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Implications of States' Views on an Arms Trade Treaty

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Structure and purpose

UNIDIR has undertaken a study involving an analysis of states' views on an arms trade treaty (ATT) submitted to the Secretary-General during the consultation process that took place during 2007 following the adoption of Resolution A/RES/61/89, *Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms* (the ATT Resolution). The study involved a review of states' views and the preparation of a statistical analysis of the elements suggested by states for inclusion in an ATT. The results are contained in UNIDIR's report, *Analysis of States' Views on an Arms Trade Treaty* (the Analysis report); the report can be downloaded at <www.unidir.org/pdf/activites/pdf2-act349.pdf>.

The study then aimed to explore the implications of states' views on the possible scope of an ATT and the process as a whole. Sections 2 to 5 of this report review the background to the ATT initiative, the objective of an ATT and why one is needed. Sections 6 to 8 revisit the issues of feasibility, scope and parameters raised in the Analysis report, to look beyond the question of what items and criteria were nominated by states for inclusion and explore *why* their inclusion in an ATT is important and *how* they might be addressed in an ATT.

With respect to the transfer criteria nominated by states, numerous extracts taken from a range of existing instruments have been included in the annexes to show that a number of states are already committed to assessing arms transfers in accordance with certain standards, and also show the different ways in which such criteria are formulated. No attempt has been made in this report to compare these criteria or assess their adequacy or appropriateness for the purposes of an ATT. They are provided purely for illustration.

Section 9 provides an in-depth analysis of possible implementation and compliance mechanisms. This section takes the examples of implementation mechanisms suggested by states and provides a detailed analysis of why such mechanisms are necessary and what issues need to be considered when designing them. Examples of relevant measures in various arms control conventions are provided as are lessons learned from existing mechanisms promoting transparency in arms transfers (the UN Register) and restricting the transfer of arms (embargoes).

Section 10 provides possible options for structuring an ATT, although this issue is touched on throughout the document.

This report should be read in conjunction with the Analysis report, which provides the framework for this report, particularly as statistical references used here are drawn from the first report but do not repeat the identities of the included states.

It is hoped that this report will be a valuable resource for governments, non-governmental organizations and academics in helping to understand why and how discussions on an ATT have evolved, what the central issues and obstacles are, and what its scope could and should look like based on the views submitted by states to the Secretary-General.

Contents

Acknowledgements.....	<i>i</i>
1. Introduction.....	1
2. Overview of states' views.....	1
3. Historical overview	2
4. What is the objective of an ATT?	6
5. Why do we need an ATT?	7
5.1. Impact of the arms trade	7
5.2. Changing nature of the arms trade	8
5.3. Inadequacy of existing arms transfer control mechanisms	9
6. Feasibility of an ATT	10
7. Possible scope for an ATT	12
7.1. Categories of weapons or items	12
7.2. Activities and transactions	16
8. Parameters for an ATT: transfer criteria.....	21
8.1. Considerations based on existing obligations and commitments.....	23
8.2. Considerations based on likely user.....	25
8.3. Considerations based on likely use	29
8.4. Considerations based on likely impact	31
8.5. Considerations based on recipient country	34
9. Range of implementation measures.....	37
9.1. Creating the capacity to implement an ATT.....	37
9.2. Transparency and accountability	40
9.3. Compliance mechanisms	47
9.4. Institutional arrangements.....	51
10. Options for structure	54
11. Conclusion	55
Acronyms	57
Annex A List of international and regional agreements and arrangements.....	58
Annex B OSCE questionnaire	60
Annex C Examples of definitions of categories of weapons and items.....	62
Annex D Examples of provisions regarding activities and transactions.....	65
Annex E Transfer criteria nominated and committed to by states.....	66
Annex F Examples of transfer criteria based on existing obligations and commitments.....	74
Annex G Examples of transfer criteria based on likely user.....	77
Annex H Examples of transfer criteria based on likely use	80
Annex I Examples of transfer criteria considerations based on likely impact	83
Annex J Examples of transfer criteria considerations based on recipient country	86
Annex K Example guidelines for assessing transfer decisions and implementing transfer criteria.....	91

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1. Introduction

At the Sixty-first General Assembly in 2006, Member States adopted Resolution A/RES/61/89, *Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms* (the ATT Resolution).¹ The resolution called on the Secretary-General to:

seek the views of Member States on the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms, and to submit a report on the subject to the General Assembly at its sixty-second session.²

It also called on the Secretary-General to establish a Group of Governmental Experts (GGE) to address such a treaty and to report on its findings at the sixty-third session of the General Assembly.

Following the adoption of the resolution, the Secretary-General invited Member States to submit their views on an arms trade treaty (ATT). At the time of writing, 98 states have provided submissions.

With the assistance of the Governments of Finland and the United Kingdom, the United Nations Institute for Disarmament Research (UNIDIR) has undertaken a two-part study involving an in-depth analysis of states' views on an ATT. The first part of the study, the results of which were presented at a side event during the meeting of the First Committee of the General Assembly in October 2007, provides a statistical analysis of states' views and identifies the central ideas and dominant themes. The second part of the study, contained in this report, aims to identify divergent approaches to an ATT, discuss the implications of specific proposals and explore regulatory alternatives for the development of an ATT.

This study is designed to supplement the Analysis report and should be read in conjunction with that report. Accordingly, the discussion on scope and parameters here follows the structure of the first as much as possible. The method used to analyse states' views and determine the categories identified is detailed in the Analysis report.

UNIDIR's study allows Member States and experts to compare the information and proposals contained in submitted views across themes, states and regions. UNIDIR's analysis will advance discussions on an ATT through identification of areas of consensus and divergence, as well as underdeveloped areas. The analysis also examines the possible scope of an ATT and therefore serves as a useful input to the GGE, which will convene in 2008.

2. Overview of states' views

With 153 states voting in favour of the ATT Resolution and over 90 states affirming the feasibility of an ATT in their views submitted to the Secretary-General during the consultation process that took place in 2007, it is clear that there is considerable support among states for the

¹ With 153 states voting in favour of the resolution, one against and 24 abstaining.

² Operational paragraph 1 of the ATT Resolution.

adoption of common international standards for the import, export and transfer of conventional weapons. The support shown for the initiative highlights the importance of the issue and the timeliness of the appearance of an ATT on the UN agenda.

States are in general agreement that it is legitimate for states to produce and acquire conventional weapons³ in order to meet their legitimate defence and security needs.⁴ The right of states to acquire and retain the means of self-defence derives from the inherent right of all states to individual or collective self-defence, which is enshrined in Article 51 of the UN Charter. Since not all states have the capacity to produce conventional weapons,⁵ international arms transfers are also necessary to ensure states have adequate supplies to meet their legitimate needs. What the impressive support shown for an ATT signifies is that the majority of states agree that decisions by states to allow these transfers should be made according to certain common legal and ethical principles.

Most states today—and certainly most significant exporters—already have national systems of export controls in place, and most claim that these systems do not simply set out to respect internationally agreed embargoes (though this is a key role), but also to exercise control for other reasons, including humanitarian and strategic motives. In some regions there are formal agreements for coordinated restraint of conventional arms, in some instances small arms and light weapons (SALW) specifically. There are also regimes among some states to regulate the transfer of particular goods, such as the Wassenaar Arrangement that regulates the movement of conventional arms and dual-use goods and technologies.

However, these national control regimes are widely felt to be inadequate because inconsistencies across regimes and their implementation provide loopholes for arms traffickers. There is a distinct lack of international regulation of arms transfers, and many states feel that international standards are becoming imperative in light of the globalization of the arms trade.

3. Historical overview

League of Nations

Attempts to regulate the arms trade at a global level are not new. In fact, the ratification of a proposed convention to control the arms trade appeared as a subject on the first agenda of the League of Nations Assembly in 1920. The Convention for the Control of the Trade in Arms and Ammunition⁶ was agreed on 10 September 1919⁷ in response to the concern that the First World War had resulted in “the accumulation in various parts of the world of considerable quantities of arms and munitions of war, the dispersal of which would constitute a danger to peace and public

³ Other than those prohibited under the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects* (CCW).

⁴ Indeed, 44 states expressly sought to include a reference to the right of states to manufacture, import, export, transfer and possess conventional weapons for self-defence, security or participation in peacekeeping operations in their submissions.

⁵ It is reported that the United States may soon become “the only country able to fund development of advanced weapons and technologies on its own”; Stockholm International Peace Research Institute, *SIPRI Yearbook 2007: Armaments, Disarmament and International Security*, 2007, p. 403.

⁶ Also known as the Treaty of St. Germain for the Control of the Traffic in Arms.

⁷ This was agreed between the United States, Belgium, Bolivia, the British Empire, China, Cuba, Ecuador, France, Greece, Guatemala, Haiti, the Hedjaz, Italy, Japan, Nicaragua, Panama, Peru, Portugal, Roumania, the Serb-Croat-Slovene State, Siam and Czechoslovakia.

order”.⁸ The process of its ratification was taken up by the League of Nations because it had been entrusted with “general supervision of the trade in arms and ammunition” by virtue of Article 23(d) of the League’s covenant.

The main principles behind the convention were a) licensing—arms exports should be licensed, b) publicity—states party to the convention were required to publish an annual report detailing the export licences granted as well as quantities and recipients of exported arms and ammunition, and c) additional restrictions on transfers to certain “prohibited areas”, namely Africa and the Asian parts of the Ottoman Empire. Although many states signed the convention, very few ratified it. Essentially, states were reluctant to ratify the treaty and thus restrict their ability to buy or sell weapons unless and until other states ratified. This stalemate was compounded by the fact that the convention imposed a ban on sales to non-signatories, which could have had a detrimental effect on the arms industry.

Eventually, the League of Nations abandoned the original convention and sought agreement on a new Arms Traffic Convention, opening a Geneva conference on the issue on 4 May 1925. The amended provisions allowed exports to non-signatories and provided greater discretion to the exporting state in granting licences. However, this initiative also ultimately failed, mainly because the smaller, non-producing states felt that the principles of licensing and publicity imposed unacceptable infringements on sovereignty and security, and would hamper their ability to arm themselves.⁹

Cold War

During the Cold War, decisions regarding arms transfers and export control policies were governed by considerations of which “side” of the Iron Curtain a recipient state was on. The Coordinating Committee for Multilateral Export Control had been established in 1947 by the United States and its allies to restrict Western exports to the Eastern Bloc. Conversely, the Soviet Union sought to restrict the production and transfer of weapons by other states of the Warsaw Pact. While arms transfers to non-allies may have been monitored carefully and transfers to Germany and Japan were highly restrained, transfers to existing allies or to non-aligned states were common; the two powers “used conventional weapons transfers with little restraint to establish or maintain spheres of influence”.¹⁰

In terms of civil society engagement, in many countries there was an extensive academic analysis of, and campaign against, the arms trade. For example, the Stockholm International Peace Research Institute (SIPRI), founded in the mid-1960s, early on established a database on the global arms trade and has published the results annually since 1969. In 1974 the Campaign Against the Arms Trade was established in the United Kingdom as a direct consequence of the growth of the arms trade following the 1973 Arab–Israeli war. The Institute for Defense and Disarmament Studies, established in 1980 in the United States, still maintains the World Arms Database that tracks imports, exports and other acquisitions and weapons developments.

⁸ Preamble of the Treaty of St. Germain.

⁹ David Stone, “Imperialism and Sovereignty: The League of Nations’ Drive to Control the Global Arms Trade”, *Journal of Contemporary History*, vol. 35, no. 2, 2000, p. 222.

¹⁰ Stockholm International Peace Research Institute, *SIPRI Yearbook 2007: Armaments, Disarmament and International Security*, 2007, p. 431.

Post-Cold War

Awareness of the lack of and need for regulation of the international trade in conventional weapons, especially SALW, began increasing toward the end of the Cold War. Within the UN, the subject of “international arms transfers” has formed a subcategory of the resolutions on “General and complete disarmament” since 1988 when it was decided that:

arms transfers in all their aspects deserve serious consideration by the international community, *inter alia*, because of:

- (a) Their potential effects in areas where tension and regional conflict threaten international peace and security and national security;
- (b) Their known and potential negative effects on the process of the peaceful social and economic development of all peoples; and
- (c) Increasing illicit and covert arms trafficking.¹¹

The issue was brought to the attention of the international community with the Iraqi invasion of Kuwait in August 1990. Post-war inspection teams discovered that Iraq had obtained a wide range of Western industrial equipment for use in illegal weapons programmes, and had built the world’s fourth largest army with foreign arms acquisitions.¹² In response to this, the United States launched two initiatives, including an attempt to obtain the agreement of the five permanent members (P5) of the Security Council to restrain arms transfers to the Middle East. This resulted in Guidelines for Conventional Arms Transfers elaborated by the P5 in 1991, which stipulated a set of transfer criteria that included considerations of likely use, recipient behaviour and existing obligations.

Although ultimately discussions over the guidelines were suspended following a disagreement between China and the United States over how the guidelines should be applied to Taiwan, it marked the first of a series of attempts to regulate conventional arms transfers at the regional and international level. Indeed, the number of regional and international agreements (and attempted agreements) governing conventional weapons and, predominantly, SALW has grown steadily since 1990 (a list of these is provided in Annex A). The negotiation and drafting of an ATT can and should draw on these instruments as well as national mechanisms and norms, not simply with respect to the principles and criteria included, but as well to the lessons learned in terms of implementation and effectiveness.

The 2001 UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* (UN PoA), a politically binding international agreement, is of particular relevance in the context of the evolution of the ATT initiative. The small arms process, put in motion by the UN PoA, has contributed to our knowledge and understanding of the impact of illicit arms transfers and has added momentum to ATT discussions.

Another trend that should be mentioned in the context of the regulation of arms transfers is the dramatic increase in the number of UN arms embargoes. Between 1945 and 1989 only

¹¹ General Assembly, *General and complete disarmament*, UN document A/RES/43/75 I, 7 December 1988.

¹² Stockholm International Peace Research Institute, *SIPRI Yearbook 2006: Armaments, Disarmament and International Security*, 2006, p. 777.

two mandatory UN arms embargoes were imposed.¹³ Between 1990 and 2006, however, two voluntary and 27 mandatory UN arms embargoes were imposed.

A study by SIPRI and the Special Program on the Implementation of Targeted Sanctions (SPITS) of Uppsala University offers several reasons for the more frequent use of arms embargoes in the post-Cold War era:

First, the ideological opposition of the [UN Security Council] P5 states thawed after the end of the Cold War, allowing them to more easily agree on the passing of embargo resolutions. Second, this led to more active efforts by the UN to play a global role, using arms embargoes, in maintaining international peace and security. Third, UN arms embargoes are perceived as “smarter” than comprehensive economic and trade sanctions because they target the elites of states and non-governmental armed forces, limiting the humanitarian impacts.¹⁴

There are two other important conclusions that can be drawn from the increase in the number of arms embargoes. First, it reflects an acknowledgement by states that preventing arms supplies to troubled states or regions can influence state behaviour and avoid the exacerbation of conflict. Second, it demonstrates that states can reach agreement on situations where the supply of weapons should be restricted or prohibited.

Arms Trade Treaty initiative

The current initiative for an ATT started in 1995 when Oscar Arias called upon a group of his fellow Nobel Peace Prize laureates to promote an international campaign to establish an agreement that would regulate the arms trade. Together, they drafted the Nobel Peace Laureates International Code of Conduct on Arms Transfers in May 1997. They felt that the international community could no longer ignore the repercussions of irresponsible arms transfers, which foster political instability and human rights violations, prolong violent conflict, weaken diplomatic efforts to resolve differences peacefully, and perpetuate poverty.

The idea of regulating the arms trade and establishing a set of international standards for arms transfers continued to gain momentum in the years that followed this initial meeting and in 2003 Oxfam, Amnesty International and the International Action Network on Small Arms started the Control Arms campaign calling for an international, legally binding ATT. The United Kingdom became the first permanent member of the Security Council to support the initiative in September 2004, and the European Union (EU) issued a statement of support the following year. In July 2006 the governments of Argentina, Australia, Costa Rica, Finland, Japan, Kenya and the United Kingdom circulated a draft resolution “Towards an Arms Trade Treaty” in preparation for the 2006 meeting of the First Committee of the General Assembly. Following amendment, the resolution was adopted by a large majority during the meeting of the First Committee in October 2006 and by an even larger majority in the General Assembly in December 2006.¹⁵

¹³ These were imposed on Rhodesia in 1966–1979 and on South Africa in 1977–1994.

¹⁴ SIPRI and SPITS, *United Nations Arms Embargoes Their Impact On Arms Flows And Target Behaviour*, 2007, p. 4.

¹⁵ Results of the vote at the First Committee were 139 in favour, one against and 24 abstaining; results of the vote at the General Assembly were 153 in favour, one against and 24 abstaining.

4. What is the objective of an ATT?

Following operative paragraph 1 of the ATT Resolution, the aim of an ATT is to establish “common international standards for the import, export and transfer of conventional arms”. The existence of common international standards will help reduce arbitrary behaviour on the part of exporting states and ensure decisions to authorize or not authorize arms transfers are consistent among states. An ATT will seek to ensure the responsible trading of conventional arms by regulating the process by which states assess and authorize arms transfer decisions and grant licences.

In their submissions, 23 states claimed an ATT is necessary to ensure responsible transfers or prevent irresponsible ones.¹⁶ Other purposes attributed to an ATT by states included to prevent diversion, to prevent proliferation, to induce transparency, to prevent the destabilizing accumulation of arms, to prevent misuse and to prevent illegal transfers. The most frequently cited objective, however, was that an ATT is needed to prevent or combat illicit transfers.¹⁷

Interestingly, the ATT Resolution makes no mention of a need to prevent illicit or illegal transfers. Certainly the concepts of preventing irresponsible transfers and preventing illicit transfers are not unrelated. However, there are important distinctions between the concepts (see Box 1).

