been adopted by a number of non-participating states.<sup>e</sup> It regularly undertakes outreach to non-participating states, industry and other interested groups, including bilateral dialogue with non-participating states and technical briefings on control list changes. The aim of a technical briefing is to promote the Wassenaar Arrangement and encourage voluntary adherence to its standards by non-participating states.<sup>f</sup>

As the Wassenaar Arrangement has noted, the ‘goals of the Arms Trade Treaty align with those of the Wassenaar Arrangement, including promotion of transparency and greater responsibility in transfers of conventional arms, thus preventing destabilizing accumulations’.<sup>g</sup> Participating states have announced that they are ‘ready to share their experience and expertise with other states, as suggested in the ATT’ and have asked the Wassenaar Arrangement Secretariat to ‘monitor opportunities to contribute to international cooperation with regard to the ATT’.<sup>h</sup> The Wassenaar Arrangement’s guidelines and best practice documents can be used by providers and recipients of ATT-related outreach and assistance when seeking to strengthen states’ export control systems. Moreover, the Wassenaar Arrangement Munitions List can be adopted by states seeking to have up-to-date and comprehensive national control lists that encompass all items covered by the ATT.<sup>i</sup> There is also scope for including ATT-focused modules in the Wassenaar Arrangement’s outreach and assistance activities.

<sup>a</sup> For a brief description of the Wassenaar Arrangement see annex B, section III, in this volume; and the Wassenaar Arrangement website, <<http://www.wassenaar.org/>>.

<sup>b</sup> Wassenaar Arrangement, Guidelines and procedures, including the initial elements’, <<http://www.wassenaar.org/guidelines/index.html>>.

<sup>c</sup> Wassenaar Arrangement, Plenary statement, 2013, <[http://www.wassenaar.org/publicdocuments/2013/WA Plenary Public Statement 2013.pdf](http://www.wassenaar.org/publicdocuments/2013/WA%20Plenary%20Public%20Statement%202013.pdf)>.

<sup>d</sup> Wassenaar Arrangement, ‘Wassenaar Arrangement public statement’, Vienna, 11–12 Dec. 2012, <[http://www.wassenaar.org/publicdocuments/index\\_PS\\_PS.html](http://www.wassenaar.org/publicdocuments/index_PS_PS.html)>.

<sup>e</sup> Recent examples include ‘Best Practice Guidelines on Subsequent Transfer (Re-Export) Controls for Conventional Weapons Systems contained in Appendix 3 to the WA Initial Elements’ and ‘Elements for Controlling Transportation of Conventional Arms between Third Countries’. Wassenaar Arrangement, ‘Guidelines and procedures, including the initial elements’, <<http://www.wassenaar.org/guidelines/index.html>>.

<sup>f</sup> Wassenaar Arrangement, ‘Wassenaar Arrangement public statement’, Vienna, 11–12 Dec. 2012, <[http://www.wassenaar.org/publicdocuments/index\\_PS\\_PS.html](http://www.wassenaar.org/publicdocuments/index_PS_PS.html)>.

<sup>g</sup> Wassenaar Arrangement, ‘Public Statement by the Wassenaar Arrangement on the Arms Trade Treaty (ATT)’, 3 June 2013, <[http://www.wassenaar.org/publicdocuments/2013/Public Statement by the Wassenaar Arrangement on the Arms Trade Treaty \(ATT\).pdf](http://www.wassenaar.org/publicdocuments/2013/Public%20Statement%20by%20the%20Wassenaar%20Arrangement%20on%20the%20Arms%20Trade%20Treaty%20(ATT).pdf)>.

<sup>h</sup> Wassenaar Arrangement (note g); and Wassenaar Arrangement (note c).

<sup>i</sup> Wassenaar Arrangement, ‘List of dual-use goods and technologies and munitions list’, <<http://www.wassenaar.org/controllists/index.html>>.

have carried out activities related to the development and enforcement of conventional arms transfer controls, particularly SALW transfer controls. UNODA has also produced best practice guides on aspects of conventional arms transfer controls, including a recent report on end use and end-use control systems.<sup>33</sup>

The South Eastern and Eastern Europe Clearinghouse for the Control of SALW (SEESAC)

<sup>33</sup> UN Office for Disarmament Affairs, ‘Study on the development of a framework for improving end-use and end-user control systems’, UNODA Occasional Papers no. 21, Dec. 2011, <<http://www.un.org/disarmament/HomePage/ODAPublications/OccasionalPapers/PDF/OP21.pdf>>.

has assisted states with the development of national and regional reports on arms exports; creating and hosting an online ‘brokering database’; and producing guidelines on SALW brokering controls and internal compliance programmes.<sup>34</sup> The UN Institute for Disarmament Research (UNIDIR) has produced a