Box 1. Definition of key terms

Authorized transfers are transfers that are authorized by at least one government.

Irresponsible transfers, also called grey market transfers, are transfers that are authorized by a government, but are nevertheless of doubtful legality, at least with reference to international law (significant risk of misuse), or irresponsible in some other sense (significant risk of diversion to unauthorized recipients).

Illegal transfers are synonymous with black market transfers. Both terms refer to transfers that are not authorized by any government.

Illicit transfers comprise both irresponsible and illegal transfers (grey/black market).¹⁸

Transfers are also illegal if states authorize a transfer contrary to international law. The majority of states noted that an ATT should include transfer criteria based on considerations of existing obligations under international law, such as UN arms embargoes. In fact, many states think an ATT should (at a minimum) codify existing international law with respect to arms transfers. In other words, it should clarify and confirm the circumstances in which the authorization of a transfer of conventional arms would breach international law. In addition, it should include agreed standards or criteria to which states would refer when deciding whether an arms transfer is responsible.

The adoption and implementation of an ATT that encompasses some or all of the transfer criteria proposed by states in their submissions and codifies existing obligations under international law

¹⁶ Albania, Australia, Austria, Benin, Bosnia and Herzegovina, Canada, Djibouti, Estonia, Fiji, France, Germany, Greece, Hungary, Iceland, Mexico, Montenegro, Norway, Slovenia, Spain, Sweden, Thailand, Trinidad and Tobago and the United Kingdom.

¹⁷ In fact, 26 states noted the purpose of an ATT was to prevent *illicit* transfers, eight states noted the purpose was to prevent *illegal* transfers, and one state nominated both.

¹⁸ Small Arms Survey, *Small Arms Survey 2007: Guns and the City*, 2007, p. 74.

will go a long way to promoting responsible arms transfers at a global level and removing some of the loopholes currently exploited by arms traffickers.

5. Why do we need an ATT?

A number of reasons have been put forward by states as to why a legally binding instrument establishing common international standards for the import, export and transfer of conventional arms is needed to secure responsible transfers. Explanations given fall under the following general headings:

- the impact of the arms trade;
- the changing nature of the arms trade; and
- the inadequacy of existing arms transfer control mechanisms.

5.1. Impact of the arms trade

The ATT Resolution noted that “the absence of common international standards on the import, export and transfer of conventional arms is a contributory factor to conflict, the displacement of people, crime and terrorism” and undermines peace, security and sustainable development. The Nobel Laureates International Code of Conduct states that “Indiscriminate weapons sales foster political instability and human rights violations, prolong violent conflicts, and weaken diplomatic efforts to resolve differences peacefully.”¹⁹ These views were echoed by many states in their submissions.²⁰

Irresponsible arms transfers have a negative impact on security and development for several reasons. For example, military expenditure may divert financial, technological and human resources from development objectives. Not only is military spending a diversion of resources—which is discouraged under Article 26 of the UN Charter²¹—but “excessive military expenditure can also affect a State’s economy, including investment, as spending on armaments is often economically non-productive and inefficient and occurs in non-competitive conditions”.²²

Additionally, arms transfers may contribute to the initiation or continuation of conflict. In the context of civil conflict, for instance, arms transfers can “enhance the capacity of the state for

¹⁹ *Nobel Peace Laureates’ International Code of Conduct on Arms Transfers*, 1997.

²⁰ For example, Austria, “the irresponsible trade in arms fuels human rights violations, destabilisation, crime, terrorism and conflict—with all its multifaceted consequences such as displacement, violations of international humanitarian law and poverty thus being one of the biggest barriers to millions of people achieving their human rights and development opportunities in peace and security”; Burkina Faso, “the poorly regulated and illegal arms trade foments conflicts, entails flagrant violations of human rights and international humanitarian law and destabilizes whole countries and regions”; Denmark, “many armed conflicts are aggravated and prolonged due to destabilising accumulations and illicit transfers of arms, causing insecurity, poverty and human rights violations”; and Italy, “irresponsible and poorly regulated trade in arms fuels armed conflicts, terrorism and organized crime, results in gross human rights abuses and serious violations of international humanitarian law (IHL), destabilizes regions and countries and undermines economic development”.

²¹ Article 26, “In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world’s human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.”

²² General Assembly, *Report of the Group of Governmental Experts on the relationship between disarmament and development*, UN document A/59/119, 23 June 2004, para. 28.

repressive violence and thus contribute to the extent and severity of human rights abuses”.²³ In the context of inter-state conflict, acquisition of conventional weapons by one state can be perceived by another state as a threat to its security, pushing it to acquire additional weapons, and sparking an arms race. The exacerbation or continuation of civil or inter-state conflict has obvious negative implications for economic growth and poverty reduction in the state(s) and region concerned.

Finally, according to a Centre for International Cooperation and Security report, arms transfers may “contribute to a deepening of corruption in recipient societies, with negative consequences for economic growth and development”.²⁴ For example, corruption in the arms trade encourages inappropriate purchases and increased spending on armaments, which contradict the principle contained in Article 26 of the UN Charter of the least diversion of human and economic resources to armaments. The prevalence and impact of corruption in the arms trade is discussed in more detail in Section 8.5.

The negative impacts discussed briefly here are not consequences of all transfers, and the impact or outcome of any given arms transfer will depend on a range of circumstances including the economic standing of the recipient country and conflict dynamics (both internal and inter-state). In some circumstances, arms transfers can have positive impacts on security and development. Arms acquisitions may help the government to maintain the state monopoly of force, for example to subdue rebellions more quickly and at a lower human cost if they do take place, or provide better border protection and prevent the spill-over of conflict or the infiltration of rebels from neighbouring states. By strengthening the police, arms acquisitions may result in greater social stability, which in turn may lead to greater economic prosperity.

As discussed in further detail throughout this paper, an ATT could and should clarify how to make responsible transfer decisions, and identify objective elements for conducting appropriate risk assessments, as a means of reducing the number of arms transfers that subsequently have a negative impact.

5.2. Changing nature of the arms trade

Since the end of the Cold War, the number of major arms-producing companies has decreased as a consequence of falling demand and rising costs of production (such as research and development for increasingly advanced weapons). So, while in 1990 the five largest arms-producing companies accounted for 22% of arms production by the top 100 producers, by 2003 they accounted for 44%.²⁵ In some respects this “increased concentration might well facilitate better oversight of the arms industry. However, this process is also characterized by the erosion of defence industrial national identities ... and increased intra-firm movement of technology, knowledge and personnel.”²⁶ For instance, this has led to increases in licensed production and technology transfers to overseas subsidiaries and partners. France expressly raised concerns over

²³ Centre for International Cooperation and Security, *The Impact of Arms Transfers on Poverty and Development*, University of Bradford, 2004, p. 29.

²⁴ *Ibid.*, p. 6.

²⁵ Stockholm International Peace Research Institute, *SIPRI Yearbook 2006: Armaments, Disarmament and International Security*, 2006, ch. 9.

²⁶ Neil Cooper, “What’s the Point of Arms Transfer Controls?”, *Contemporary Security Policy*, vol. 27, no. 1, 2006, p. 123.

this development in its submission, observing that the delocalization of production and the diversification of the countries producing arms benefit arms traffickers who:

meet with relative impunity by using to their advantage the diversity which characterises our national judicial and legal systems and by putting to best use the effects of globalisation which were not intended for their benefit. In such circumstances, insufficient progress as regards the harmonisation of systems of control represents an increased threat to peace and security.

Globalization has brought with it other opportunities for arms traffickers and unauthorized end-users. For instance, arms traffickers, criminals and terrorists can make use of technological developments such as mobile phones and the internet to spread their networks and increase their operations. Brokers, for instance, are able to move around easily among different jurisdictions and to facilitate deals without actually being present in either of the states where the arms are sourced or delivered. In fact, claims one author, illicit arms traffickers “have particularly benefited from the mechanisms of globalization”²⁷ as a consequence of such elements as local and global deregulation, advancements in communications, improvements in transport technology and increased migration, which have facilitated the development of local, regional and global trade networks.

Many states believe that a global response in the form of international, as opposed to national or regional, controls is necessary to confront the effects of globalization generally and the arms industry specifically:

In the face of an arms industry that operates globally, national or regional export control systems have become ineffective in controlling illicit transfers of conventional arms. Effective control of global arms trade requires a corresponding new set of universal standards and regulations that should guide trade in arms based on existing international law.²⁸

5.3. Inadequacy of existing arms transfer control mechanisms

A number of regional and international instruments have been agreed since the Cold War that regulate or affect arms transfers. This raises the question: if there are instruments and initiatives in place seeking to secure similar objectives, why do we need an ATT? The answer is that existing instruments are proving insufficient or inadequate in tackling the illicit trade in conventional weapons and ensuring responsible transfers; the reasons for these inadequacies need to be considered so that an ATT does not repeat the same mistakes. This was raised by the Russian Federation in its submission: “it would be logical at the outset to analyse why the existing mechanisms are not sufficiently effective and precisely where they are encountering obstacles. This analysis must take place before the question of the formulation of a global instrument is raised.”

²⁷ Ibid., p. 124.

²⁸ Nigeria. Other states that specifically mentioned globalization include Canada, “the increasing globalization of the illicit international arms trade, and the lack of effective export controls to stop it ... have raised a compelling argument in favour of a global system of controls that will comprehensively regulate all aspects of this trade”; Djibouti, which noted “the increasing globalization of the arms trade” and its prejudicial effects on sustainable development; Ecuador, which noted the threat to regional and global peace and stability posed by “the globalization of crime and its organizational structures”; France, “the international trade in conventional arms has undergone great changes since the 1990s following the emergence of new threats and under the influence of the gradual globalization of the industry and the arms market”; Mauritius, “given the complex nature of the arms trade in an increasingly globalised environment, there is a need for an international, comprehensive and transparent framework for all States to follow”; and Spain, “the absence of truly universal control systems hinders the fight against the increasingly globalized illicit trade”.

The main explanation provided by states as to why the current regional and international instruments are not adequate is that existing agreements vary widely in terms of:

- **scope**—some are less comprehensive than others in terms of the transactions and categories of weapons they cover (especially since a large number of instruments only govern SALW);
- **level of commitment**—some are legally binding, but the majority are only politically binding; and
- **implementation**—some are less rigorously applied and enforced than others.

Additionally, some states are not party to any existing instruments. Some states believe, therefore, that a global instrument in the form of an ATT will “on the one hand achieve universalization and on the other cover the existing gaps”²⁹ and “remove any present uncertainties and inconsistencies that might currently surround States’ commitments in this field”.³⁰ According to the Netherlands:

Given that these agreements vary in their formulation and application it is important to ensure that an international instrument clearly sets out the full scope of states’ existing responsibilities under international law and standards. The basis for an ATT should be derived from the highest standards contained in these agreements, not the lowest common denominator.

6. Feasibility of an ATT

One of the aspects of an ATT that states were asked to provide their views on and one of the central issues in the ATT process is *feasibility*. Is it possible for states to reach agreement on a legally binding instrument that establishes international standards on the transfer of conventional arms? More importantly, what kind of an ATT is feasible (in terms of scope)? Will states be able to agree on an instrument that will actually prevent or reduce irresponsible arms transfers if it is implemented?

The central issues to the feasibility question are: a) will the level and nature of participation be adequate to make an ATT effective? In other words, will enough states (or enough of the states whose implementation of such standards would actually impact the trade) participate in and be able to agree on an ATT? And b) will the set of standards that can be agreed address the major concerns regarding irresponsible arms transfers or will only weak standards be agreed?

As noted by Luxembourg:

The feasibility [of an ATT] will depend on the willingness of a large number of States to establish common rules of conduct that would effectively address the problems caused by the uncontrolled spread of conventional arms and also on the mechanisms it establishes to ensure the effective and transparent implementation of the standards it institutes.

²⁹ Macedonia.

³⁰ New Zealand.

The majority of states that submitted their views on an ATT believe that such a treaty is feasible. The reasons given by states to support the assertion included:

- that an overwhelming majority of states voted in favour of the ATT Resolution;
- that a number of regional and international instruments already exist that refer directly or indirectly to controlling the arms trade; and
- that many of the fundamental principles that an ATT might include are already set out in customary international law and existing international agreements.

Yet, even states that are in favour of an ATT identified and acknowledged the following obstacles:

- a lack of political will to negotiate an instrument that meets states' different interests and concerns;
- a lack of capacity on the part of some states to implement such an instrument; and
- a concern that some of the major exporting states will not constructively participate in negotiations on an ATT.

States that are sceptical towards or opposed to an ATT expressed a variety of reasons for their views including concern that an ATT process is premature, that it should be a “politically binding” rather than a legally binding instrument, or that universal agreement on a set of standards would be difficult to achieve.³¹

Both sceptics and supporters of an ATT noted that universal participation is desirable (necessary, according to some) but would be difficult to achieve. There is concern that if certain major exporting or importing states do not eventually participate, this would reduce an ATT's legitimacy and would have a detrimental impact on the ability of a treaty to fill the gaps in current control systems. However, some states that do not currently support an ATT already have transfer controls in place that apply principles likely to be included in a treaty. Thus, the lack of participation by certain of these states would not necessarily undermine an ATT control system. Indeed, one of the concerns of certain exporting states is that an ATT would undermine strong existing standards: an instrument meeting all the interests of the states involved would require such compromise that it would be weaker than current national and regional standards.

Insistence on universal participation and the compromises necessary to achieve such could result in an ineffective treaty unable to achieve its objectives and could potentially alienate those who originally supported a treaty. Such a situation can empower certain states to influence negotiations in a manner that suits their interests yet may weaken the final instrument. It is for participating states to decide whether or not to pursue a rigorous, comprehensive and meaningful treaty that certain states may not accept. In fact, there may be unforeseen benefits to having certain states that participate in the arms trade—particularly those that participate in the illicit arms trade—outside of an ATT. Such a situation may indeed benefit a treaty, lending it the authority and legitimacy that it deserves.

³¹ See Analysis report, p. 4.

7. Possible scope for an ATT

In their submissions, states provided details of the categories of weapons or items an ATT should cover and the types of transactions and activities that it should regulate.

7.1. Categories of weapons or items

The ATT process will need to establish a list or agreed minimum of what weapons or items should be covered by a treaty. The term “items” is used in addition to “weapons” because some of the categories that were suggested by states for inclusion in an ATT are not weapons per se, but they may be put to military use. Technology, dual-use goods and parts and components are examples of this.

One of the primary considerations for the GGE will be to determine the purpose of such a list or minimum, and a broad definition of what should therefore be covered. For example, one could imagine a statement that an ATT would cover all goods and services that have a purely (or primarily) military or security end-use. The issue of whether and how to include dual-use goods might also arise at this stage. There would need to be clarity as to what sort of non-military end-users (e.g. police and internal security) were of relevance. In this regard, 12 states mentioned that arms for internal security should be covered under an ATT.³²

Once the principles guiding an ATT’s purview are agreed, detailed discussions of particulars can take place.

The Analysis report provides a statistical overview of the categories of weapons and items suggested by states and the frequency with which they were mentioned. What follows is a more in-depth discussion of some of the points raised by states, an expansion of some of the issues states touched on and a discussion of their implications for an ATT.

Agreed list of items to be covered by an ATT

A number of states mentioned the possibility of developing an agreed list of the weapons or items to be covered by an ATT, similar to the control lists adopted by the Wassenaar Arrangement and the common list of military equipment adopted under the EU Code of Conduct on Arms Exports. Indeed, some states suggested adopting or utilizing one or other of these existing lists.

Some states suggested adopting the seven categories of major conventional arms covered by the UN Register of Conventional Arms. However, several states felt the categories contained in the UN Register would be inadequate. Germany, for instance, claimed the list needs to be broader because the categories in the register “are not sufficient in scope”. Italy also noted the categories in the register “fall short” of what is needed in an ATT and Poland stated that “the specification of categories should be more comprehensive and precise, as in the European Union Munitions List”.

³² Albania, Bangladesh, Burkina Faso, Colombia, Côte d’Ivoire, Fiji, Liberia, the Netherlands, Niger, Paraguay, Togo and Zambia.

Another observation made by Poland in discussing the pros and cons of using the UN Register categories or the EU Munitions List was that “A compromise could also be reached to include terminology used in arms embargoes imposed by the UN Security Council.” There are several examples of lists agreed by the Security Council in the context of arms embargoes, notably the list of goods and services prohibited for sale or supply to Iraq under Resolution 687 (1991).³³

States made a number of suggestions with a view to ensuring an attached list could be used effectively and remain relevant and up-to-date. In summary, they noted that it would need to be:

- **unambiguous** so as to ensure it “leaves the least possible room for differing interpretations”.³⁴ Accordingly, it will need to be technically precise and comprehensive; and
- **easily updated** to allow for new developments in technology. One of the suggestions made in this regard was that: “One or more Protocols of the future Treaty should be devoted to the categories of military equipment and their technology covered by the Treaty and a review mechanism should be envisaged. A Special Sub Working Group on the items issue should work in parallel to the main Working Group on the text of the Treaty.”³⁵

In terms of the form of such a list of weapons or items, several arguments were put forward as to whether it should be a detailed or a generic list. It was noted that the adoption of a detailed list would reduce risk of ambiguity,³⁶ although there was scepticism about the possibility of reaching agreement on a detailed list.³⁷ A generic list, on the other hand, could be easily updated,³⁸ but would increase ambiguity and the risk of inconsistent interpretation.³⁹

In considering the type of list that could be annexed to an ATT, it will be important to draw on the experiences and lessons learned from the development of and agreement on other lists such as the EU Munitions List, the Wassenaar lists and lists adopted by the UN Security Council in association with arms embargoes. The central issue in establishing such a list seems to be whether it should be generic or detailed, and the GGE will need to consider what type of list is desirable and what type of list would be practical or possible.

³³ For details, see Security Council, UN document S/2002/515, 3 May 2002.

³⁴ Luxembourg.

³⁵ Italy.

³⁶ Republic of Korea, “A detailed listing is desirable because it would reduce the risk of ambiguity, inconsistency and confusion stemming from different interpretations among countries of controlled items”; Latvia, “A detailed list would avoid misunderstandings when applying the Treaty”; and the United Kingdom, “A detailed listing, like that used by the European Union ... would help remove the risk of ambiguity”.

³⁷ Republic of Korea, “the process of completing a detailed list of controlled items would inevitably lead to stalemates and confrontations among countries. It may be almost impossible for the international community to agree on a complete detailed list of conventional arms to be controlled by an ATT”.

³⁸ The United Kingdom, “A simple generic description of the categories of arms, possibly stemming from the categories of the UN Register on [sic] Conventional Arms (with the addition of other areas covered by an instrument, e.g. ammunition, parts, components, technology to produce etc), would be relatively easy to keep current”.

³⁹ Republic of Korea, “this type of listing increases the possibility of differing interpretations regarding which specific items under a certain category of arms need to be controlled. It also increases the probability that political and economic considerations will enter into the process of export licensing. Additionally, differing interpretations regarding which items are to be controlled would likely lead to undercutting other countries’ decisions on arms export bans”; and the United Kingdom, a simple generic description “might leave open the possibility for confusion over whether an item is covered or not”.

Ammunition and explosives

Ammunition was the category most frequently nominated for inclusion in an ATT, with 62 states including it in their submission.

Some states included explosives with ammunition or munitions—“ammunition, including explosives”,⁴⁰ “ammunition and other explosives”,⁴¹ “munitions including ammunition and explosives”.⁴² Most states, however, referred to ammunition and explosives separately⁴³ and in fact Argentina noted that “explosives should occupy a specific section separate from munitions”. One state suggested including related materials such as “any chemical substance serving as active material used as propelling or explosive agent”.⁴⁴ One of the problems associated with including explosives is the difficulty in distinguishing between military, security and civilian use. States did not elaborate on this in their submissions, but the issue would no doubt arise in deliberations.

Several instruments include definitions of ammunition or explosives that may be of use if these are included in the list of categories covered by an ATT (details of these definitions are provided in Annex C).

A Group of Experts was appointed in 1998 to prepare a study on the problems of ammunition and explosives in all their aspects.⁴⁵ The report of the group includes an overview of some of the problems and practices associated with both legal transfers and illicit trafficking in ammunition and explosives. Some of the key findings of the report that are of relevance are included in Box 2.

Box 2. Key findings of the first Group of Experts on ammunition and explosives⁴⁶

Findings

Small arms and light weapons used in conflict require frequent resupply of ammunition and therefore enhanced controls on ammunition and its explosive components and on the manufacturing technology to produce them could be of particular value in dealing with the existing dissemination of small arms and light weapons and reducing the incidence of their use in conflict or post-conflict situations; ...

Ammunition, explosives and improvised explosive devices are relatively easily manufactured and the knowledge, equipment and technology required is easily transferred on a global basis;

Enhanced transparency in the fully legitimate trade in ammunition and explosives would help to identify, circumscribe and combat illicit trafficking; ...

Law enforcement is key to protecting the legitimate trade and preventing and detecting illegitimate transfers. (In the current period of increased globalization, free trade presents problems for law enforcement agencies charged with guaranteeing public safety and open trade. The international community needs to find a way to make law enforcement compatible with free trade if it plans to eliminate the illicit movement of ammunition and explosives.)

⁴⁰ Burkina Faso, Côte d’Ivoire and Paraguay.

⁴¹ Democratic Republic of the Congo.

⁴² Bangladesh, Fiji, Liberia and Malawi.

⁴³ Colombia, El Salvador, Togo and Turkey.

⁴⁴ Senegal.

⁴⁵ Pursuant to General Assembly Resolution 52/38 J of 9 December 1997.

⁴⁶ A second group is due to meet in 2008 to consider further steps to enhance cooperation with regard to the issue of conventional ammunition stockpiles in surplus. The report of that group will be presented to the General Assembly for consideration at its sixty-third session.

Box 2. Continued

Recommendations

- (e) The pursuit of efforts to expand the scope of the United Nations Register to small arms and light weapons, as well as ammunition and explosives;
- (f) The regional and international harmonization of laws and regulations relevant to the control of ammunition and explosives;
- (g) The international standardization of the form and content of end-use/end-user certificates;
- (h) Encouraging states to register, regulate and approve all of the participants in the ammunition and explosives supply chain, including producers, brokers and shippers, and only to deal with similarly approved participants on a national and international level; ...⁴⁷

Parts and components

Forty-nine states included parts and components in their list of suggested items to be covered by an ATT. In order to prevent or restrict the emergence of new loopholes, parts and components will need to be addressed. As noted by Spain, “This is a complex question to which the group of experts should give special attention.”

This is of particular relevance in the context of the changing nature of the arms industry, as discussed in Section 5.2, whereby complete weapons are less frequently being transferred and instead components or the means to produce weapons are provided.

Several instruments include definitions of parts and components that may be of use if they are included in the list of categories covered by an ATT (details of these definitions are provided in Annex C).

Manufacturing technology, technology and technological development

Fifty-one states included manufacturing technology, technology or technological development in their list of suggested items to be covered by an ATT.⁴⁸ As in the case of components, in order to prevent or restrict the emergence of new loopholes, technology will need to be addressed in an ATT and in order for it to be effective and remain relevant “care must be taken to ensure that emerging technologies can be covered as far as possible without requiring constant amendment of the treaty text”.⁴⁹

In an increasingly globalized industry, a comprehensive list of items covered by an ATT should include the technology to produce them. This relates to the question of how the scope of an ATT will be defined and whether it will cover all services and items that have military or security end-use. Further discussion of the transfer of technology takes place in Section 7.2 under “intangible transfers and licensed production”.

⁴⁷ General Assembly, *Report of the Group of Experts on the problem of ammunition and explosives*, UN document A/54/155, 29 June 1999, § X.

⁴⁸ See Analysis report, p. 6.

⁴⁹ Australia.

Dual-use goods

While 22 states supported the inclusion of dual-use goods in the list of categories to be covered by an ATT, several were more cautious about the issue, suggesting that the GGE consider the matter carefully, and one state was adamant that they should *not* be included in an ATT:

their inclusion may cause undue negative impact on civilian applications of such dual use items or technologies. It should also be recalled that negotiating a list of such items and keeping it updated in the framework of a legally binding instrument may involve insurmountable difficulties, with little if any added value for its purposes.⁵⁰

Of all the categories suggested for inclusion by states, this appears to be the most controversial. The key issue to be resolved is which dual-use goods should be covered by an ATT. Many states that raised the issue referred to the need to cover all items intended for military, security, policing or law enforcement purposes.⁵¹ So, for example, military communication technology would be covered, while commercial communication technology might only be assessed to the degree that it could be applied to military ends. Again, this raises the important question of how the scope of an ATT will be defined. Adoption of a broad definition linked to the end-use(r) of the goods to be transferred may be more appropriate and practical than an agreed list that attempts to provide an exhaustive listing of actual weapons and items.

7.2. Activities and transactions

The ATT resolution called on the Secretary-General to seek states' views on an instrument establishing common international standards for the "import, export and *transfer* of conventional arms" [emphasis added]. In fact the concept of "transfer" includes "import" and "export" and so the reference to these activities is not necessary. The GGE will need to give careful consideration to what constitutes a transfer of conventional arms for the purposes of an ATT (see Box 3).

⁵⁰ Brazil.

⁵¹ Bangladesh, Burkina Faso, Colombia, Costa Rica, Côte d'Ivoire, Fiji, Liberia, the Netherlands, Niger, Paraguay, Togo and Zambia.

Box 3. What is a transfer?

The Panel of Governmental Technical Experts appointed to advise on the establishment of the UN Register in 1992 did not attempt to define arms transfers but, for the purpose of the register, considered that the request that states provide data on categories of equipment “imported into or exported from their territory”⁵² required clarification. Accordingly, they provided a description of transfers, which has been reaffirmed by the 1994, 1997, 2000, 2003 and 2006 reports on the UN Register and remains the guideline for reporting transfers.

The description provided by the panel states:

10. International arms transfers involve, in addition to the physical movement of equipment into or from national territory, the transfer of title to and control over the equipment.
11. An international arms transfer may also occur without the movement of equipment across State frontiers if a State, or its agent, is granted title and control over the equipment in the territory of the supplier State. Therefore, a transfer of arms to a State would occur when its forces stationed abroad are granted title and control of equipment by the host country or any third State, or when title and control of such equipment are transferred to the host country or any third State. Additionally, if title and control of equipment temporarily stored or pre-positioned on the territory of another State are granted to the host country by the owner, then an international transfer has occurred.
12. Since the supply of equipment by a State to units of its armed forces stationed abroad does not involve transfer of national title and control, such supply is not considered an international transfer. Equipment of a State can be temporarily stored or pre-positioned on the territory of another State with no transfer of title and control of this equipment. This is not considered an international arms transfer.⁵³

Only a few regional agreements have attempted or adopted a definition of transfer, and they unanimously indicate a transfer is only considered to have taken place if arms are moved to another state (details of these definitions are provided in Annex C). It is logical to assume an ATT would only cover *international* transfers, and at least 18 states noted in their submissions that an ATT should not cover transfers *within* a state.⁵⁴

On the assumption that transfers will be defined along the lines of the 1992 Panel of Governmental Technical Experts’ description as involving the movement of arms to the control of another state, there are a range of activities that could be characterized as transfers. States listed in their submissions a range of such activities and transactions that either should or should not be considered for inclusion in an ATT.⁵⁵ In many instances states gave little or no elaboration of the control measures or types of provisions they would like to see included in an ATT in respect to the activities and transactions listed in their submissions. They merely noted that an ATT should cover “brokering”, for example. A closer look at some of the suggestions made by states follows, with a view to exploring why their inclusion in an ATT is important and providing further guidance on the issues and provisions that might be addressed and included in an ATT.

⁵² Paragraph 2(a) of the annex to General Assembly, *General and complete disarmament*, UN document A/RES/46/36 L, 6 December 1991.

⁵³ Report of the Governmental Technical Experts on the Register of Conventional Arms, annexed to General Assembly, *Report on the Register of Conventional Arms*, UN document A/47/342, 14 August 1992, paras 10–12.

⁵⁴ See Analysis report, p. 9.

⁵⁵ *Ibid.*, p. 7.

Brokering

Of all the activities and transactions, brokering was the one most frequently suggested for inclusion in an ATT, with a number of states noting that the findings of the GGE on brokering established pursuant to General Assembly Resolution 60/81 should be considered by the GGE on an ATT.⁵⁶ One of the main recommendations of the GGE on brokering was that states should develop adequate national laws, regulations and administrative procedures to control such activities. Similarly, the predominant suggestion by states in their submissions regarding an ATT was that it should call for national implementation measures to regulate brokers and brokering activities such as the registration of brokers, “including financial agents and transport agents”;⁵⁷ the criminalization of illicit brokering; and full disclosure of transaction details as part of the licensing process, including “relevant documents, the names and locations of all brokering and shipping agents involved in the transaction and the transit routes and points of the arms shipments”.⁵⁸

There was also some suggestion that states should seek to control brokers’ activities beyond their borders:

- the ATT “should include provisions authorizing the prosecution of arms brokers in the territory of any party thereto”;⁵⁹ and
- “States shall ensure that all registered brokering agents obtain an explicit authorization for each individual transaction in which they are involved irrespective of where the arrangements take place.”⁶⁰

Given that many of the national implementation measures suggested by states and the regulation of brokering activities generally is being considered in a separate process, it may not be necessary or appropriate for an ATT to address the issue of brokering in the level of detail indicated in states’ views. Rather, the focus should be on whether brokering as an activity should be covered by an ATT and which other related services might also be covered. For example, there may be a case for including the provision of private security and military services.

Transit, transshipment,⁶¹ transport

Fifty-six states suggested including transit and transshipment in an ATT. Switzerland nominated transit for inclusion in an ATT; however, it noted that “transshipment should not be included because it is too difficult to handle”. Efforts to control the movement of arms once they leave the exporting state are certainly complicated since they involve cooperation and coordination among, potentially, several transit states. However, such efforts are also vital since the journey the

⁵⁶ For the findings, see General Assembly, *Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons*, UN document A/62/163, 30 August 2007.

⁵⁷ Senegal.

⁵⁸ Senegal.

⁵⁹ Burkina Faso.

⁶⁰ Senegal.

⁶¹ The difference between transit and transshipment is that transshipment usually involves a change in the mode of transport during the movement of arms from State A to State B through another state (or several others); see Analysis report, p. 20.

weapons take from the exporting to the importing state can provide opportunities for the diversion of those weapons to unauthorized end-users.

The issue of principle concern here is whether the transit country should be required to re-license exports, seek assurances from the exporting states that there is a valid licence in place, or do nothing with respect to arms transfers across its territory. There may be large transaction costs associated with re-licensing all arms crossing a state's territory, especially where the state experiences a high volume of transit traffic. Accordingly, a requirement to seek assurances from the exporting states that valid licences are in place may be more acceptable and practical. This will also help foster communications between exporting and transit states with regard to arms transfers, which can serve as a "soft" means of monitoring delivery of the arms.

The issue of transport and the means by which arms are transferred is clearly related to the issue of transit and transshipment, and although transport was only specifically mentioned by 10 states in their submissions, it is an important topic for consideration in an ATT. France and Belgium have begun working on an initiative to raise awareness of and promote discussion on the fight against the illicit trafficking by air transport of SALW.

One of the observations arising out of this initiative is that often export licences are granted by states before the company responsible for transporting the weapons has been identified or contracted. States could require additional information, including the identification of the transport company to be used, as a condition for granting the export licence to ensure better oversight of companies involved in the movement of arms.⁶² This is just one example of a small, non-intrusive measure that could be adopted through an ATT implementation mechanism to enhance national export control systems.

In fact, this measure was included in the Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport agreed by participating states of the Wassenaar Arrangement at the plenary meeting in November 2007, adopted in recognition of the fact that "air transport is one of the main channels for the illicit spread of SALW".⁶³ Under the best practices, export licences may be made subject to the condition that additional information is provided before the goods are actually exported:

Such additional information on transport may include the following elements:

- air carrier and freight forwarding agent involved in the transportation;
- aircraft registration and flag;
- flight route to be used and planned stopovers;
- records of previous similar transfers by air;
- compliance with existing national legislation or international agreements relating to air transport of weapons.⁶⁴

⁶² Information from discussions during the COARM-NGO Annual Conference, "Preventing the Diversion of Arms—Developing a Pan-Europe Architecture", Brussels, 28 November 2007.

⁶³ Wassenaar Arrangement, *Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport*, 2007.

⁶⁴ *Ibid.*, para. 2.1.

Annex D gives examples of provisions in the Economic Community Of West African States (ECOWAS) Convention to monitor the movement of small arms transfers. It is not suggested that the level of detail of the supply process required under the ECOWAS Convention is appropriate for all situations and transit routes. It is merely provided to illustrate how the transport of arms is being monitored in situations where illicit SALW transfers pose a particular problem.

Re-export

Only 20 states mentioned the need to include the re-export or retransfer⁶⁵ of arms by the recipient state, with two specifying that an ATT should include a ban on re-export without the express authorization or consent of the original exporting country.⁶⁶ It is surprising that more states did not mention the issue of re-export given its association with diversion to unauthorized users.

Re-export by the recipient state may take place within a short time after the delivery (which could imply the arms were not required for their defence or security needs) or years later if the arms become surplus to the states' requirements or no longer serve their needs. In such cases, the recipient state may seek to re-export the arms. Unless the recipient state is under an obligation to inform the state that originally exported the arms of the proposed re-export, or to seek its consent to the re-export, the arms could be supplied to an end-user that has not been authorized by the original exporting state, or would not have been approved by the original exporting state. Annex D gives examples of re-export notification provisions that are in place.

Intangible transfers and licensed production

Seventeen states mentioned intangible transfers and eight specifically mentioned licensed production as a form of transfer that should be covered by an ATT. It is likely that many intended to cover licensed production in nominating technology (in one form or other) as a category that should be covered (as discussed in Section 7.1).

Licensed production involves the granting of a licence for production of weapons, by the company that owns the patent or right over the design of those weapons. Licensed production represents a cost-effective way for states to increase their ability to produce arms without having to develop the technology themselves. From the point of view of the company granting the licence, the economic advantages include the recovery of costs associated with research and development and an increase in global market share.⁶⁷ Although there are no exact statistics on what proportion of the arms trade licensed production represents, data indicate that deals including licensed production, ranging from small arms to combat aircraft, take up a significant share of total international arms trade.⁶⁸

Two major issues associated with the production of conventional weapons under licence are that it can be used as a means to evade strict export controls on the transfer of arms, and, once a licence is granted, it can be difficult to control the use or export of arms produced under licence,

⁶⁵ Re-export and retransfer are related concepts that are often used interchangeably and have been grouped together for the purposes of this study; see Analysis report, p. 8.

⁶⁶ Argentina and Australia.

⁶⁷ For more details, see Small Arms Survey, *Small Arms Survey 2002: Counting the Human Cost*, 2002, pp. 40–61.

⁶⁸ *Ibid.*; and email correspondence with SIPRI personnel, December 2007.

despite restrictive provisions in the licensing agreement. Given the difficulty of preventing or controlling the manner in which arms produced under licence are then exported, states should give the same scrutiny to decisions to transfer technology or authorize licensed production that they give to the transfer of complete weapons. The inclusion of licensed production as an activity to be covered by an ATT should be given careful consideration.