<sup>34</sup> South Eastern and Eastern Europe Clearinghouse for the Control of SALW (SEESAC), ‘Arms export control’, [n.d.] <<http://www.seesac.org/project.php?l1=126&l2=136>>; SEESAC, ‘Brokering database’, [n.d.] <<http://www.seesac.org/project.php?l1=126&l2=136&l3=166>>; SEESAC, ‘Implementation of the EU Common Position on the Control of Arms Brokering’, 2009, <<http://www.seesac.org/res/files/publication/374.pdf>>; and SEESAC, ‘Internal compliance programmes’, 2011, <<http://www.seesac.org/res/files/publication/327.pdf>>.



range of handbooks and best practice guidelines in areas relating to SALW transfer controls and has implemented EU-funded regional seminars on an ATT (see below). The UN Coordinating Action on Small Arms (CASA) is in the process of drafting a set of international standards covering all areas of SALW controls, including national controls on international transfers of SALW and on the end use of internationally transferred SALW.<sup>35</sup>

#### *Outreach and assistance efforts by regional and international organizations*

A large number of regional and international organizations have provided assistance to states that are interested in establishing or strengthening their transfer control systems and building the capacities of relevant enforcement agencies. The OAS has drafted a range of model legislation and regulations for member states to assist with the implementation of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (CIFTA). The OSCE has developed and circulated an electronic end-user certificate template and has provided best practice guides on national control of brokering activities and export control of SALW.<sup>36</sup>

The World Customs Organization (WCO) and Interpol are focused on providing or facilitating the provision of assistance and cooperation in areas relating to aspects of customs controls, border controls and law enforcement. These activities have clear implications for strengthening states' ability to implement their conventional arms transfer controls. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies regularly produces publicly accessible best practice guidelines on various aspects of controlling transfers of dual-use goods and conventional arms that can be of use to states seeking

<sup>35</sup> UN Coordinating Action on Small Arms (CASA), <<http://www.un-casa-isacs.org>>.

<sup>36</sup> Organization for Security and Co-operation in Europe (OSCE), Conflict Prevention Centre, 'OSCE helps control export of small arms and light weapons', [n.d.], <<http://www.osce.org/cpc/83173>>; OSCE, *Handbook of Best Practices on Small Arms and Light Weapons* (OSCE: Vienna, 2003); OSCE, Forum for Security Co-operation, 'Best Practice Guides on Small Arms and Light Weapons', Decision no. 5/03, FSC/DEC/5/03, 18 June 2003; and OSCE, Forum for Security Co-operation, 'OSCE principles on the control of brokering in small arms and light weapons', Decision no. 8/04, FSC.DEC/8/04, 24 Nov. 2004.

to bring their national systems in to line with ATT requirements (see box 3).

#### *Outreach and assistance efforts by the European Union*

The EU funds separate assistance projects to tackle SALW trafficking, and to develop and implement controls on transfers of dual-use items and conventional arms. The EU's outreach and assistance efforts in the field of dual-use transfer controls began in 2005 and are now the second biggest in the world after those of the USA, involving nearly 30 countries in Europe Africa, Asia and the Middle East.<sup>37</sup> Current activities are implemented by BAFA, using a pool of government officials from EU member states with experience in the fields of drafting laws, licensing, industry outreach and enforcement.<sup>38</sup> Under the Instrument for Stability (IFS) the EU allocated €14 million (\$17.7 million) to dual-use export control assistance efforts for the period 2007–13.<sup>39</sup> EU outreach and assistance for improving dual-use transfer controls is also provided via the EU Chemical, Biological, Radiological and Nuclear (CBRN) Centres of Excellence Initiative, which is funded by the IFS and intended to build capacity in countries outside Europe to mitigate CBRN risks, including illicit transfers, via a range of measures, including transfer and border controls.<sup>40</sup>

Complementary EU assistance efforts in the field of conventional arms are more limited.<sup>41</sup> The main activities have been annual regional seminars and study visits to EU member states for a small number of states in Eastern Europe, South Eastern Europe, the Middle East and North Africa. The seminars and study visits are intended to promote the criteria and principles of the EU Code of Conduct on Arms Exports

<sup>37</sup> Bauer (note 5).

<sup>38</sup> German Federal Office of Economics and Export Control (BAFA), 'EU cooperation in export control of dual-use goods', <<http://www.eu-outreach.info>>; and SIPRI, 'Current projects: EU project on strengthening export controls of dual-use goods', <<http://www.sipri.org/research/disarmament/dualuse/capacity-building/current>>.

<sup>39</sup> Six-monthly progress report on the implementation of the EU Strategy against the proliferation of weapons of mass destruction (2012/II), *Official Journal of the European Union*, C37, 9 Feb. 2013.

<sup>40</sup> Mignone, A., 'The European Union's Chemical, Biological, Radiological and Nuclear Centres of Excellence Initiative', Non-proliferation Papers no. 28, EU Non-proliferation Consortium, June 2013, <<http://www.nonproliferation.eu/activities/activities.php>>.