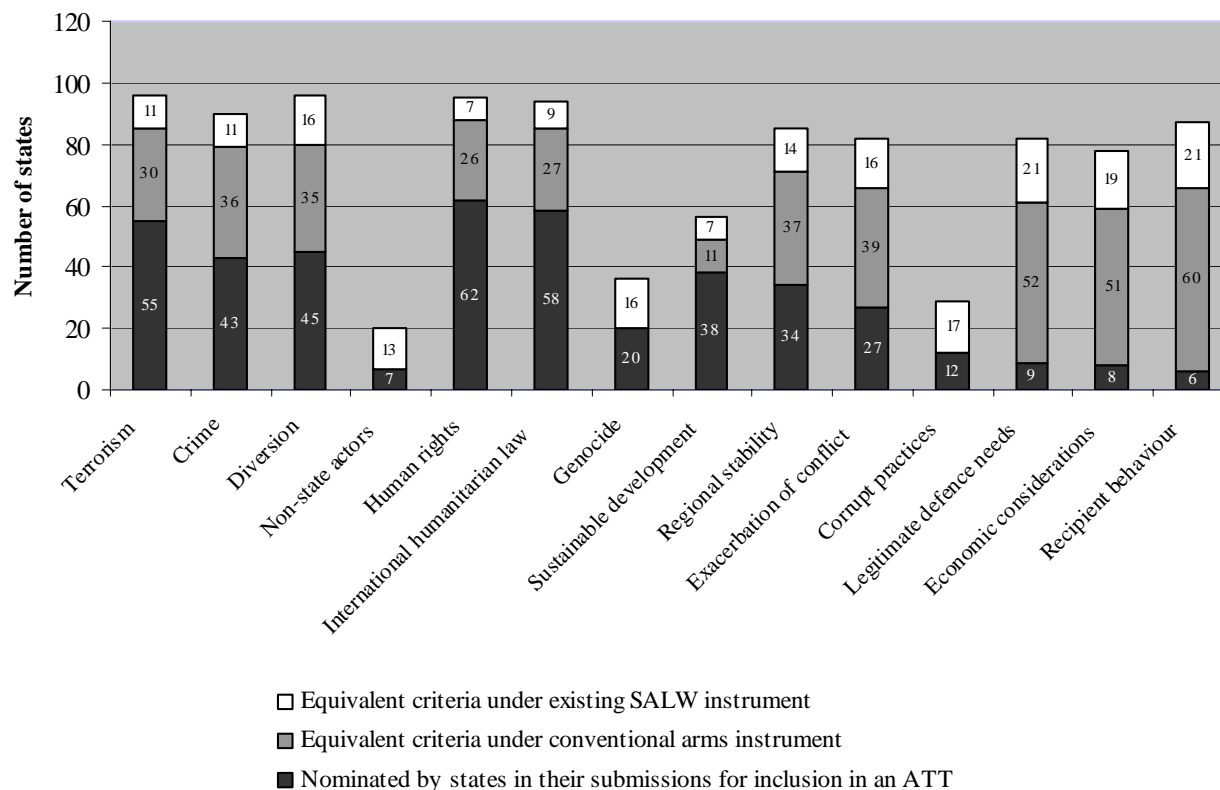
8. Parameters for an ATT: transfer criteria

Not surprisingly, in drafting their views on an ATT, many states drew on their existing commitments under regional instruments when suggesting transfer criteria and parameters for an ATT.

Existing instruments were reviewed to determine how many of them contain some or all of the transfer criteria mentioned by states as reflected in the Analysis report. It was then determined how many states have already committed themselves to these criteria by virtue of having supported, signed or ratified relevant instruments. In the absence of evidence to the contrary, it can be assumed that states that have already agreed to certain criteria would not object to its inclusion in an ATT, especially if they have incorporated such criteria into their arms control legislation. This is a useful means of predicting whether states that did not submit their views on an ATT might support such criteria, to get a better idea of the level of support and the prospects for inclusion of certain criteria in an ATT.

In addition to illustrating the number of states that mentioned certain transfer criteria in their submissions to the Secretary-General, Chart 1 incorporates supplementary data derived from the review of existing regional and international instruments. These instruments were the Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel; the ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material; the EU Code of Conduct on Arms Exports; the Nairobi Guidelines; the Organization for Security and Co-operation in Europe (OSCE) Principles Governing Conventional Arms Transfers and the Wassenaar Arrangement. They were included because they contain specific transfer criteria, similar or related to those suggested by states.

Chart 1. Overview of nominated and existing transfer criteria⁶⁹



The dark section of each column shows the number of states that nominated each criterion for inclusion or consideration in an ATT in their submissions (as reflected in the Analysis report). The grey section of each column shows the number of states that are parties or signatories to an instrument concerning conventional weapons that contains the transfer criterion in question. The light section of each column shows the number of states that are parties or signatories to an instrument concerning SALW that contains the transfer criterion in question. A detailed list of which states included these transfer criteria in their submissions and which states did not but are parties to existing instruments with similar criteria is provided in Annex E.

Proposals for an ATT by civil society and states alike suggest that at minimum an ATT should codify existing international legally binding commitments with respect to arms transfers, and establish a set of guidelines governing how states should make decisions regarding arms transfers. Some kind of progressive weight will be applied to criteria depending on the source of the obligation. The Netherlands, for instance, acknowledging that the different transfer criteria have different foundations—i.e. some being based on existing legal foundations and others on evolving ethical principles—suggested:

⁶⁹ Note that the transfer criteria under “considerations based on existing obligations and commitments” (UN Charter, Security Council resolutions, embargoes and regional or international commitments) are not included in Chart 1. This is because these reflect existing commitments and principles that bind all states. Accordingly, a review of how many states are already bound by a commitment not to export arms in violation of the UN Charter is not necessary.

In a treaty text these criteria should be dealt with separately on the basis of (e.g.) their different status within international law while setting criteria for 1) express prohibitions where no transfers are allowed; 2) prohibitions on transfers based on the likely use of the transferred arms and 3) other factors that must be taken into account.

So under an ATT, for instance, states would be reminded of—and expected to comply with—express obligations under international law, such as those reflected in the UN Charter or imposed by the Security Council. These obligations are not open to interpretation and, in theory, states do not have discretion to choose whether or not to comply.

Other criteria regarding the use of transferred arms (such as the likelihood that arms will be used to commit violations of international human rights or humanitarian law) allow for some level of discretion on the part of the exporting state in assessing the likelihood of a violation occurring as a consequence of a transfer. Moving down the spectrum to other factors that should be taken into consideration, such as recipient behaviour including compliance with other arms control arrangements, the level of discretion states have in making this judgement is arguably much broader.

A closer look at some of states' suggestions and concerns as well as general considerations regarding transfer criteria follows. The criteria are listed and grouped in accordance with the classification used in the Analysis report.

8.1. Considerations based on existing obligations and commitments

States are already bound to comply with a range of existing obligations regarding transfers of conventional weapons. The source of these obligations can be found in the UN Charter, Security Council resolutions including those imposing arms embargoes, and other international and regional agreements (some examples are included in Annex C). Incorporation of universally binding commitments into an ATT should be automatic, and indeed one of the purposes envisaged for an ATT is to codify and clarify these existing commitments.

According to the Nobel Peace Laureates' initiative:

The UN Charter, as well as international human rights and humanitarian law, already provide a number of important limitations on states' freedom to transfer weapons. However, some of these restrictions are only implied and their application to the trade in weapons is not altogether clear, therefore it is increasingly necessary to codify them in an explicit agreement that makes clear the international responsibilities of weapons transfers ... It is critical to note that the ATT would not impose a completely new normative framework on state behavior. Rather, it would affirm states' existing responsibilities under international law, clarify them, give them the force of renewed commitment, and provide a mechanism for their consistent and effective application to the trade in weapons.⁷⁰

Many states reiterated this need to have a consolidated list or reminder of all their existing international obligations with regard to arms transfers. This would eliminate any doubt or ambiguity regarding states' obligations and, additionally, provide an opportunity to establish guidelines to assist states to make decisions regarding arms transfers and ensure consistent

⁷⁰ "Arms Trade Treaty - About the ATT", <www.armstradetreaty.com/att/aboutatt.php>.

application of obligations and principles governing this area. Perhaps most importantly, it may allow for a more rigorous enforcement mechanism depending on what is agreed in an ATT.

Regional and international commitments

Forty-two states noted that consideration of existing regional and international commitments should be included as a criterion to be applied by states when assessing a proposed arms transfer. Although the category is extremely broad and includes the subcategories “embargoes”, “UN Charter” and “Security Council resolutions” (discussed under separate headings in this section), it has been included as a distinct category because many states made a general reference to existing obligations under international law without providing specific examples.

It is unclear what states intended to refer to when employing the phrase “regional and international commitments”. It is unlikely they intended to imply an ATT should include commitments in existing regional instruments that are not universally binding since this would be unlikely to attract support from states not party to those arrangements. The inclusion of specific commitments in regional instruments may be acceptable, but a blanket reference to “regional commitments” is too ambiguous. Annex F provides examples of how this criterion has been addressed in existing instruments.

Embargoes

Member States are legally obliged to respect and enforce mandatory UN arms embargoes by virtue of Article 2(5) of the UN Charter, which states that they “shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action”. In other words, states are under an obligation not to transfer arms to other states that are the subject of an arms embargo imposed by the Security Council. This is the clearest example of a legally binding commitment affecting states’ right to transfer arms under international law. Annex F provides examples of how this criterion has been addressed in existing instruments.

Most of the examples provided in Annex F focus on preventing transfers that would violate an arms embargo. The provisions in the Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel, however, seek to prevent transfers to (or from) states that have not complied with arms embargoes. In other words, it seeks to effectively sanction states that have not complied with arms embargoes by preventing arms transfers to or from these states. If this type of provision (as opposed to one that merely stipulates states should not transfer arms in direct violation of an arms embargo) were included in an ATT, it may constitute a further means of deterring states from violating arms embargoes. That said, it may be considered more appropriate for the UN Security Council to deal with this issue as part of its implementation mechanism for embargoes.

UN Charter and Security Council resolutions

Only 21 states specifically referred to the need to consider whether a proposed transfer might be contrary to the UN Charter, and 18 referred to Security Council resolutions generally. The low number of references to these sources of binding commitments perhaps reflects the fact that most states considered these to fall under “existing regional and international commitments” generally, or assumed that the principles affecting arms transfers under the UN Charter would automatically be incorporated into an ATT.⁷¹ Annex F provides examples of how this criterion has been addressed in existing instruments.

8.2. Considerations based on likely user

Terrorism and crime

Fifty-five states suggested transfer criteria to prohibit transfers where the recipient state supports terrorism or terrorists or where the arms could be used by terrorists, used in terrorist acts or diverted to terrorists or for terrorist activities. This reflects states’ obligation under Security Council Resolution 1373 to “refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists”.⁷² Annex G provides examples of how this criterion has been addressed in existing instruments.

There are several possibilities for approaching this criterion, as illustrated by some of the examples provided in the Annex G. They range from broad consideration of whether the arms are likely to be used to support or encourage terrorism, focusing on the behaviour of the recipient state and whether it supports or encourages terrorism, or has a record of doing so, and whether the recipient state has complied with (and presumably ratified) existing instruments regarding terrorism.

Some of these considerations can obviously be assessed more objectively than others. For instance, whether a state has ratified any or all of the international instruments on terrorism can be easily ascertained. Whether the state has also incorporated the obligations under such instruments into its domestic law is also fairly easily determined. Information regarding the recipient state’s record of supporting or tolerating terrorism is less readily ascertainable, but there will certainly be civil society and UN reports as well as media attention on this issue. The broader consideration of whether the arms are likely to be used to support or encourage terrorism is more subjective, and without further guidance on the factors that should be taken into account in order for an exporting state to reach an appropriate level of certainty that the arms will not be used for terrorism, such a vague criterion is likely to be interpreted and applied by states in different ways.

⁷¹ Such principles include the following: Article 2(4), “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”; Article 2(7), “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”; and Article 26, “In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world’s human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.”

⁷² Paragraph 2(a) of Security Council, UN document S/RES/1373, 28 September 2001.

This point was noted by the United Kingdom in its submission in the context of assessing the measure of certainty states need to have when implementing transfer criteria:

it is important to set out clearly the measure of certainty States need to have in the legitimate nature of a proposed transfer. In the case of clear commitments, such as UN Embargoes, the standards are unambiguous. But in deciding if they can be satisfied an item will not be used in one of the stated negative ways, States will need clear, easy to understand guidance to be set out in an instrument to facilitate implementation of controls. This may need to be set out for each individual area of concern. For example, it may be unreasonable to expect a State to refuse to allow a transfer because they cannot be satisfied arms will not be used in the furtherance of terrorist acts just because there has been one terrorist incident in the State in question. But if a State was aware that the intended recipient was a known terrorist grouping (for example those identified by a relevant UN body) or a trader associated with procurement for terrorist groupings, they should clearly not approve the transfer.⁷³

Forty-three states referred to the need for transfer criteria to prohibit transfers where the recipient country supports organized crime or where the arms could be used by criminal groups, used to facilitate the commission of violent crime, or diverted to criminals or for criminal use. Annex G provides examples of how this criterion has been addressed in existing instruments.

Designing transfer criteria to help prevent the transfer of arms that are likely to end up in the hands of criminals raises many of the same problems and considerations as those discussed in the section on terrorism. Inclusion of a criterion that seeks to prevent or avoid transfers of arms where those arms will or are likely to end up facilitating crime should be encouraged.

Box 4 provides a list of the questions suggested in the User's Guide to the EU Code of Conduct on Arms Exports for making a determination as to whether a recipient country encourages or supports terrorism and international crime.

⁷³ United Kingdom.

Box 4. EU Code of Conduct user's guide: suggested questions

A buyer country may encourage or support terrorism and international crime in many ways and before granting a licence, the competent authority might ask, among others, the following questions:

Does the recipient country have a record of past or present terrorist/criminal activities?

Are there any known or suspected links between the buyer country and terrorist/criminal organizations (or even individual terrorists/criminals) or any reasons to suspect that entities within—and tolerated by—the recipient country have those links?

Is there any other reason to suspect that the buyer country tolerates arms re-export or diversion to terrorist/criminal organizations, or that it organizes re-export or diversion itself?

Does the recipient country have internal legislation that tolerates terrorist/criminal activities, or does failure to apply legislation result in tolerance of terrorist/criminal activities?

More detailed questions should be:

Does the recipient country criminalize the provision of funds to terrorists, freeze the financial assets of people who commit, or attempt to commit, terrorist acts and prohibit the provision of services to those who participate in the commission of terrorist acts?

Does the recipient country refrain from providing any form of support, active or passive, to entities or persons involved in the terrorist acts?

Does the recipient country provide early warnings to other states by exchanging information?

Does the recipient country deny safe havens to those who finance, plan, support, or commit terrorist acts?

Does the recipient country prevent those who finance, plan, facilitate or commit terrorist acts from using its territory?

Does the recipient country prevent the movement of those who carry out acts through effective border controls?⁷⁴

Diversion

Forty-five states nominated the risk of diversion as a criterion that should be included in an ATT, with many specifying the risk of diversion to terrorists. The diversion of arms from their intended recipient or end-user can occur at number of stages:

- during the transfer process—while the arms are in transit or being transported from the exporting state to the recipient state;
- following delivery of the arms to the recipient state:
 - ◆ the arms may be leaked from state stockpiles as a consequence of poor stockpile management, theft or corrupt officials; or
 - ◆ alternatively, they may eventually be re-exported by the recipient state to another end-user if, for instance, they become surplus to the recipient state's requirements.

An assessment of the risk that arms transferred may be diverted from their intended end-user is a crucial consideration in the fight against the illicit trade in arms. It is also an extremely complex risk to assess and control once the arms have left the territory of the exporting state. Nevertheless, there are practical measures that can be adopted at the pre-export, post-export and post-delivery stages that could help reduce the risk of diversion. For instance, a number of states noted that an ATT should include end-use verification measures “to ensure that the arms reach and remain with the intended end-user. While complete and precise documentation constitutes an essential part of the end-use verification process, only a comprehensive and flexible approach

⁷⁴ Council of the European Union, *User's Guide to the EU Code of Conduct on Arms Exports*, EU document 10684/1/07 REV 1 (en), 3 July 2007.

will enable a reliable assessment.”⁷⁵ This is closely linked to the challenge of preventing diversion.

More specifically, states suggested ways to improve and standardize related documentation, including end-user certificates:

- “The use of export, import, transit and brokering licenses and end-user certificates (including adequate security measures, as for example, certification requiring the signatures of competent authorities in the consulates of the destination countries)”;⁷⁶
- “GGE should consider establishing agreed minimum levels of information which Member States must include on end-use and end-user certification in order to facilitate enforcement”;⁷⁷
- “It is necessary to set up a universal end-user confirmation and secure the necessary database about the authority of the member state in charge of issuing permits, as a security against undesired re-export and a control of the flow of arms, to prevent them from falling into the hands of terrorists”;⁷⁸
- “For the purpose of effective verification, due consideration should be given to the possible classification of the arms lists under the Harmonized Commodity Description and Coding System, possibly with adaptations in the [system] if necessary”;⁷⁹ and
- “one of the [priorities] should be to define standard elements for end-user certificates and verification procedures, including the drafting of standard forms for licensing authorities”.⁸⁰

Mali suggested that end-user certificates should contain the following particulars:

- (a) description of the weapon (type or model, calibre) and quantity (in the case of batches);
- (b) contents of the marking;
- (c) name and location of old and new owners and, as the case may be, successive owners;
- (d) date of registration;
- (e) information about each transaction, i.e.:
 - name and address of consignor, any broker, consignee and end-user;
 - origin, points of departure, possible transit and destination, as well as customs references and dates of departure, transit and delivery to end-user;
 - export, transit and import licences (quantities of batches for each licence, and validity of licence);
 - complete information on the carrier(s);
 - monitoring agency or agencies (at departure, transit and arrival points);
 - nature of transaction (commercial or non-commercial, private or public, weaponization, repair); and
 - as appropriate, the insurer and/or financing organization involved in the transaction.

⁷⁵ Germany.

⁷⁶ Argentina.

⁷⁷ Australia.

⁷⁸ Croatia.

⁷⁹ Iceland.

⁸⁰ Italy.

Serbia suggested introducing:

a binding standardized form to be printed out on special paper containing hologram [sic] for all kinds of important documents required for the import, export or transfer of conventional arms, such as End User Certificate (EUC), International Import Certificate (IIC), Delivery Verification Certificate (DVC) and other relevant certificates.

Annex G provides examples of how this criterion has been addressed in existing instruments.

Non-state actors

Only six states called for a prohibition on transfers to non-state actors in an ATT. Given the controversial nature of the issue of arms transfers to non-state actors and the absence of strong support in states' views, it seems unlikely that an absolute prohibition on such transfers could or would be included in an ATT. Measures to prevent diversion to non-state actors, however, are likely to meet with more success. Annex G provides examples of how this criterion has been addressed in existing instruments.

Although a blanket prohibition on sales to non-state actors is very unlikely to be included in an ATT, transfers to non-state actors may be affected indirectly. For example, if an ATT applies to transfers to *all* recipients or end-users, then transfers to non-state actors will be subject to the same transfer criteria and scrutiny as state-to-state transfers. If dual-use goods that are intended for civilian or non-military use are excluded from an ATT, then transfers of such items to non-state actors will not be affected.

8.3. Considerations based on likely use

Human Rights

Consideration of the possibility that arms transferred might be used to commit human rights violations was the most frequently suggested criterion by states. Several states also suggested means of assessing the level of risk involved:

- “The authoritative bodies to guide States on when serious human rights violations have been established would be the human rights bodies of the United Nations; in particular The Human Rights Council, the special procedures and the treaty bodies”;⁸¹ and
- “This prohibition must envisage consultation mechanisms that enable these prohibitions to be applied while not impairing the rights of a State to self-defence or its responsibilities in terms of protecting and providing security for its citizens.”⁸²

Annex H provides examples of how this criterion has been addressed in existing instruments.

While there is considerable support for the inclusion of a criterion based on the possibility or likelihood that arms transferred might be used to violate human rights, the practical application of such a criterion would be complicated and the development of guidelines within the

⁸¹ Finland.

⁸² Colombia.

ATT framework for assessing the likelihood that arms transferred will be used to commit human rights abuses would be essential to ensure consistent application of such a criterion.

Annex K includes an extract from the User's Guide to the EU Code of Conduct on Arms Exports regarding best practice guidelines for the interpretation of Criterion 2 (which includes a commitment that states will exercise special caution and vigilance in issuing licences to countries where serious violations of human rights have been recognized by the competent bodies of the UN, the Council of Europe or by the EU). It includes considerations such as whether the recipient country prosecutes and brings to justice those responsible for human rights violations, and whether it has ratified relevant human rights instruments through national policy and practice.

There is already a range of tools and information sources at states' disposal for assessing the likelihood that a recipient will use transferred arms to commit human rights violations. In addition to media and civil society reports, for example, a number of data sets containing information on states' human rights practices are maintained.⁸³

For example, the Bonn International Center for Conversion publishes different data sets concerning 170 countries with the specific aim of supporting and facilitating an evaluation of German arms exports and is therefore based on the criteria spelled out in the EU Code of Conduct on Arms Exports. The website hosts a database that measures the 170 countries against the following seven evaluation criteria: international or regional arms embargoes, adherence to human rights, good governance, internal conflict, membership in human rights and arms control conventions, arms export controls and the danger of disproportionate military capacities impairing development.

Similar to the assessment of the likelihood that arms transferred will be used for terrorist activities, there seems to be consensus among advocates of a human rights criterion that sporadic, one-off instances of human rights violations may not be sufficient to compel the denial of a transfer. Rather there must be persistent, grave or systematic violations or patterns of abuse.⁸⁴ The problem lies in reaching an objective assessment of whether such a pattern exists.

International humanitarian law

Consideration of the possibility that arms transferred might be used to violate international humanitarian law (IHL) was the second most frequently suggested criterion by states. Several states also suggested means of assessing the level of risk involved. One such suggestion is as follows:

Questions to be asked could include whether the recipient has ratified international humanitarian law instruments or made other formal engagements to apply the rules of international law; whether the recipient has trained its armed forces in the application of international humanitarian law and whether stable authority structures capable of ensuring respect for international humanitarian law exist in the area under control of the recipient.⁸⁵

⁸³ For example the Cingranelli-Richards Human Rights Data Set, the Universal Human Rights Index, the World Bank's Worldwide Governance Indicators, the Ibrahim Index of African Governance and the Countries at the Crossroads survey.

⁸⁴ Author's discussions with senior diplomats and human rights advocates.

⁸⁵ Finland.

Annex H provides examples of how this criterion has been addressed in existing instruments.

The International Committee of the Red Cross (ICRC) has produced a comprehensive practical guide that provides a set of indicators that states should take into account when assessing the risk that a proposed transfer of arms or military equipment will be used in the commission of serious violations of IHL.⁸⁶ Box 5 contains the list of the indicators explored in the ICRC guide.

Box 5. ICRC proposed transfer risk indicators

Proposed indicators to assess the risk that transferred arms or military equipment will be used in the commission of serious violations of international humanitarian law

- Whether a recipient which is, or has been, engaged in an armed conflict, has committed serious violations of IHL;
- Whether a recipient which is, or has been, engaged in an armed conflict, has committed serious violations of IHL;
- Whether a recipient which is, or has been, engaged in an armed conflict has taken all feasible measures to prevent violations of IHL or cause them to cease, including by punishing those responsible;
- Whether the recipient has made a formal commitment to apply the rules of IHL and taken appropriate measures for their implementation;
- Whether the recipient country has in place the legal, judicial and administrative measures necessary for the repression of serious violations of IHL;
- Whether the recipient disseminates IHL, in particular to the armed forces and other arms bearers, and has integrated IHL into its military doctrine, manuals and instructions;
- Whether the recipient has taken steps to prevent the recruitment of children into the armed forces or armed groups and their participation in hostilities;
- Whether accountable authority structures exist with the capacity and will to ensure respect for IHL;
- Whether the arms or military equipment requested are commensurate with the operational requirements and capacities of the stated end-user;
- Whether the recipient maintains strict and effective control over its arms and military equipment and their further transfer.⁸⁷

Genocide

Although the majority of states mentioned human rights and IHL as transfer criteria that should be included in an ATT, only 20 specifically mentioned that an ATT should include a criterion based on the likelihood the arms transferred would be used to commit acts of genocide or crimes against humanity. It is likely that states felt this was already covered by the broader category of human rights. Annex H provides examples of how this criterion has been addressed in existing instruments.

8.4. Considerations based on likely impact

Sustainable development

As noted in the 2004 report of the GGE on the relationship between disarmament and development:

⁸⁶ International Committee of the Red Cross, “Arms Transfer Decisions: Applying International Humanitarian Law Criteria”, 2007.

⁸⁷ Ibid.

Excessive armament and military spending can have negative impact on development and divert financial, technological and human resources from development objectives. Armaments in themselves may not be the root cause of violence and conflict. However, their spread and availability can threaten physical safety, endanger stability and welfare and diminish social and economic confidence, thus discouraging investment and economic development and contributing to a cycle of poverty, underdevelopment and distress.⁸⁸

The report also noted that:

Not only does military spending divert resources from other priorities, because of ... the competitive relationship between armaments and development, but excessive military expenditure can also affect a State's economy, including investment, as spending on armaments is often economically non-productive and inefficient and occurs in non-competitive conditions. ... At a time when global poverty eradication and development goals are not being met due, inter alia, to a shortfall of necessary funds, rising global military expenditure is a disturbing trend.⁸⁹

At least 35 states suggested including transfer criteria that would restrict transfers that could hinder, undermine or adversely affect sustainable development, and several others mentioned the need to consider issues of sustainable development generally in the context of an ATT. Considerations of the impact of an arms transfer on sustainable development are linked with "economic considerations" discussed in the next section, and many states that listed sustainable development referred to the principle of ensuring the least diversion to armaments of human and economic resources.

Sixteen of the states that nominated sustainable development as a criterion are EU member states and, consequently, are already committed to considering the impact on a recipient state's sustainable development when authorizing a transfer by virtue of Criterion 8 of the EU Code of Conduct on Arms Exports (see Annex I).⁹⁰ A further eight states that nominated this criterion are member states of the ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials, which also includes considerations of the impact on sustainable development when authorizing arms transfers.

Of the other states that referred to sustainable development, only Chile and Japan are among the 20 top recipients of major conventional weapons during 2002–2006.⁹¹ It remains to be seen whether the major recipients of conventional arms transfers and developing countries will be willing to include a criterion that involves an estimation of the recipient state's economic capacity and priorities, especially since an assessment of the socio-economic impact of an arms transfer may require access to information on government military and social spending. On the other hand, implementation of such a criterion may facilitate dialogue and cooperation between exporters and importers regarding the economic and development needs of the recipient. Annex I provides examples of how this criterion has been addressed in existing instruments.

Annex K includes an extract from the User's Guide to the EU Code of Conduct on Arms Exports regarding best practice guidelines for the interpretation of Criterion 8 (which includes a

⁸⁸ General Assembly, *The relationship between disarmament and development in the current international context*, UN document A/59/119, 23 June 2004, para. 18.

⁸⁹ *Ibid.*, paras 28–9.

⁹⁰ Austria, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom.

⁹¹ Stockholm International Peace Research Institute, *SIPRI Yearbook 2007: Armaments, Disarmament and International Security*, 2007, p. 418.

commitment that states consider the compatibility of the arms exports with the technical and economic capacity of the recipient country). It includes a recommendation that special attention be given to whether or not the recipient state is a developing country when considerations regarding the impact on sustainable development and economic resources are concerned.

Regional stability

Consideration of the impact an arms transfer will or may have on regional stability is closely related to the principle of avoiding “destabilizing accumulations of arms”. One of the logical benefits of including this criterion is that it will enhance communication between countries in the region concerned. While 34 states nominated this as a consideration, one state objected to its inclusion:

due to the complexity of the issue, objectively determining how it should be affected by a particular arms transfer may not be possible: in many cases, conventional arms transfers may have a stabilizing effect, by increasing the deterrence capabilities of the importing State, thereby contributing to avoid conflict or destabilization. Therefore, such factor should not be included as an objective criterion for the authorization of transfers.⁹²

One of the major problems associated with this criterion is that a determination of whether an arms transfer will have a destabilizing effect on a region or situation involves a complex analysis of multiple factors. First, an analysis of the existing military balance is required. Even if there were complete transparency with respect to arms *transfers* (which the UN Register has attempted—and thus far failed—to achieve), unless and until states provide information on their existing holdings and other procurement measures (namely domestic production), it may be difficult to gain an accurate picture of the military balance in a region. Second, even if an accurate assessment of arms holdings or military balance is possible, a determination of whether an arms transfer will have a destabilizing effect will depend on a range of context-specific factors including the perception of other states of the threat posed. Research indicates that there are at least six characteristics of military acquisitions, build-ups and subsequent balances which increase the likelihood of producing destabilizing conditions:

destabilization and conflict are more likely when armaments and equipment are acquired which by their intrinsic nature lead to any of the following: Decreased warning time, provision of breakthrough capabilities, no effective defense against the weapon, one side gaining transparency of other side’s military preparations, a broadening of target sets, and engendering of hostile feelings.⁹³

Given the complex nature of the risk assessment involved in determining whether an arms transfer will have an impact on regional stability, if this criterion is included in an ATT, consideration should be given to including detailed guidelines on how to make such a determination. Annex I provides examples of how this criterion has been addressed in existing instruments.

⁹² Brazil.

⁹³ Reference to the findings of David Mussington and John Sislin, “Defining Destabilizing Arms Acquisitions”, *Jane’s Intelligence Review*, vol. 17, no. 2, 1995, pp. 88–90, taken from Edward Laurance, “The United Nations Conventional Arms Register (UNCAR): Present Challenges, New Directions”, Canadian Department of Foreign Affairs and International Trade, 2001, p. 20.

Exacerbation of conflict

Twenty-seven states included consideration of the likelihood that a proposed arms transfer would exacerbate existing conflict as a criterion that should be included in an ATT. Annex I provides examples of how this criterion has been addressed in existing instruments.

The impact that a supply of weapons will have on an existing conflict is context specific. In some instances it may facilitate the continuation and escalation of the conflict, in others it may help to bring about the end of hostilities. For instance, “arms transfers can help accelerate victory for government forces in civil war” or they can “reduce incentives for negotiated settlements in civil wars by maintaining the military viability of continued conflict, and increase the scale and severity of destruction (physical and human)”.⁹⁴ As with the criterion considering the impact on regional stability, an assessment of the impact that an arms transfer may have on existing tensions or conflicts is a complex one, and if this is included as a criterion in an ATT, consideration should be given at a later stage to establishing detailed guidelines to assist states to make an appropriate determination.

Annex K provides a list of the questions suggested in the User’s Guide to the EU Code of Conduct on Arms Exports for making a determination as to the impact of an arms transfer on an existing conflict.

If any or all of the criteria on the possible impact of a transfer are included in an ATT, the Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons that form part of the Wassenaar Arrangement provide some useful questions to help guide states in assessing likely impact (see Annex K).

8.5. Considerations based on recipient country

Corrupt practices

Thirteen states mentioned that “corruption” or “corrupt practices” should be considered by states in deciding whether to authorize a transfer. Most simply listed corruption as an issue without elaborating further. Some gave a broad frame of reference to the corruption they were referring to: “corrupt practices involved in any stage of the transfer”;⁹⁵ “corrupt practices at any stage—from the supplier, through any middlemen/broker, to the recipient”.⁹⁶ France specified that an ATT “should provide for a clause on combating the bribery of foreign public officials in the context of international commercial transactions, a clause which forms the subject-matter of several existing instruments”.

There has certainly been considerable media attention given to the commissions and kickbacks provided by arms-producing companies to government officials in recipient states. Several instruments have attempted to address the issue of corruption in international business transactions generally including, at a regional level, the 1997 Organisation for Economic Co-

⁹⁴ Centre for International Cooperation and Security, *The Impact of Arms Transfers on Poverty and Development*, University of Bradford, 2004, p. 33.

⁹⁵ Liberia and Mali.

⁹⁶ Bangladesh.

operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1996 Inter-American Convention Against Corruption; and, at a global level, the United Nations Convention Against Corruption. In total, 134 states have ratified one or more of these conventions.

It is not the aim of this section to explore in detail the extent or impacts of corrupt practices and bribery in the international arms trade, but two aspects of the issue warrant consideration in particular in determining the scope of an ATT. First, the provision of commissions or bribes to foreign officials distorts decisions to purchase arms, and can result in the purchase of quantities and types of weapons that exceed the defence needs of the recipient state and contribute to the diversion of economic resources to armaments. Accordingly, although “corrupt practices” was nominated by relatively few states as a criterion for inclusion in an ATT, and does not appear to be a priority, the practice of bribing or providing incentives to recipient states should be explored in the development of an ATT because such can distort arms purchasing decisions, thus potentially affecting sustainable development and the principle of the least diversion of resources to armaments. Second, from a practical point of view, it has been commented that the fact that the *value* of arms exports is not required to be reported to the UN Register (or under the EU Code of Conduct on Arms Exports or Wassenaar Arrangement) allows incentives, commissions or bribes to be disguised: “such information in conjunction with a description of the goods licensed could undoubtedly reveal the vast differences in prices of the same exports which could point to the potential for corrupt payments”.⁹⁷ This has implications for the reporting mechanism adopted by an ATT (discussed further in Section 9.2).

In determining whether a transfer is likely to involve corrupt practices on the part of the recipient state, for instance, exporting states could consider whether the recipient state has ratified the UN Convention Against Corruption (or one of the other conventions), and whether the recipient state has implemented the necessary legislation in accordance with its obligations under the convention. Annex J provides examples of how this criterion has been addressed in existing instruments.

Legitimate defence needs

Inclusion of a criterion based on an assessment of the recipient state’s legitimate defence and security needs was only raised by nine states, although it appears as a criterion governing arms transfers in several regional instruments. This criterion is problematic because it seeks to second-guess a state’s assessment of its own security and defence needs, and intrudes on state sovereignty issues. It is also in danger of infringing on the principle raised by at least seven states that an ATT should not impose restrictions on the number of arms that may be acquired, held or used within a state’s territory.⁹⁸ For this reason, there is likely to be some debate over its inclusion in an ATT. Annex J provides examples of how this criterion has been addressed in existing instruments.

⁹⁷ Catherine Courtney, “Corruption in the Official Arms Trade”, Transparency International (UK), Policy Research Paper 001, April 2002, p. 32.

⁹⁸ See Analysis report, p. 9.

Economic considerations

The principle of the “least diversion for armaments of the world’s human and economic resources” is enshrined in Article 26 of the UN Charter. Furthermore, this criterion appears in several regional instruments (see Annex J). Nevertheless, only eight states suggested consideration of a recipient state’s economic capacity as a criterion that should be considered when assessing a transfer, and one state opposed its inclusion:

considerations on the domestic socioeconomic impact of military expenditures and arms acquisitions by a given State are within the realm of exclusively sovereign attributions and responsibilities of the State in question. Therefore, the inclusion of such criterion in the instrument would be altogether unacceptable.⁹⁹

One of the problems raised with including such a criterion is that, as with considerations of legitimate defence needs and sustainable development, this involves second-guessing another state’s determination of its own priorities. Thus the inclusion of this criteria in an ATT is likely to meet with some opposition. Annex J provides examples of how this criterion has been addressed in existing instruments.