<sup>41</sup> Holtom and Bromley (note 9); and Council Decision 2012/711/CFSP of 19 Nov. 2012 on support for Union activities in order to promote, among third countries, the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP, *Official Journal of the European Union*, L321, 20 Nov. 2012.

and the EU Common Position on arms export control; assist third countries in drafting and implementing effective export control legislation; aid countries in the training of licensing officers; help countries in the elaboration of national reports on arms exports and other forms of scrutiny; and encourage support for the ATT. Participants have been drawn from licensing and customs agencies, ministries of foreign affairs, defence and economic affairs, and industry from the EU and partner states. Seminars in South Eastern and Eastern Europe have also involved participants discussing case studies drawing on real licensing decisions.

Most of the EU projects related to the EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition (SALW Strategy) have focused on supporting the POA, with a particular emphasis on surplus destruction and stockpile management and marking. Projects have been funded largely via EU Council decisions, focusing on partners in Eastern and South Eastern Europe, Africa, Asia and Latin America and have been implemented by UN agencies, regional organizations and NGOs. Recent examples include Council Decision 2010/179/CFSP, which was implemented by SEESAC and focused on SALW stockpile management and surplus destruction in South Eastern Europe; Council Decision 2010/765/CFSP, which was implemented by the Stockholm International Peace Research Institute (SIPRI) and focused on screening and targeting aircraft that are likely to be involved in the illicit trade of SALW; Council Decision 2012/662/CFSP, which is being implemented by the OSCE and focuses on reducing the risk of the illicit trade in and excessive accumulation of SALW in the OSCE region; and Council Decision 2012/121/CFSP, which is being implemented by Saferworld and is focused on promoting Africa–China–EU dialogue and cooperation on conventional arms controls.<sup>42</sup> Activities have also been funded via the IFS, such as support for the work on effective SALW management by the Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA).<sup>43</sup>

<sup>42</sup> Fourteenth progress report on the implementation of the EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition (2012/II), *Official Journal of the European Union*, C138, 17 May 2013, pp. 9–11.

<sup>43</sup> Fourteenth progress report on the implementation of the EU Strategy (note 42), p. 11.

### *Outreach and assistance efforts by non-governmental organizations*

The International Committee of the Red Cross (ICRC) has produced a handbook detailing how to apply principles of international humanitarian law when making decisions about arms transfers, and Amnesty International has produced a guide on applying principles from international human rights law when making decisions on export licences.<sup>44</sup> SIPRI's Dual-use and Arms Trade Control Programme provides technical expertise for capacity-building projects for licensing, customs and prosecution services in Asia, Europe and the Middle East.<sup>45</sup> The University of Georgia's Center for International Trade and Security (CITS) identifies loopholes in national licensing and enforcement practices and policies and then provides technical assistance to close the gaps.<sup>46</sup> To date, it has carried out assessments in 70 countries. RECSA has carried out assessments of states' national legislation to identify the extent to which they are in line with the 2000 Nairobi Declaration and the 2004 Nairobi Protocol and other relevant international commitments.<sup>47</sup>

### **Lessons from ongoing outreach and assistance efforts**

Instruments aimed at assisting states to develop improved transfer control systems have had significant success in recent years. Some preliminary work has been undertaken to highlight some of the lessons

<sup>44</sup> International Committee of the Red Cross, 'Arms transfer decisions: applying international humanitarian law criteria', May 2007, <<http://www.icrc.org/eng/resources/documents/publication/p0916.htm>>; and Amnesty International, 'How to apply human rights standards to arms transfer decisions', 2008, <<http://www.amnesty.org/en/library/info/ACT30/008/2008>>.

<sup>45</sup> SIPRI, Dual-use and Arms Trade Control Programme, <<http://www.sipri.org/research/disarmament/expcon>>.

<sup>46</sup> University of Georgia, Center for International Trade & Security (CITS), 'Mission', <<http://cits.uga.edu/mission/>>.

<sup>47</sup> These assessments also cover those aspects of the commitments relating to the development and enforcement of conventional arms transfer controls, particularly SALW transfer controls. See e.g. Hailu, T., 'The status of the implementation of the Nairobi Declaration and the Nairobi Protocol in Ethiopia: challenges and opportunities', 2010, <<http://www.recsasec.org/pdf/ethiopia.pdf>>; Nairobi Declaration: on the problem of the proliferation of illicit small arms and light weapons in the Great Lake Region and the Horn of Africa, Nairobi, 15 Mar. 2000, <<http://www.globalpolicy.org/component/content/article/204/42638.html>>; and Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, 21 Apr. 2004, <[http://www.recsasec.org/publications/Nairobi\\_Protocol.pdf](http://www.recsasec.org/publications/Nairobi_Protocol.pdf)>.

from these efforts that could be of relevance for states seeking to fulfil their ATT obligations. Some general principles from these studies are offered below.<sup>48</sup>

#### *Balance donor and partner interests*

Outreach and assistance programmes tend to be driven by the strategic priorities and interests of the donors.<sup>49</sup> However, the success of any assistance and capacity-building programmes depends on the interest and commitment of the partner state. Key elements for success include local ownership; common objectives, goals and understandings; and joint assessments and planning.<sup>50</sup> The importance of ensuring local ownership in outreach and assistance programmes is recognized in different fields, including for developing transfer control systems and capacities.<sup>51</sup> In particular, working together to develop need assessments, evaluations and reviews is a positive contribution to increasing ownership of assistance and capacity-building programmes.<sup>52</sup> Connected with this approach is the importance of treating partners as peers. However, the requests of some states that seek assistance are not answered. For example, Iraq's POA report of 2011 stated that, despite discussions on international assistance with UN agencies on meeting Iraq's needs with regard to sharing experience on combatting the illicit trade in SALW, developing national laws and regulations and so on, 'nothing has come of this'.<sup>53</sup>