Recipient behaviour

This subcategory was used for general comments or criteria suggested by states based on the behaviour of the recipient state that did not fit into the subcategories listed above. For instance:

- Argentina noted that the “existence of adequate national arms controls in the destination countries” should be considered when authorizing a transfer. This points to the desirability of including methods for assessing the adequacy of national controls in an ATT’s implementation mechanisms. This could involve a determination of whether export controls are being effectively enforced or implemented, as well as whether the intended recipient at least has export control legislation in place;
- Côte d’Ivoire, Japan and Turkey noted that the recipient state’s record of compliance with commitments in the field of non-proliferation, arms control and disarmament should be considered; and
- Spain suggested considering “the behaviour of the purchasing country toward the international community, especially its stance on terrorism, the nature of its alliances and its full respect for international law” and “consideration of the national control capacity, preventing bribery and corruption, as well as ensuring the recipient country’s capacity to control the final destination of arms”.

Annex J provides examples of related criteria that have been adopted in existing instruments.

If criteria regarding a recipient state’s behaviour are included in an ATT, the Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons of the Wassenaar Arrangement provide some useful questions to help guide states in assessing a recipient state’s behaviour, including motive, adherence to disarmament treaties and commitments, and relationship to other states (see Annex K).

⁹⁹ Brazil.

9. Range of implementation measures¹⁰⁰

Agreement on the objectives and scope—in terms of categories of weapons and transactions to be covered—of an ATT are essential to its development and adoption. Of equal importance, however, in terms of ensuring an ATT achieves its objectives, is the implementation of the treaty and the confidence in its implementation.

The implementation of the ATT will be bound up in the capacity of states to implement the treaty. Confidence in its implementation will depend in part on the capacity of states to implement and on the capacity of states to monitor compliance with a treaty:

The political will of States to implement non-proliferation, arms control and disarmament obligations and commitments, including confidence-building measures, and to participate in the associated verification arrangements, where applicable, is crucial. It is characterized by the willingness of States to share information, allocate resources, use available verification mechanisms and deal with cases of non-compliance.¹⁰¹

This section will deal in turn with the capacity to implement and the capacity to monitor compliance, which includes transparency and accountability measures.

9.1. Creating the capacity to implement an ATT

International cooperation and assistance

International cooperation and assistance was the operational mechanism most frequently mentioned by states for inclusion in an ATT, and consideration of a mechanism or commitment to assist states in developing capacity to implement their ATT commitments effectively is vital. Some of the suggestions made include the following categories:

- **information exchange**—“The treaty must contain specific commitments to cooperate in the following fields: judicial—relating to exchange of information on tracing, evidence, ballistics traces, etc”;¹⁰² “cooperation should also be directed toward helping States to establish a mechanism to facilitate the exchange of information and experiences with a view to ensuring effective oversight of the manufacture of firearms and other activities, such as monitoring and neutralizing illegal trafficking activities; not renewing licences to bear arms; detecting illegal sales on the part of arms traders; preventing the intentional diversion of arms to other buyers; preventing and punishing the offence of falsifying documents in order to buy and register firearms; keeping appropriate records of seized or confiscated arms; verifying import and export operations; obtaining basic information on the routes and networks used by criminal organizations involved in arms trafficking; and promoting and facilitating international cooperation and assistance in tracking arms”;¹⁰³

¹⁰⁰ In the Analysis report, the implementation issues raised by states were discussed in Section 3.3.2 under “operational mechanisms”. For the purposes of this report, the mechanisms suggested by states have been grouped under relevant implementation themes.

¹⁰¹ General Assembly, *Verification in all its aspects, including the role of the United Nations in the field of verification*, UN document A/61/1028, 15 August 2007, para. 14.

¹⁰² Colombia.

¹⁰³ Ecuador.

- **border control**—“Development of cross-border cooperation to limit traffic in small arms; More effective control over arms movements through the establishment of control mechanisms at borders; Strengthening and harmonization of legislation and controls of countries in the same region; and Provision of the necessary resources for law enforcement forces, including capacity-building (police, armies, intelligence services and customs) to ensure security in countries in conflict and to combat the supply of arms to terrorist networks”;¹⁰⁴ “An ATT should also encourage States to cooperate for effective customs control and border management. Regular exchange of information and experience and among law enforcement bodies, as well as expert meetings would contribute to this aspect. Moreover, regional and bilateral arrangements and agreements on customs cooperation could be encouraged. ... Training courses could also be organized both on specific implementation issues as well as general aspects of arms trade”;¹⁰⁵
- **education and training**—“The treaty should put special emphasis on strengthening structures and upgrading the skills of staff working in the customs, security, inspection and trade sectors. Emphasis must also be placed on the training of specialists in stockpile management and security of the stocks held”;¹⁰⁶ “Educational provisions, provisions to aid implementation and provisions for performance assessment. ... [T]hese provisions, under the principle of progressivity, will permit the organisation of outreach-type workshops, training sessions for government experts in the field of customs and control, exchanges of information on best practice etc”;¹⁰⁷ “The treaty must contain specific commitments to cooperate in the following fields: ... technical—concerning assistance, education and training in new technologies”;¹⁰⁸ and
- **legal assistance**—In the context of advocating that an ATT should oblige states to make the unlicensed export of conventional arms a punishable offence under national criminal law, the Netherlands suggested that “as an inherent part of this system, a framework for the international mutual legal assistance in criminal matters should be included in the ATT”.

Guidelines

A number of states suggested that an ATT include guidelines for states in making transfer decisions under the adopted criteria:

- “To assure comprehensive application the ATT should include detailed guidelines on how to implement” criteria;¹⁰⁹
- “It will be crucial to devise guidelines on how to assess the existence and degree of a risk that the [principles of an ATT] might be violated by authorizing a proposed transaction”;¹¹⁰
- “guidelines based on best practices could be elaborated to achieve coherent implementation of the instrument”;¹¹¹

¹⁰⁴ Morocco.

¹⁰⁵ Turkey.

¹⁰⁶ Togo.

¹⁰⁷ France.

¹⁰⁸ Colombia.

¹⁰⁹ Czech Republic.

¹¹⁰ Germany.

- “an instrument should also set out the basic practical mechanisms and guidance States should use when deciding on a case by case basis whether or not to allow a transfer. This does not need to be overly burdensome, but may set out, for example, the basic need to ensure all transfers are supported by appropriate documentation, and that records must be kept of all transfers”;¹¹² and
- “In order to seek an increasing convergence on the interpretation of the treaty and its implementation, it might be useful to consider the possibility of adding political undertakings to the treaty, for example in the form of a guide to best practice, or even a system of inspection by peers of the control mechanisms.”¹¹³

Such guidelines could take the form of a check-list or a standard form to be filled in by all states parties to an ATT. There are existing guidelines in other related measures, for example, the ICRC guidelines on transfers in the context of norms of IHL, the EU Code of Conduct user’s guide and so on. Guidelines can serve the purpose of providing clear illustrations of prohibited and permitted arms trade transactions while allowing some discretion in applying the criteria set out in the treaty.

National legislation

Capacity to implement an ATT includes national implementation measures, such as the adoption of national legislation incorporating commitments made under a treaty into domestic law. This was recognized by at least 27 states in their submissions. Suggested elements for national implementation measures included:

- **penal and administrative sanctions** to respond to violations of the ATT: “such penal and administrative sanctions should be extended to any activities prohibited by the instrument undertaken anywhere by [nationals] in conformity with international law”;¹¹⁴ “Although every state will be entitled to establish a transfer control regime that is in conformity with its own internal legal order, it is recommended that minimum criteria be included in order to ensure a common standard for the controls”;¹¹⁵
- **licensing systems** that require licences for the export, import and international transit of conventional arms. It was suggested that such licensing systems should demand that evidence of licences or authorizations by competent national authorities of the recipient state be obtained prior to the authorization of transfers and that “transfers of conventional weapons that have not been expressly authorized by competent governmental authorities of all States involved in the transaction” should be prohibited;¹¹⁶
- **marking** of all small arms and light weapons subject of an international transfer in accordance with the provisions of the International Tracing Instrument;¹¹⁷

¹¹¹ Hungary.

¹¹² United Kingdom.

¹¹³ France.

¹¹⁴ Brazil.

¹¹⁵ Argentina.

¹¹⁶ Brazil.

¹¹⁷ *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, or the 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*.

- **record-keeping**—“The maintenance of detailed records containing all relevant information related to transfers of conventional weapons that may be necessary to enable States to comply with their obligations as regards the cooperation to trace such weapons”;¹¹⁸ and
- **establishing a national agency**—An ATT “may encourage the establishment of a national conventional Arms Trade Control Agency”;¹¹⁹ “National authorities possessing the competence and expertise required for arms trade licensing should be established as part of the administrative framework of every future States Party [sic].”¹²⁰

Adoption and harmonization of national legislation (or incorporation of ATT principles into export controls) is necessary to ensure an ATT is consistently applied and to prevent loopholes that would reduce the impact and effectiveness of an ATT.

Resources for building capacity for implementation of an ATT need to be considered and addressed carefully. Harmonization of legislation can be done effectively through regional organizations or through national bodies. Building on existing export controls, trade legislation and penalties for illegal activities could be the most effective approach. Interaction with international legal and law enforcement experts, as a form of technical assistance, has proven effective in similar initiatives.

9.2. Transparency and accountability

In order to ensure confidence in compliance with a treaty, there are a number of confidence-building measures that could serve to increase trust in states’ commitment to a treaty and in their capacity to implement its provisions. Such measures rely heavily on a system of transparency and accountability in which all parties have a stake. Information for the purpose of assessing compliance with the treaty needs to be provided and shared while simultaneously protecting information not needed as part of the accountability system. Accountability measures that are clearly designed to provide needed information but do not expose the whole of a party’s military interests and activities are more likely to be acceptable—and therefore succeed—than a list of extraneous requirements.

Information-sharing

In their submissions, states proposed a range of transparency measures to assist in the sharing of information. Forty-one states noted the need for an ATT to include provisions on information-sharing. The types of information states suggested sharing included:

- information on transfers that were denied or approved;
- information on “authorized arms producers, dealers, importers, exporters and, whenever possible, carriers”;¹²¹

¹¹⁸ Brazil.

¹¹⁹ Bangladesh.

¹²⁰ Hungary.

¹²¹ El Salvador.

- “scientific knowledge and technological information in order to prevent, detect, and investigate illicit arms manufacturing and trafficking that may arise from the legal arms trade”,¹²²
- experience and know-how on controls of arms transfers;¹²³ and
- “Information on national legal regulations on trade and brokering activities and storage and surplus management”.¹²⁴

States did not make suggestions as to *how* this information could be shared, other than through a reporting mechanism as discussed below. They did note, however, that any information-sharing mechanism needs to “ensure this information is available in a timely manner and accessible to all States”¹²⁵ and that an ATT “should not establish procedures for the submission of information that endanger the national security of States”.¹²⁶

Reporting mechanisms

An obligation to report on implementation of obligations under a treaty is a common tool for ensuring transparency, building confidence among states parties and providing states with an opportunity to demonstrate their compliance. A voluntary mechanism for reporting on the transfer of conventional weapons already exists in association with the UN Register, which is discussed in greater detail under the heading “international register” below.

This raises an important question as to whether a reporting mechanism under an ATT would replace or supplement the existing mechanism, reflecting the concern that “an ATT must not suffer from too many additional reporting and meeting requirements; such requirements should remain limited to what is strictly necessary, and should adhere as closely as possible to existing formats and structures”.¹²⁷ While reporting under the UN Register may “serve as an appropriate guideline”,¹²⁸ and something in line with this would certainly “limit bureaucracy”¹²⁹ by not overburdening states with a multitude of different reporting obligations, if the reporting mechanism established under an ATT simply mimics the UN Register then it will likely suffer the same shortcomings and inadequacies.¹³⁰ Another possibility is the approach taken by the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons in developing a mechanism to reduce the amount of work required in reporting SALW arrangements by streamlining the reporting forms and creating a database that can be used to generate reports for different agreements.¹³¹

In the context of an ATT, the information that could be requested or required includes:

- information on international transactions that were approved and executed, including:
 - ◆ the identity of the recipient or end-user;

¹²² El Salvador.

¹²³ Thailand.

¹²⁴ Turkey.

¹²⁵ Bosnia and Herzegovina.

¹²⁶ Cuba.

¹²⁷ Netherlands.

¹²⁸ Thailand.

¹²⁹ Switzerland.

¹³⁰ The limitations of the reporting mechanism under the UN Register are highlighted in Box 6, see p. 45.

¹³¹ See for example “Arms Export Control Reports Templates”, <www.seesac.org/index.php?content=7§ion=2>.

- ◆ the quantity of arms transferred;
- ◆ the type of arms transferred;
- ◆ the value of the transfer;
- ◆ the age of the arms transferred (e.g. new or second-hand);
- ◆ the identity of the source or supplier (e.g. manufacturing company, surplus government stocks);
- ◆ the identity of the broker or intermediary (where applicable);
- ◆ details of all licences granted in association with the transfer (including export, transit and import licenses);
- ◆ the nature of the transaction (e.g. sale, loan, commercial, non-commercial, private or public, conversion, repair);
- ◆ the intended use of the arms (e.g. for national police forces);
- ◆ the date of the transfer;
- ◆ details of the delivery of the arms (including the methods of transport; customs references; the dates of departure, transit and delivery; and the identity of transporters involved in the delivery);
- information on international transfers that were denied, including:
 - ◆ the identity of the requesting party or state;
 - ◆ the quantity of arms requested;
 - ◆ the date of the request;
 - ◆ the reasons for denying the transfer;
 - ◆ other related information;
- national implementation measures, including:
 - ◆ the adoption or adaptation of legislative provisions relevant to the treaty (including the provision of copies of relevant legislation); and
 - ◆ other related developments in the national implementation of an ATT.

The above list is not intended to be exhaustive, and additional elements for consideration include the items contained in the OSCE Questionnaire on Participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology, the text of which is included in Annex B. The questionnaire includes considerations of export policy and details of export licensing practices. Participating states of the OSCE provide responses to the questionnaire annually.

Practical considerations

The elements to consider when designing a reporting mechanism for an ATT include:

- **approvals or actual transfers**—Exporting companies need to gain approval of a transfer before it takes place. But they are not obliged to use the licence fully, and there may sometimes be a substantial time lag between approval and transfer. Moreover, while governments typically keep reasonably good records on licensing decisions, they may not always keep comparable records on delivery. A decision therefore needs to be taken as to whether an ATT reporting mechanism will include licences, transfers or both. Since an ATT aims to ensure better government decision-making on transfers, reporting of transfer decisions or licensing might be more appropriate. It would also be

more timely, since it would allow reporting at an earlier stage than reporting on actual transfers. The UN Register could then continue to report actual transfers;

- **frequency**—How often should states be required to report? The 36 states that suggested including a reporting mechanism in an ATT commented that the requirement should be for regular reporting. A few states emphasized that information provided through information-sharing mechanisms should be timely. One means of ensuring this is to stipulate that states should notify a secretariat or designated body within a set period of time of licences that have been granted. For instance, the Chemical Weapons Convention (CWC), which permits certain chemicals to be transferred to other states for research, medical, pharmaceutical or protective purposes, requires the states parties involved in the transfer to notify the Technical Secretariat of the transfer “not less than 30 days before” the transfer takes place.¹³² Such a requirement would mean that not only is information on transfers available long before it might be in an annual report, but before the transfer even occurs. If states are required to report under an ATT on licences granted rather than transfers made, then the latter suggestion could be adjusted so that states are required to report within a certain period *after* the licence is granted, since an obligation to report in advance would not be appropriate;
- **format**—A suggested format for reports could be annexed to an ATT. If states are given a format for reporting, this is likely to make it easier to submit reports provided that the requirements are not too great. It is also likely to increase the comparability of data and information submitted by states. A precedent for reporting on the transfer of conventional weapons already exists in the form of a template designed by the UN Office for Disarmament Affairs (UN ODA) to assist states reporting to the UN Register.¹³³ Although a template for reporting will notify states of the information desired, there is no way of guaranteeing states will complete such a template accurately or adequately. Indeed, this has been one of the criticisms of the UN Register’s reporting system (see Box 6, p. 45);
- **depository**—Who should receive and collate ATT reports? If a secretariat or permanent body of some sort is established under an ATT, states could report to it, and indeed several states noted this could be one of the roles of an ATT secretariat. Reports to the UN Register are currently deposited with UN ODA and published on its website;
- **voluntary or compulsory**—Should states be required to report under an ATT or should reporting be voluntary? In a legally binding agreement that includes reporting as part of the accountability mechanism, information-sharing ideally would be mandatory. If states are not prepared to commit to this then they would not join the agreement. At least one state commented that obligatory annual reporting should be part of an ATT,¹³⁴ however it may be difficult to agree on compulsory reporting at a global level and the need for reports and their content would have to be clear to all. At a regional level, the Inter-American Convention on Transparency in Conventional Weapons Acquisition provides the only instance where states parties to a legally binding convention have agreed to a compulsory reporting obligation with respect to their conventional weapons

¹³² CWC, Verification Annex, Part VI, § B(5).

¹³³ Standardized reporting forms are available in the six official UN languages at <<http://disarmament.un.org/cab/register.html>>.