When the partner country has agreed to abide by obligations and commitments at the global level, this can help to ensure local ownership of the process and generate the necessary political will to ensure a successful programme.<sup>54</sup> Under the ATT, states have made a clear political commitment to 'regulate the international trade in conventional arms' and

'prevent and eradicate the illicit trade in conventional arms'.<sup>55</sup> In contrast to the POA and UN Security Council Resolution 1540, this creates a clear political commitment that could help to frame outreach and assistance programmes in the field of conventional arms transfer controls.

#### *Recognize and adapt to local needs and capacities*

If the assistance provided is to have a positive and sustainable impact, it is important that the donor provides training or equipment that the partner can absorb and use and in line with their capabilities.<sup>56</sup> In the case of assistance to help states fulfil their ATT commitments, one potential obstacle is many states' lack of staff with adequate technical expertise to identify gaps and needs in national transfer control systems.<sup>57</sup> Another challenge is the inability to formulate requests for assistance in a way that attracts donors. For example, Trinidad and Tobago identified a number of areas for POA-related assistance, but also highlighted the need for assistance in 'formulating project proposals'.<sup>58</sup>

An additional challenge is faced when experts from states with well-developed transfer control systems provide assistance to states that have far more limited needs and capacities.<sup>59</sup> One way in which this challenge can be lessened is by using experts from states that have recently established or modernized national transfer control systems.<sup>60</sup> These experts can understand the challenges and perspective of the partner state. It is therefore worth considering mechanisms for including 'train-the-trainer' components in assistance programmes in order to enable the partner state to become a future provider of assistance to third states. The US EXBS programme uses technical experts from Estonia, Latvia, Lithuania, Poland and Romania, which have previously been beneficiaries of EXBS assistance programmes, to help deliver projects in South Eastern Europe and the Caucasus.

<sup>48</sup> Bauer (note 5); and Holtom and Bromley (note 9).

<sup>49</sup> Holtom, P. and van Veen, E., 'Serious about regulating arms exports? Donate here', International Peace Institute Global Observatory, 20 June 2013, <<http://theglobalobservatory.org/analysis/526-serious-about-regulating-arms-exports-donate-here.html>>.

<sup>50</sup> Bauer (note 5); and Holtom and Bromley (note 9).

<sup>51</sup> Paul, C. et al., *What Works Best When Building Partner Capacity and Under What Circumstances?* (RAND: Santa Monica, CA, 2013), p. 4; and Bauer (note 5), p. 11.

<sup>52</sup> Bauer (note 5), p. 11; and Maze, K., 'International assistance and cooperation in an ATT: possibilities for a future treaty', *UNIDIR Resources*, Jan. 2011, pp. 19–20.

<sup>53</sup> Iraqi Ministry of Interior, National report of the Republic of Iraq on small arms and light weapons, 2011 (note 30), p. 7.

<sup>54</sup> Holtom and Bromley (note 9), p. 13.

<sup>55</sup> Arms Trade Treaty (note 7), Article 1.

<sup>56</sup> Paul et al. (note 51), p. 4.

<sup>57</sup> Holtom and Bromley (note 9), p. 12.

<sup>58</sup> Trinidad and Tobago, National report on the Programme of Action, 2012 (note 30).

<sup>59</sup> Bauer (note 5), p. 16.

<sup>60</sup> Holtom and Bromley (note 9), p. 16.

*Long-term commitments are necessary to ensure sustainability*

Capacity-building and assistance programmes involve building trust and relations between donor and partner before undertaking capacity-building work and can take time to deliver positive results. Progress can also be slowed by ‘false starts, delays, or time consumed in establishing processes and routinizing interactions’.<sup>61</sup> However, it is also important to set targets for the short, medium and long term, working towards the goal of ensuring that capacity is built in the partner country rather than assistance being a substitute or replacement for local capacity.<sup>62</sup> One of the ways in which this can be achieved is by ensuring that assistance provides for the formalization of transfer control systems, investing in ‘laws and regulations, procedures, institutions and people, and engage with the full range of potential institutional partners’.<sup>63</sup> While human resources remain crucial for success, it is important to ensure that all expertise does not leave when an individual retires or changes position.

It is particularly important that the partner state is able to make a long-term practical and political commitment to the success of the programme. In recent years a number of states have undergone major reforms of their transfer control systems, drawing on assistance provided by states and international organizations. Crucial to the success of recent efforts in Albania and Mexico has been strong political commitment at the highest level to support the process over a sustained period of time.<sup>64</sup>

*Explore opportunities for coordinating assistance*

Several opportunities exist to coordinate assistance for strengthening transfer controls to implement the ATT. First, as noted above, there is clear potential to coordinate efforts to strengthen controls on transfers of dual-use goods, SALW and conventional arms.<sup>65</sup> The US EXBS programme already takes this approach. The ATT also provides potential avenues for developing synergies with other international assistance activities that are not focused on arms

transfer controls but which can have a positive impact in this area (e.g. customs and border controls, law enforcement, and judiciary and prosecution services). The connection could be strengthened by linking projects aimed at supporting ATT implementation with ongoing and planned security sector reform (SSR) activities.<sup>66</sup> Efforts have already been made to connect SSR activities with aspects of SALW control that are mentioned in the ATT. For example, the Organisation for Economic Co-operation and Development (OECD) Handbook on SSR includes a section on SALW controls that focuses on collection programmes and stockpile management.<sup>67</sup> Making this connection would help to make ATT assistance efforts eligible for existing funding mechanisms, particularly Official Development Assistance (ODA) funds.<sup>68</sup> Such funding could be considered appropriate, given the impact of the illicit arms trade on economic and social development. In certain cases, donor governments might be unwilling to use ODA funds in this way and NGO support for such a reallocation might be required.

The potential also exists to align ATT-related assistance efforts with ongoing work in the field of SALW stockpile management, and in disarmament, demobilization and reintegration (DDR) programmes. Article 16 on international assistance notes that assistance provided to help states implement the ATT may include ‘stockpile management [and] disarmament

<sup>66</sup> In the EU context, SSR is understood to cover the ‘core security actors’ (i.e. armed forces, police, gendarmeries, presidential guards, intelligence and security services, etc.), ‘security management and oversight bodies’ (i.e. government ministries and parliaments) and the ‘justice and law enforcement institutions’ (i.e. courts and prosecutors). SSR is understood as a development-oriented activity aimed at creating an ‘accountable, effective and efficient security system, operating under civilian control consistent with democratic norms and principles of good governance, transparency and the rule of law, and acting according to international standards and respecting human rights’. Council of the European Union, ‘EU concept for ESDP support to security sector reform (SSR)’, 12566/4/05 REV 4, 13 Oct. 2005, <<http://register.consilium.europa.eu/pdf/en/05/st12/st12566-re04.en05.pdf>>; and Commission of the European Communities, ‘A concept for European Community support for security sector reform’, COM(2006) 253 final, 24 May 2006, <[http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0253en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0253en01.pdf)>.

<sup>67</sup> Organisation for Economic Co-operation and Development (OECD), *OECD DAC Handbook on Security System Reform (SSR): Supporting Security and Justice* (OECD: Paris, 2007), pp. 106–107.

<sup>68</sup> The OECD Guidelines on SSR are contained in Organisation for Economic Co-operation and Development (OECD), *Security System Reform and Governance*, DAC Guidelines and Reference Series (OECD: Paris, 2005), p. 20. See also Oxfam, ‘Armed robbery: how the poorly regulated arms trade is paralysing development’, Oxfam Briefing, June 2012, <<http://www.oxfam.org/sites/www.oxfam.org/files/tb-development-arms-trade-treaty-130612-en.pdf>>, p. 5.

<sup>61</sup> Paul et al. (note 51), p. 4.

<sup>62</sup> Maze (note 52), pp. 19–20.

<sup>63</sup> Bauer (note 5), p. 11.

<sup>64</sup> ‘Implementing the arms trade treaty: next steps’, Report from EU Non-proliferation Consortium seminar, Geneva, 17–18 June 2013, <<http://www.nonproliferation.eu/adhoc/report2.pdf>>.

<sup>65</sup> Bauer (note 5); Holtom and Bromley (note 9); and Holtom and Mičić (note 11).

demobilization and reintegration programmes'.<sup>69</sup> A number of states and international organizations, including the EU, are supporting and implementing SALW stockpile management and DDR programmes in different parts of the world.<sup>70</sup> Connecting these programmes with post-ratification ATT-assistance activities could serve to channel resources more effectively, avoid duplication of efforts and build political support in beneficiary states.

#### **IV. RECOMMENDATIONS FOR EU OUTREACH AND ASSISTANCE TO SUPPORT THE EFFECTIVE IMPLEMENTATION OF THE ARMS TRADE TREATY**

The EU has stated that it is willing to provide assistance to states that will sign and ratify an ATT but require assistance to fulfil their obligations.<sup>71</sup> To date, the EU has adopted three Council Decisions to promote understanding of the ATT during the negotiating process. Aspects of the model used for promoting the EU Common Position in South Eastern and Eastern Europe and North Africa, particularly the use of case studies, have been used in the second of two rounds of regional ATT seminars—funded by the EU and carried out by UNIDIR—aimed at supporting the preparatory process leading up to the 2012 UN conference on the ATT.<sup>72</sup> In December 2013 the EU established a dedicated ATT implementation support programme.<sup>73</sup> The key elements of the programme include tailored national assistance programmes to help beneficiary states develop their transfer control systems, ad hoc assistance workshops to address specific issues raised by a beneficiary state, a conference where beneficiary states can share experiences from the programme, and a series of regional seminars aimed at promoting the universalization of the ATT. As with other EU export

control assistance programmes, BAFA is responsible for implementation.