¹³⁴ France, an ATT “could, inter alia, make obligatory the annual publication of national reports, and provide for the maintaining of a universal transfer register, based on the United Nations Register of Conventional Arms.”

transfers.¹³⁵ Reporting is an important confidence-building measure. Voluntary reporting mechanisms are beset with problems and states would be left with something that merely echoes existing arrangements under the UN Register, which are not ideal. One way of increasing incentives for states to submit is to prohibit the transfer of arms to states that have not submitted a report¹³⁶ or, more softly, include it as a consideration when assessing recipient behaviour as a transfer criterion. This is seen in the Wassenaar Arrangement which provides that participation in the UN Register could be used as a factor in assessing a recipient state's behaviour for the purposes of approving an arms transfer; and

- **publication**—Should ATT reports be made publicly available? It would defeat the transparency objective if reports were not made public. However, the willingness of all states to agree to having reports made publicly available may depend on the nature and scope of the information they are required to report on. As noted by Thailand, “in certain circumstances, transparency reporting that involves disclosing the information of arms stockpile [sic] may be a sensitive issue as it relates to national security, and, as such, an adequate safeguard of national security should be built into the Treaty”. Perhaps a compromise could be found whereby certain information could be kept confidential. For example, states that provide data to the UN Register on military holdings and procurement through national production may request that the data not be published in the Secretary-General's annual report.¹³⁷

Apart from cases of deliberate misinformation, capacity-building programmes for reporting on ATT compliance, coupled with a reporting and information exchange mechanism at an annual meeting, should take care of most benign problems. The Coordinating Action on Small Arms project for capacity-building in reporting for the UN PoA could be a useful model.¹³⁸

International register

Thirteen states suggested establishing an international register whose functions could include the following:

- record states' compliance with obligations deriving from instruments in the field of disarmament, non-proliferation and arms control;¹³⁹
- establish electronic databases that facilitate the exchange of information;¹⁴⁰
- record requested, authorized and denied transfers;¹⁴¹

¹³⁵ Article III, “1. States Parties shall report annually to the depositary on their imports and exports of conventional weapons during the preceding calendar year, providing information, with respect to imports, on the exporting State, and the quantity and type of conventional weapons imported; and information, with respect to exports, on the importing State, and the quantity and type of conventional weapons exported. Any State Party may supplement its submission with any additional information it considers relevant, such as the designation and model of the conventional weapons.”

¹³⁶ This provision need not be absolute but could apply, for instance, where a state party has not submitted a report in the past three years, or some other appropriate period. Such a provision would need to consider capacity issues, as it may lead to discrimination against states that do not have capacity to report on an annual or regular basis.

¹³⁷ United Nations Register of Conventional Arms, “Information Booklet 2007”, part I(E), para. 2.13.

¹³⁸ Elli Kytömäki and Valerie Yankey-Wayne, *Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Analysis of the Reports Submitted by States in 2003*, United Nations Institute for Disarmament Research, 2004; and Elli Kytömäki and Valerie Yankey-Wayne, *Five Years of Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Regional Analysis of National Reports*, United Nations Institute for Disarmament Research, 2006.

¹³⁹ Argentina.

¹⁴⁰ Argentina.

¹⁴¹ Argentina, Canada and Latvia.

- publish an annual report summarizing states' reports (submitted in accordance with whatever reporting obligation is agreed);¹⁴²
- maintain a database of conventional arms holdings;¹⁴³ and
- maintain a database that provides an “inventory of the annual quantitative [data] of intermediary-trade organizations for arms and ammunition, and contracts executed by them”.¹⁴⁴

Some states suggested using the existing UN Register with or without modification, but others advocated establishing a new international register specifically for an ATT. As noted by Japan, while “using the [UN Register] could be considered from the viewpoint of efficient use of the UN budget by utilizing an existing system[,] ... Consideration of setting up a new international registry is also necessary”.¹⁴⁵

This raises important questions touched on in the previous section, namely: how well is the current system of reporting conventional arms transfers to the UN Register working? Should an ATT replace the existing system or supplement it? The temptation could be to build on the register but, given its problems, this could be an unwise move. However, if the register's problems could be addressed and fixed prior to the elaboration of an ATT, then this should be considered (see Box 6).

Box 6. Lessons learned from the UN Register

The United Nations Register of Conventional Arms was established by General Assembly Resolution 46/36 L in 1991 “to prevent excessive destabilizing accumulations of arms”. Other goals included implementing new confidence-building measures, reducing arms transfers, addressing the problem of the illicit arms trade, reducing the economic burden on states of arms acquisitions and reducing military expenditure. Under the resolution, states were invited to provide annual data on their imports and exports of arms.

In 2003, SIPRI released a policy paper analysing the operation and performance of the register during its first 10 years of operation, which noted it had “failed to secure comprehensive participation and consistent observance; to harvest genuinely useful data; to analyze it; or to achieve practical follow-up in terms of identifying and correcting potentially destabilizing build-ups of arms”.¹⁴⁶ The paper provided a number of explanations for this failure, and an excerpt is included here in an attempt to highlight some of the lessons learned that could and should be avoided in an ATT process:

First, the UN Register was limited to major conventional weapons because these were believed to be the most useful weapons for aggression and therefore the most likely to cause a destabilizing arms build-up. In addition, major conventional weapons are the most visible individual items and therefore the most transparent weapons in open sources, so in general providing official data on them does not seriously compromise secrecy.

¹⁴² Bangladesh, Burkina Faso, Japan and Lithuania.

¹⁴³ Ecuador.

¹⁴⁴ Georgia.

¹⁴⁵ Japan.

¹⁴⁶ Siemon Wezeman, “The Future of the United Nations Register of Conventional Arms”, Stockholm International Peace Research Institute, Policy Paper no. 4, August 2003, p. 3.

Box 6. Continued

Second, the resolution invited countries to report only on weapons obtained via imports, not on those acquired through other means. Most notably, it did not invite countries to report on weapons obtained through national production. In addition, data on inventories were not requested. [There was a plan to expand the UN Register and states were invited to provide annual data on imports and exports of arms and, “pending the expansion of the Register” states would be invited to provide “available background information regarding their military holdings, procurement through national production and relevant policies”.]

Third, the reporting mechanism was purely voluntary and included no clauses for inspection or control. Since both arms exporters and arms importers are requested to provide data, it is possible to ‘cross-check’ the data provided. In theory, the reports from arms exporters should correspond with those from arms importers. In practice, however, cross-checking the reports is problematic, since countries use different definitions of the term ‘transfer’. They also have different understandings of when a transfer can be said to occur and what weapons are to be reported to the [UN Register]. An additional problem is that, while most arms exporters report, many importers do not, leaving one side of the transfer unreported and making crosschecking impossible. [This latter point is of particular relevance in the context of an ATT, and highlights the importance of including clear, exhaustive definitions in an ATT and of including a comprehensive list of the activities and transactions covered, as discussed in Section 7.2.]

Fourth, the resolution requested only minimal data: the name of the supplier and recipient countries; and the numbers and general categories of weapon. The model numbers of the weapons and notes on their age and quality could be provided voluntarily as background information.

Fifth, the resolution left open the possibility of improvements to the [UN Register] reporting mechanism, to be discussed and decided upon at an unspecified later date. It stipulated that a review of the process was to be held within two years, but it did not specify how the results of the review were to be used.

The GGE appointed every three years to review the continuing operation of the UN Register and its continued development has made various attempts and recommendations to improve its operation, with varying degrees of success. For instance, in its 2006 report, the GGE recommended that states in a position to do so could provide information on transfers of SALW, which—not being “major” conventional weapons—were not included in the original list.

This reflected an acknowledgement that the illicit trade in SALW was of greater significance and interest to many states than the transfer of major conventional weapons, and that inclusion of this category of arms might encourage greater reporting by such states. However, despite noting that there was “no transparency instrument covering international transfers of SALW between States, although those transfers were believed to comprise a significant portion of the global trade in conventional weapons”,¹⁴⁷ these arms were not included under the UN Register, rather a recommendation was made that states report on their SALW transfers as part of their voluntary reporting. The GGEs have also raised the possibility of including a requirement to report on procurement through national production.

These are all limitations that could be considered and overcome by a new register established under an ATT. One final consideration that may affect the decision whether to establish a new register or simply improve the existing one is the fact that the UN Register has been plagued by disagreement among states as to whether or not it should include other categories of weapons. A registry established under an ATT, which would be exclusively concerned with issues concerning the trade in conventional arms, and would be part of a legally binding treaty, might help to alleviate this stalemate.

¹⁴⁷ General Assembly, *Continuing operation of the United Nations Register of Conventional Arms and its further development*, UN document A/61/261, 15 August 2006, p. 26.

In summary, the adoption of an ATT may provide the impetus to improve the existing arrangement under the UN Register and supplement it with a mechanism for reporting on licences granted, or an opportunity to abandon an initiative that has not achieved its original objectives and start again.

9.3. Compliance mechanisms

Although some states parties to an ATT might not be willing to accept an intrusive verification mechanism, given the objectives of an ATT it will be necessary to establish a framework for building confidence in compliance with an ATT:

The ability to detect and assess accurately non-compliance depends on factors such as the nature of the obligations, the precision of the language by which they are expressed, the monitoring means included in the agreements, the compliance history of the parties and analytic capabilities. The integration of information from various sources and the degree of access that inspectors have to areas of concern will also be factors. While international bodies may be mandated to verify compliance, ultimate responsibility for making compliance assessments rests with States parties. States have the opportunity to demonstrate their compliance by undertaking confidence-building and transparency measures and providing extra information in addition to the basic legal, mandatory requirements. Conversely, States need to consider that suspicions might arise from their non-participation or partial, reluctant involvement in verification activities.¹⁴⁸

In cases where doubts or concerns arise about the accuracy of a state's report under an ATT, a system allowing for a secretariat or other states parties to request clarification of the report, or certain transfers reflected in the report, may be useful. This seems the obvious place for challenges by other states to be raised, since the reporting stage is when the information would become public. If, however, an element of confidentiality were introduced, another avenue should be provided for states to raise concerns regarding compliance by another state.

One possibility may be to include a mechanism similar to the one incorporated in Article 8 of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention on Landmines). This enables a state party to submit a "Request for Clarification" to the Secretary-General regarding another state suspected of violating the treaty. A process then follows whereby the state in question is given an opportunity to respond to the request; a fact-finding mission may be sent to the state in question to investigate the allegations of the request; and ultimately, the matter may be put before the states parties.

A mechanism for seeking clarification if there is a suspected breach also exists under the CWC and the Comprehensive Nuclear-Test-Ban Treaty. Under these arrangements, states are encouraged to exchange information and consult with each other before asking for clarification. There is also provision for on-site inspections within the territory of a state party if there is a suspected breach.

Another possible mechanism for ensuring compliance is the establishment of an international roster of trained auditors to carry out spot checks on states' submissions to a register. The

¹⁴⁸ General Assembly, *Verification in all its aspects, including the role of the United Nations in the field of verification*, UN document A/61/1028, 15 August 2007, paras 19–20.

mandate for the auditors would include the right to determine the accuracy and completeness of reports made under an ATT, ascertain the significance of discrepancies, bring unresolved significant discrepancies to the attention of all states parties and furnish an audit report that could propose ways to increase the effectiveness, accuracy and completeness of the states' reporting procedures.

Enforcement

As far as implementation, monitoring and enforcement are concerned, the operative provisions of a future Treaty should be rigorous but not overly burdensome, based on best practices but also taking into account lessons learned as well as a gap analysis of the licensing process in all its aspects.¹⁴⁹

Forty states expressly noted the need to include enforcement in an ATT. Only a few states specifically mentioned the types of enforcement measures that should be imposed, for example “The imposition of import and export embargoes on violators”¹⁵⁰ and Security Council sanctions.¹⁵¹

Other states provided comments on the process for deciding to impose enforcement measures:

- “This should be a visible process, designed to investigate in a timely manner any alleged breaches, but also designed to avoid unnecessary investigation of frivolous suggestions of wrong doing”;¹⁵² and
- “states must agree to set up a mechanism for monitoring and ensuring compliance with the treaty, a mechanism which is capable of initiating, within a reasonable period, an impartial and transparent investigation of alleged infringements of the treaty and imposing suitable penalties on infringers”.¹⁵³

Other potential options include:

- financial penalties; and
- restrictions or prohibitions on trading in arms for certain periods of time.¹⁵⁴

A few states made specific reference to the CWC as a useful model in determining appropriate compliance and sanctions mechanisms (see Box 7).¹⁵⁵

¹⁴⁹ Italy.

¹⁵⁰ Burundi.

¹⁵¹ Senegal.

¹⁵² Bosnia and Herzegovina and the United Kingdom.

¹⁵³ Colombia.

¹⁵⁴ For example, the Kimberley Process Certification System includes the threat of exclusion from world diamond markets for states found to be in breach of their commitments.

¹⁵⁵ For example Iceland and South Africa.

Box 7. Enforcement mechanisms under the CWC

Under the CWC, if a state party has been requested by the Executive Council to take measures to redress a situation regarding compliance, and that state party fails to fulfil the request within the specified time, its rights and privileges under the convention may be restricted or suspended until it takes the necessary action to redress the compliance issue. Where there may be serious damage to the object and purpose of the convention as a result of a violation, the Conference of the States Parties may recommend collective measures in conformity with international law. In cases of “particular gravity”, the conference may refer the matter to the attention of the UN General Assembly or Security Council.¹⁵⁶

In addition to looking at the enforcement mechanisms in other arms control agreements, attention must be paid to the challenges and obstacles experienced in the context of implementing arms embargoes, especially since arms embargoes constitute the only international legally binding attempts to control conventional arms transfers and their implementation over the past two decades has not been a resounding success (see Box 8). Indeed, Turkey noted that an ATT would provide an opportunity to redress some of the failures of arms embargoes:

although adherence to UN arms embargoes is a legal responsibility for all States, the measures in case of breach of these embargoes have not yet been identified by the international community. One aspect of the ATT should be filling this loophole and identifying measures in case of breach of UN arms embargoes.¹⁵⁷

Box 8. The problems with enforcing arms embargoes

Evidence suggests that UN arms embargoes have done little to stem the flow of weapons to target countries and that violations have consistently occurred. A 2007 study concludes that “the effectiveness of UN arms embargoes depends primarily on the capacity and will of UN member states, particularly the ... P5 states, arms-supplying states, transit and transshipment states, and states neighbouring embargoed targets”.¹⁵⁸ Another study concluded that “few countries have put much emphasis on enforcing UN arms embargoes. Loopholes in national laws, weak enforcement and gaps in border control have made the implementation of arms embargoes extremely difficult.”¹⁵⁹

Those cases where violations of embargoes have taken place:

have highlighted a number of challenges for the border, customs, law enforcement and transfer control services of UN member states seeking to implement UN arms embargoes, including poor compliance culture, corruption, low numbers of staff, poor detection equipment, lack of knowledge and experience for detecting forged or out-of-date enduser certificates (EUCs) and misinterpretation of the coverage and scope of embargo resolutions. ... It is not only the capacity of UN member states that poses a challenge to the implementation of UN arms embargoes. Political will is also a crucial factor in ensuring that an arms embargo is implemented by all states.¹⁶⁰

¹⁵⁶ See CWC, art. 12.

¹⁵⁷ Turkey.

¹⁵⁸ SIPRI and SPITS, *United Nations Arms Embargoes Their Impact On Arms Flows And Target Behaviour*, 2007, p. 51.

¹⁵⁹ Michael Brzoska, “Putting More Teeth in UN Arms Embargoes”, in David Cortright and George Lopez (eds), *Smart Sanctions: Targeting Economic Statecraft*, Roman and Littlefield, 2002, p. 132.

¹⁶⁰ SIPRI and SPITS, *United Nations Arms Embargoes Their Impact On Arms Flows And Target Behaviour*, 2007, p. 24.

Box 8. Continued

One recommendation for improving arms embargoes is as follows:

With regard to improving the effectiveness of UN arms embargoes to limit arms flows to embargoed targets, the UN should support global efforts to improve arms export, transit and transshipment controls. These would include the establishment of a set of legally binding and globally applicable guidelines for arms transfers in the proposed arms trade treaty, global controls on brokering, and support for standardized EUCs. States neighbouring embargoed targets have posed particular problems for implementing UN arms embargoes.¹⁶¹

There is some suggestion that improvements in export control legislation and the regulation of brokering activities have improved records of compliance with arms embargoes and that “there are growing efforts to prosecute [brokers] and this seems to have acted as a deterrent, with a decline in the brazen sanctions-busting cases that were the hallmark of the late 1990s”.¹⁶² Additionally, there is evidence to suggest that “naming and shaming” those governments involved in violations of arms embargoes can have an impact on state behaviour. For instance:

the expert committee established by the Security Council to investigate the arms embargo against the UNITA forces in Angola named a number of governments responsible for violations, including Burkina Faso, Ivory Coast, and Rwanda. The intense discussion of the expert report has had the desired effect of prompting the mentioned governments to promise strict enforcement of the arms embargo. This reinforces the impression that what governments fear most is public exposure of arms embargo violations. A number of governments have experienced the shaming power of international [non-governmental organizations] and the media and want to avoid adverse headlines that can influence international perception of a government’s behaviour. Countries generally do not wish to be seen as pariah states violating international norms.¹⁶³

In terms of the lessons to be drawn from the arms embargo experience for the development of an ATT, it seems clear that capacity and political will are likely to be obstacles to the implementation and possibly even the creation of an ATT. With respect to ensuring compliance, the importance of national implementation measures and the power of “naming and shaming” mechanisms should be considered in the development of an ATT.

On a final note, Liberia made an interesting suggestion that, in addition to imposing sanctions against those states that violate an ATT treaty, there must be “appropriate acknowledgements for those countries that cooperate fully in the implementation of the ATT”.

¹⁶¹ Ibid., p. 51.

¹⁶² Holger Anders and Alex Vines, “Sanctions and Enforcement”, in *Developing a Mechanism to Prevent Illicit Brokering in Small Arms and Light Weapons: Scope and Implications*, United Nations Institute for Disarmament Research, 2006, p. 130.

¹⁶³ Michael Brzoska, “Putting More Teeth in UN Arms Embargoes”, in David Cortright and George Lopez (eds), *Smart Sanctions: Targeting Economic Statecraft*, Roman and Littlefield, 2002, p. 132, note 165.