This section considers the potential partners for the EU's ATT assistance programme and its implementation and further development.

##### *Mainstreaming the ATT into existing EU assistance projects*

The EU could consider mainstreaming ATT-related activities into its ongoing outreach and assistance programmes related to dual-use, conventional arms and SALW transfer controls (see section III). Concerted efforts may be required to mainstream knowledge about the ATT for relevant EU assistance to third countries in order to strengthen border and customs services and SSR processes. Potential benefits could be achieved if ongoing outreach and assistance programmes for Eastern Europe, South Eastern Europe and North Africa could be used to promote signature and ratification of the ATT and effective implementation of the treaty. In order to ensure that participants' standards and practices are in line with ATT requirements seminar programmes could include ATT-focused modules on legislation reviews and reporting practices. Even if an explicit link with the ATT is not made, the ongoing implementation of EU programmes in these areas will benefit future ATT implementation. For example, assistance provided in the field of border and customs controls, even if it is provided in the context of dual-use goods or SALW transfer control assistance, will help to improve the partner states' ability to meet ATT commitments.

##### *Selecting the right partners for ATT-related assistance*

The Council Decision provides information on the process and criteria to be used for selecting partners. Requests for assistance to implement the ATT will be made to the High Representative of the Union for Foreign Affairs and Security Policy. The High Representative, in consultation with COARM and BAFA, will select partners using the following criteria: whether or not the state has signed the ATT, the likelihood of a successful outcome to the assistance efforts and the states' relevance to the global arms trade.<sup>74</sup> In addition to these criteria, it is important at this stage to consider needs, resources, expectations and experience. Thus, if the existing assistance models are to be used for EU assistance to build capacity with

<sup>69</sup> Arms Trade Treaty (note 7).

<sup>70</sup> See 'Regional approach to stockpile reduction (RASR)', <<http://www.rasrinitiative.org>>; and OAS Programa de Asistencia al Control de Armas y Destrucción de Municiones en Mal Estado en Centroamérica [Programme of assistance for control of arms and munitions, PACAM], <<http://www.oepacam.org>>.

<sup>71</sup> Statement by the European Union, 21 July 2010, Arms Trade Treaty Preparatory Committee, 'Statements on an arms trade treaty', <<http://www.un.org/disarmament/convarms/ATTPrepCom/Statements.html>>.

<sup>72</sup> UN Institute for Disarmament Research (UNIDIR), 'Supporting the arms trade treaty negotiations through regional discussions and expertise sharing', [n.d.] <<http://www.unidir.org/programmes/process-and-practice/supporting-the-arms-trade-treaty-negotiations-through-regional-discussions-and-expertise-sharing>>.

<sup>73</sup> Council Decision 2013/768/CFSP (note 4).

<sup>74</sup> Council Decision 2013/768/CFSP (note 4), p. 65.

**Box 4. Outreach to sceptical states**

Targeted outreach aimed at states that are sceptical of the Arms Trade Treaty (ATT) could be carried out both by the European Union (EU) and individual EU member states. In making the case for ATT ratification and signature, it could be emphasized that ATT ratification would serve to demonstrate the effectiveness of a state's national control system and would bring associated benefits. These points could be made during bilateral meetings on other foreign and security policy issues or during regional events that are specifically focused on the ATT.

It will be important to focus on the states that play the largest role in the international arms trade and have the greatest potential to influence the views of others. Among the 22 states that abstained from the United Nations General Assembly vote on adopting the draft ATT were two of the world's largest arms exporters—China and Russia—and India, the world's largest arms importer. Convincing these states to sign and ratify the ATT will require patient and nuanced lobbying efforts aimed at addressing those countries' national concerns without diluting the content of the treaty itself. These interactions could also demonstrate to sceptical countries the advantages of joining the ATT.

*Source:* Holtom, P. and Bromley, M., 'Next steps for the Arms Trade Treaty: securing early entry into force', *Arms Control Today*, June 2013.

regard to the ATT, it is to be expected that partner states will have existing arms production capacity or transfer controls already in place. The eligibility criteria for an ATT assistance programme will therefore have to be carefully applied in this regard.

Council Decision 2013/768/CFSP, envisages that states that abstained from the vote on the ATT in the General Assembly could be subject to targeted outreach activities in order to encourage signature of the ATT (see box 4).

*Outreach to support parliamentary processes related to the Arms Trade Treaty*

Council Decision 2013/768/CFSP references the need to raise awareness and ownership of the ATT among parliamentarians.<sup>75</sup> In many states, parliaments will play an important role in the process of ratifying the ATT, including drafting and approving amendments to existing or new legislation. This may prove difficult if parliamentarians have a limited understanding of the ATT or arms transfer controls. It is crucial to ensure that legislatures understand the importance of the ATT. Therefore, ATT awareness raising for parliamentarians is an important short-term priority. In addition to inviting parliamentarians to the regional seminars, detailed briefings could be provided in order to inform parliamentarians about the content of the ATT and encourage their support of the ratification process.

*Assistance with carrying out assessments of national legislation*

The EU ATT assistance programme includes joint needs assessments carried out by EU experts and experts from the partner state. These assessments would be facilitated by making use of information that states have already made available to pre-existing reporting instruments, such as those attached to the POA and UN Security Council Resolution 1540. Using this methodology, the 1540 Committee has generated far more detailed and accurate reports than those produced by other instruments that rely entirely on submissions compiled by states parties.

*Assistance with drafting national legislation*

Before being able to ratify and effectively implement the ATT, many states will need to undertake reforms of their transfer control systems in order to comply with its requirements. EU experts should provide beneficiary states with guidance and assistance in how to develop or strengthen their arms transfer control systems. These activities could also be supported by producing a set of short guides with basic information on the obligations contained in the ATT. The guides would constitute a toolkit demonstrating how to develop an effective and transparent arms transfer control system and should complement other planned and existing ATT implementation toolkits and handbooks (see box 2).

The use of such guides will be highly dependent on the existing transfer control capacity of the beneficiary country. In particular, generic guides will be more helpful to countries with limited or non-existent transfer control capacities. The guides could also be

<sup>75</sup> Council Decision 2013/768/CFSP (note 4), p. 62.

made available via an online web portal. Potential topics could include the key components of an effective transfer control system, the legal basis for an effective transfer control system, the development of a national control list, the definition of activities to be controlled, the administrative system for regulating transfers, and the documentation and information required for licensing authorities.

#### *Assistance with training licensing officers, customs and border officials*

As noted above, implementing the ATT will be an ongoing process that will require increased capacity in many areas. The EU has extensive experience in providing assistance to build capacity for licensing officers, customs and border officials. The benefits of this training are threefold. First, experienced licensing officers from EU member states and beneficiary states openly discuss their national policies and practices in the seminars. Second, partner countries' officials provide case studies based on challenges that they face and thus facilitate the sharing of knowledge, experience and sources of information for informing risk assessments. Third, the training provides an opportunity for licensing officers to exchange contact details, facilitate informal consultations and give advice.<sup>76</sup>

This is an area in which there is great potential for synergy with a number of assistance programmes for strengthening dual-use controls and customs and border controls more broadly. In the case of the EU, there are currently separate assistance programmes for dual-use items and conventional arms in a number of partner countries that are carried out by the same implementing agent, BAFA, but with a seeming lack of coordination. While it is likely that the two distinct programmes that use the same implementing agent and in many cases the same EU member state experts will continue, it seems worthwhile to explore methods to consolidate and save resources and perhaps move towards the US EXBS programme model of a comprehensive transfer control assistance programme in practice—even if a separation needs to be maintained between the programmes due to EU competency and financial instrument organization.

#### *Assistance with record keeping and reporting*

In order to demonstrate compliance with the ATT, states parties are required to submit a report to

the secretariat on 'measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures' and to follow up reports 'on any new measures undertaken in order to implement this Treaty'. States are also required to maintain records, pursuant to national laws, of their export authorizations or exports of arms that are covered by the ATT. Compiling and submitting the type of reports required by the ATT may prove burdensome for both large and small states. For example, a recent study of sub-Saharan African states' small arms controls found that training and equipment for record keeping for transfers was a particular 'challenge'.<sup>77</sup> However, the potential exists to develop synergies between the ATT reporting requirements and the reports associated with the POA and the UN Register of Conventional Arms (UNROCA). With its extensive experience of compiling and submitting reports, the EU is well placed to support a range of assistance activities aimed at helping states to comply with the reporting requirements laid down in the ATT.<sup>78</sup>

#### *Assistance with developing effective risk assessment mechanisms and prevention of diversion*

The ATT lacks clarity in certain areas, particularly those relating to risk assessment mechanisms. For example, a clear need exists to create common understandings of a number of articles—especially Articles 6 and 7—since some of the treaty's language is rather vague. The EU has indicated a willingness to help to fill this gap by providing modules on 'information sources relevant to the application of the ATT risk assessment criteria' in ad hoc assistance workshops.<sup>79</sup> This could be supported by producing guidelines and training modules on how to implement aspects of the ATT on an ongoing basis. The experience of the EU with regard to developing the user's guide could be helpful in this area. In addition, attention should focus on preventing diversion by building on activities to support implementation of the EU SALW Strategy. In particular, the EU could provide guidance for states as they seek to put in place measures to achieve one of the main objectives of the ATT: 'to prevent and eradicate the illicit trade in conventional

<sup>76</sup> Holtom and Mičić (note 11), p. 12.

<sup>77</sup> Small Arms Survey, 'Efficacy of small arms control measures and national reporting: learning from Africa', *Research Notes*, no. 33 (Aug. 2013), p. 3.

<sup>78</sup> Council Decision 2013/768/CFSP (note 4), p. 62.

<sup>79</sup> Council Decision 2013/768/CFSP (note 4), p. 63.

arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users’.

*Assistance with developing import, transit, trans-shipment and brokering controls*

As discussed above, many of the states that will be first to ratify the ATT will be small ones that lack the capacity to build and maintain a complex arms transfer control system. In addition, for many states provisions on import, transit, trans-shipment and brokering controls will be of greater relevance than those on export controls. A number of EU states are also small in size and have limited arms exports. Building on the experience of these states, the EU could consider developing resources to specifically target the needs of smaller states with limited arms exports as part of the ATT assistance programme. These resources should be aimed at showing states how to create a transfer control system that meets the requirements of the ATT (including those related to import, transit, trans-shipment and brokering controls), while not generating unnecessary administrative or financial burdens.

*Assistance with facilitating south-south cooperation and assistance*

The ATT provides an opportunity for creative thinking about international assistance. One example is consideration of how states could provide ‘in-kind’ assistance to each other. In particular, states that have undertaken reforms of their transfer control systems—but which are not traditional providers of international assistance in this area—could provide experience and training. In recognition of such opportunities, the regional seminars planned under Council Decision 2013/768/CFSP are intended, among other things, to provide an opportunity for states to explore ‘experiences and possibilities of South–South cooperation in the establishment and development of arms transfer control systems’.<sup>80</sup> The EU could also consider taking additional steps to help states to build networks that facilitate South–South cooperation in the field of arms transfer controls assistance. Such support could include mapping the offers of assistance made via the 1540 Committee and supporting workshops and seminars that facilitate the provision of such assistance.

<sup>80</sup> Council Decision 2013/768/CFSP (note 4), p. 64.



**ABBREVIATIONS**

ATT	Arms Trade Treaty
BAFA	Bundesamt für Wirtschaft und Ausfuhrkontrolle (German Federal Office of Economics and Export Control)
CBRN	Chemical, biological, radiological and nuclear
DDR	Disarmament, demobilization and reintegration
EU	European Union
EXBS	US Export Control and Related Border Security Programme
IFS	Instrument for Stability
NGO	Non-governmental organization
OAS	Organization of American States
ODA	Official Development Assistance
OSCE	Organization for Security and Co-operation in Europe
POA	UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
RECSA	Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States
SALW	Small arms and light weapons
SEESAC	South Eastern and Eastern Europe Clearinghouse for the Control of SALW
SSR	Security sector reform
UN	United Nations
UNIDIR	UN Institute for Disarmament Research
UNODA	UN Office for Disarmament Affairs

## A EUROPEAN NETWORK

In July 2010 the Council of the European Union decided to create a network bringing together foreign policy institutions and research centres from across the EU to encourage political and security-related dialogue and the long-term discussion of measures to combat the proliferation of weapons of mass destruction (WMD) and their delivery systems.

## STRUCTURE

The EU Non-Proliferation Consortium is managed jointly by four institutes entrusted with the project, in close cooperation with the representative of the High Representative of the Union for Foreign Affairs and Security Policy. The four institutes are the Fondation pour la recherche stratégique (FRS) in Paris, the Peace Research Institute in Frankfurt (PRIF), the International Institute for Strategic Studies (IISS) in London, and Stockholm International Peace Research Institute (SIPRI). The Consortium began its work in January 2011 and forms the core of a wider network of European non-proliferation think tanks and research centres which will be closely associated with the activities of the Consortium.

## MISSION

The main aim of the network of independent non-proliferation think tanks is to encourage discussion of measures to combat the proliferation of weapons of mass destruction and their delivery systems within civil society, particularly among experts, researchers and academics. The scope of activities shall also cover issues related to conventional weapons. The fruits of the network discussions can be submitted in the form of reports and recommendations to the responsible officials within the European Union.

It is expected that this network will support EU action to counter proliferation. To that end, the network can also establish cooperation with specialized institutions and research centres in third countries, in particular in those with which the EU is conducting specific non-proliferation dialogues.

<http://www.nonproliferation.eu>



## FOUNDATION FOR STRATEGIC RESEARCH

FRS is an independent research centre and the leading French think tank on defence and security issues. Its team of experts in a variety of fields contributes to the strategic debate in France and abroad, and provides unique expertise across the board of defence and security studies.

<http://www.frstrategie.org>



## PEACE RESEARCH INSTITUTE IN FRANKFURT

PRIF is the largest as well as the oldest peace research institute in Germany. PRIF's work is directed towards carrying out research on peace and conflict, with a special emphasis on issues of arms control, non-proliferation and disarmament.

<http://www.hsfk.de>



## INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES

IISS is an independent centre for research, information and debate on the problems of conflict, however caused, that have, or potentially have, an important military content. It aims to provide the best possible analysis on strategic trends and to facilitate contacts.

<http://www.iiss.org/>



## STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE

SIPRI is an independent international institute dedicated to research into conflict, armaments, arms control and disarmament. Established in 1966, SIPRI provides data, analysis and recommendations, based on open sources, to policymakers, researchers, media and the interested public.

<http://www.sipri.org/>