9.4. Institutional arrangements

Secretariat

Thirteen states suggested establishing a secretariat or some kind of permanent, semi-permanent or ad hoc body to support and administer implementation of an ATT. Suggestions for the functions and responsibilities of such a body included:

- to “serve as a Point of Contact for the submission of national annual reports, exchange of information, provision of expert assistance in national capacity building, and also a foundation for any other mechanism to be established by the ATT”;¹⁶⁴
- to “assist States Parties with the drawing up of national legislation and the establishment of export control systems. [An] Implementation Support Unit could also be the mechanism to facilitate international co-operation and assistance in this regard”;¹⁶⁵ and
- to “serve ... as a basis for any fact-finding mechanism”.¹⁶⁶

A few also suggested the form that a secretariat or other implementation monitoring body might take:

- “an international institution to ensure its effectiveness through a mechanism agreed on by all States and by means of a process that enables an impartial, multilateral body to ensure that States parties properly carry out their responsibilities”;¹⁶⁷
- “United Nations outposts should be established in producer and consumer countries to enforce the principles” of an ATT;¹⁶⁸
- “The ATT should also establish regional bodies that would be responsible for settling disputes and for monitoring and promoting the treaty in the geographical areas under their jurisdiction”;¹⁶⁹
- an “expert group of corresponding qualifications, conducting inspections [of arms and ammunition producing companies and examination of the labelling and marking processes] should be created within the Treaty framework”;¹⁷⁰
- “a standing committee to guide all states by making determinations on whether to prohibit arms exports to countries where arms might be used for gross or serious human rights violations. For example, the standing committee could issue on a regular basis a list of regions or countries to which conventional arms should not be transferred to because of humanitarian concerns”.¹⁷¹ Morocco also mentioned the possibility of “development by the United Nations of a list of countries ... subject to international [transfer restrictions]”; and
- “When setting up a compliance mechanism for ATT [sic] the Group of Governmental Experts could consider defining a review process through regular meetings of states parties, which would assess the operation of the treaty. Another separate or parallel

¹⁶⁴ Serbia.

¹⁶⁵ South Africa.

¹⁶⁶ United Kingdom.

¹⁶⁷ Spain.

¹⁶⁸ Burundi.

¹⁶⁹ Colombia.

¹⁷⁰ Georgia.

¹⁷¹ Republic of Korea.

option might be to establish a separate organisation entrusted with ensuring the implementation of relevant ATT provisions and providing furthermore a forum for consultations and cooperation among States Parties”.¹⁷²

Some states also expressed concern regarding the potential costs of establishing and maintaining a secretariat and the possibility that its functions may duplicate those of existing institutions: “It should be set up as economically as possible”;¹⁷³ “Given the need to avoid the establishment of excessively costly international institutions, a feasible alternative would be to have a unit within the United Nations Secretariat with the capacity to coordinate matters and assist States to implement the provisions of the instrument”;¹⁷⁴ and “Any such body should not duplicate the work of other existing bodies.”¹⁷⁵

Many of the suggestions made by states are reminiscent of existing mechanisms under other arms control treaties. A brief overview of some of those mechanisms is provided in Box 9.

Box 9. Existing multilateral mechanisms

The Organisation for the Prohibition of Chemical Weapons was established under the CWC to “achieve the object and purpose of this Convention, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties”.¹⁷⁶ The three organs are the Conference of the States Parties, which meets annually to oversee implementation; the Executive Council; and the Technical Secretariat, which carries out the verification measures.

The Comprehensive Nuclear-Test-Ban Treaty Organization was established under the Comprehensive Nuclear-Test-Ban Treaty to ensure the implementation of the treaty once it enters into force, including verification of compliance with it, and to provide a forum for consultation and cooperation among states parties.¹⁷⁷ Although they are not yet in existence, the treaty provides for three organs: the Conference of the States Parties, the Executive Council and the Technical Secretariat, to coordinate the International Monitoring Team (comprising facilities for monitoring nuclear testing activity) and operate the International Data Centre (which stores and processes information generated, for instance, through consultations and inspections). Currently these functions are in preparation through the offices of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization.

¹⁷² Hungary.

¹⁷³ Iceland.

¹⁷⁴ Argentina.

¹⁷⁵ United Kingdom.

¹⁷⁶ Article VIII.

¹⁷⁷ Article II.

Box 9. Continued

The Nuclear Non-Proliferation Treaty did not establish a secretariat as such. Rather, it authorized the International Atomic Energy Agency (IAEA) to create a system of safeguards that includes conducting inspections to ensure compliance. The IAEA was established under the Statute of the International Atomic Agency, and operates as an autonomous international organization in a working relationship with the United Nations.

The Ottawa Convention on Landmines did not initially create a secretariat or mandate an existing body to act as such. States parties submit their reports to the Secretary-General, who also receives requests for clarifications regarding compliance.

Additionally, institutions and forums have evolved to assist states parties with their implementation, most notably the Geneva International Centre for Humanitarian Demining, which was established by the Swiss government in 1998 to provide research and operational support to states in implementing the convention. Following the Third Meeting of States Parties in 2001, an Implementation Support Unit was established.

The Legal Unit of the Advisory Service on IHL of the ICRC is also engaged in assisting states implement their commitments under the Ottawa Convention. It provides states with technical advice and assistance to establish national measures on implementation, and collates national legislation relevant to treaty implementation that is submitted voluntarily by states parties. On a final note, civil society plays an active role in monitoring and verification of the convention, which has been actively encouraged by the states parties. The International Campaign to Ban Landmines produces the annual *Landmine Monitor Report* that provides information on state party compliance, adherence by signatories and non-state-party observance.

Although the Biological and Toxin Weapons Convention¹⁷⁸ did not originally have a verification regime, in 2006 states parties established an Implementation Support Unit to provide support and assistance for administrative matters, national implementation, confidence-building measures and obtaining universality of the treaty.

Some of the mechanisms described in Box 9 may be better suited to an ATT than others. For instance, given the sensitive nature of the information states may be required or encouraged to share under an ATT, there may be reluctance for de facto monitoring by civil society, although implementation support in the form of assistance with reporting and drafting national legislation may be welcomed, especially by states with limited resources and capacity. On the other hand, the sensitivity of the information and concern over national security interests may mean that an independent body of non-affiliated, non-governmental experts selected or agreed to by states parties, with no political or strategic agenda, may be best suited to the task of monitoring implementation.

¹⁷⁸ Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

The structure of a secretariat or other body will depend on the nature of the verification mechanism adopted to ensure compliance with an ATT. A rigorous verification regime that provides for inspections of arms transfers that are claimed to violate the terms of the treaty may not be feasible to structure or establish. On the other hand, verification of states' reports is quite possible. If the verification mechanism agreed consists simply of self-reporting by states parties, then the establishment of a unit within the UN ODA to receive and publish the reports submitted would be adequate.

Such a development would be a cause for concern. First, it would mean the system developed merely mimics the existing system of reporting under the UN Register and does not advance transparency in conventional arms transfers or the fight against illicit trafficking. Second, it would signify a failure to learn from the mistakes of previous attempts at multilateral arms control.

10. Options for structure

A framework treaty that allows for protocols to be adopted at future stages seems the most obvious choice for an ATT. Indeed, this was suggested by Switzerland along with several other considerations:

A future ATT should consist of a Framework Treaty (cf. Convention on Conventional Weapons) with additional protocols on specific categories of conventional weapons which focus on commitments of States in respect of the international transfers of conventional arms. ... An evolutionary clause should permit the inclusion of new issues. ... The detailed technical issues could be addressed in annexes to the protocols.

Such conventions in operation include the 1992 United Nations Framework Convention on Climate Change and the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW, also referred to as the Convention on Certain Conventional Weapons or the Inhumane Weapons Convention).

Both conventions contain general provisions, with the substantive provisions contained in annexed protocols. In the context of the Convention on Climate Change, the Kyoto Protocol, which committed developed countries to reducing green house gas emissions, was not adopted until December 1997. In the context of the CCW, three protocols were annexed to the convention at the time of adoption, and two further protocols were adopted in 1995 and 2003. Furthermore, at the Second Review Conference, the states parties agreed to amend the convention so that it applies to situations of non-international armed conflict as opposed to situations of international armed conflict as originally agreed.

These brief descriptions are provided to illustrate that it is possible to design treaties in such a way that there is sufficient flexibility to allow states that are committed to the purpose of a treaty to move forward on specific issues, despite reluctance or opposition from certain major states, and to adapt the treaty to new developments and changing priorities.

Entry-into-force considerations

The provisions regarding the entry into force of an ATT will be of significance given the emphasis states have placed on the need for universal participation in an ATT. Entry-into-force provisions vary from treaty to treaty, but generally there is a requirement that a certain number of states ratify a treaty before it can enter into force. In some treaties, there is a requirement that specific states ratify before it can enter into force. For instance, in order for the Kyoto Protocol to enter into force, at least 55 parties to the Convention on Climate Change had to have ratified the protocol. Among those, enough of the states listed in Annex I of the protocol¹⁷⁹ to account for at least 55% of the total carbon dioxide emissions for 1990 of those listed parties had to have ratified. A similar formulation that ensures the participation of a significant number of major conventional arms exporters may be deemed appropriate for an ATT.

Follow-up

Several states recognized the need for a follow-up mechanism in the form of a periodic review to ensure that new provisions can be added and common principles adapted in light of bans on new uses or the emergence of new threats not contemplated at the time of negotiation.¹⁸⁰ The structure of a follow-up mechanism will be particularly important if a list of weapons is annexed to the treaty, which will require regular consideration and updating to accommodate technological developments and emerging technologies.

The arrangement adopted in a number of other arms control conventions, including the CWC and the Ottawa Convention on Landmines, is to have annual meetings of states parties and conferences every five years to review implementation.

Dispute settlement

There is a range of options with regard to a dispute settlement mechanism under an ATT. With regard to disputes arising between states parties that relate to the interpretation or application of the treaty, a common approach is to encourage the parties in dispute to consult with one another and attempt to negotiate a settlement of the issue. Failing this, the parties may seek to refer the matter to an appropriate organ of a secretariat or other institutional body established under the treaty. Final recourse may involve referral—with the mutual consent of the disputing parties—to the International Court of Justice.

11. Conclusion

A strong and effectively implemented ATT could lead to recognized standards for assessing and encouraging responsible behaviour in arms transfers. For such reasons, the ATT initiative has gained a great deal of momentum and attracted much state support. A large majority of states support the idea of establishing a set of common international standards that would govern how and whether states authorize conventional arms transfers. Although some states are sceptical about the feasibility of or need for an ATT, no state has expressed the view that there should *not*

¹⁷⁹ Annex I states are industrialized countries that were members of the OECD in 1992, plus countries with economies in transition.

¹⁸⁰ Argentina.

be standards and principles governing the transfer of arms. What the support shown for an ATT signifies is that most states agree that decisions to allow arms transfers should be made according to common legal and ethical principles. What remains to be seen is what those principles may be and whether critical mass in terms of participation can be achieved.

In terms of the content of an ATT, the views expressed by states in their submissions to the Secretary-General, and the level of agreement on the categories of weapons, activities and transactions, transfer criteria and operational mechanisms, form a solid foundation on which to begin substantive deliberations. It will be up to those states committed to an ATT to decide whether to push for the inclusion of categories or transactions that may cause discomfort and may lead to a deadlock of the process, or accept an instrument that may be weaker than they wish, but which nevertheless makes for a dynamic process that could evolve over time.

There are a few states that are sceptical about or opposed to the adoption of an ATT. However, these states carry a great deal of weight due to their standing as major players in the conventional arms trade and global politics generally. While preoccupation with the participation of these states is understandable, efforts to bring them on board at the expense of moving forward on a treaty could present more risks than opportunities.

This year, 2008, marks the fortieth anniversary of the signing of the Treaty on the Non-Proliferation of Nuclear Weapons; yet, neither China nor France, two of the five Nuclear Weapons States, joined until 1992. They joined the treaty at that late stage for many reasons, one of which was that it had proven to be successful even without them. It is worth remembering that *many* global agreements begin without the adherence or support of key players.

Acronyms

ATT	arms trade treaty
CCW	Convention on Certain Conventional Weapons
CWC	Chemical Weapons Convention
ECOWAS	Economic Community of West African States
EU	European Union
GGE	Group of Governmental Experts
ICRC	International Committee of the Red Cross
IHL	international humanitarian law
OECD	Organisation for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
P5	Security Council Permanent Members
SALW	small arms and light weapons
SIPRI	Stockholm International Peace Research Institute
SPITS	Special Program on the Implementation of Targeted Sanctions
UN PoA	UN Programme of Action on Small Arms and Light Weapons
UNIDIR	United Nations Institute for Disarmament Research
UN ODA	UN Office for Disarmament Affairs

Annex A. List of international and regional agreements and arrangements

- 1993** OSCE Principles Governing Conventional Arms Transfers
- 1995** Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies
- 1996** Guidelines for International Arms Transfers in the Context of General Assembly resolution 46/36 H of 6 December 1991 (Disarmament Commission Guidelines)
- 1997** Inter-American Convention Against The Illicit Manufacturing Of And Trafficking In Firearms, Ammunition, Explosives, And Other Related Materials
- Nobel Peace Laureates' International Code of Conduct on Arms Transfers
- 1998** ECOWAS Moratorium On The Importation, Exportation And Manufacture Of Light Weapons In ECOWAS Member States
- EU Code of Conduct on Arms Exports
- Model Regulations For The Control Of The International Movement Of Firearms, Their Parts And Components And Ammunition (Organization of American States)
- 1999** EU Development Council Resolution on Small Arms
- Inter-American Convention On Transparency In Conventional Weapons Acquisitions
- Joint Declaration On Responsible Arms Transfers (Stability Pact)
- 2000** Antigua Declaration On The Proliferation Of Light Weapons In The Central American Region
- Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons
- Legal Framework for a Common Approach to Weapons Control (Nadi Framework)
- Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa
- OSCE Document On Small Arms And Light Weapons
- US–EU Declaration on Responsibility in Arms Exports

- 2001** ECOWAS Moratorium On The Importation, Exportation And Manufacture Of Light Weapons In ECOWAS Member States
- 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
- Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects
- Southern African Development Community Protocol on Control of Firearms, Ammunition and other related materials
- 2002** EU Joint Action on Small Arms
- Best Practice Guidelines for Exports of Small Arms and Light Weapons (Wassenaar Arrangement)
- 2003** Andean Plan To Prevent, Combat And Eradicate Illicit Trade In Small Arms And Light Weapons In All Its Aspects
- Draft Framework Convention on International Arms Transfers
- 2004** The Nairobi Protocol For The Prevention, Control And Reduction Of Small Arms And Light Weapons In The Great Lakes Region And The Horn Of Africa
- 2005** International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons
- 2006** Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel
- ECOWAS Convention On Small Arms And Light Weapons, Their Ammunition And Other Related Materials
- Nairobi Guidelines
- UN Global Counter-Terrorism Strategy

Annex B. OSCE questionnaire

OSCE Questionnaire on Participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology

OSCE participating States are requested to provide details of:

1. Their basic principles, policies and/or national practices on the export of conventional arms and related technology.
2. Their national legislation governing the export of conventional arms and related technology. If applicable, report changes and/or updates to the data provided in 1995, including any relevant subsidiary legislation.
3. Any international agreements or guidelines, other than OSCE commitments, covering the export of conventional arms to which they are a party.
4. The procedures for processing an application to export conventional arms and related technology:
 - who is the issuing authority?
 - what other authorities are involved and what is their function?
 - who deals with compliance?
5. Lists of conventional weaponry under national export controls and the basis for their control. If applicable, report changes and/or updates to the data provided in 1995.
6. Principles and national regulations on the destination or end-user of the equipment. Is there a complete *erga omnes* system or a published list of—destinations of concern?
 - embargoed countries?
 - differentiation between destinations (e.g., is there any preferential treatment of (groups of) countries)?
7. Requirements for the provision of an end-user certificate in an export license application, or of non-re-exportation clauses, or of any other type of certification before and after delivery for conventional arms export contracts. If applicable, please specify any verification of the end-user certificate and/or non-re-exportation clauses before and after delivery.
8. National definition of transit and transshipment (including free zones) of conventional arms, together with associated national legislation and compliance procedures.
9. The procedures governing companies wishing to export arms. Are companies obliged to seek official governmental authority to enter into contract negotiations or to sign contracts with foreign customers?
10. Policy on the revocation of export licences once they have been approved; please list any published regulations.
11. The penal and administrative implications for any exporter failing to comply with national controls. If applicable, report changes and/or updates to the data provided in 1995.
12. Any circumstances in which the export of arms does not require an export licence.
13. Licences for temporary export (e.g., demonstrations or testing), the period allowed and any special conditions attached to the licence, including verification of return procedures.
14. Licence documents and any standard conditions attached to it (copies to be provided).
15. Different types (e.g. individual, general, restricted, full, permanent, etc.) of licences and what they are used for.
16. Advice given to exporters as to licensability, such as the likelihood of approval for a possible transaction.

17. The average number of export licences issued annually and the staff engaged in the export licensing procedure.
 18. Any other relevant information pertaining to the export of conventional arms and related technology, e.g., additional laws, reports to Parliament, special procedures for certain goods.
 19. Are all guidelines governing conventional arms transfers nationally published?
- NB: Participating States that do not export conventional arms and related technology will so inform all other participating States.

Annex C. Examples of definitions of categories of weapons and items

This annex contains extracts from existing instruments and reports of definitions of categories of weapons and items that may be of relevance to an ATT.

Existing definitions of “ammunition”

Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all its Aspects (definitions, paragraph c)

... Ammunition and explosives are part of the small arms and light weapons that are used in fighting and include: cartridges (bullets) for small arms, projectiles and missiles for light weapons, hand-driven antipersonnel and antitank grenades, land mines, explosives and movable containers holding anti-aircraft and antitank missiles or projectiles for a single action.

Arab Model Law on Weapons, Ammunitions, Explosives and Hazardous Material [unofficial translation] (article 1, paragraph 7)

Ammunition: bullets containing a combustion primer, propelling force, projectile, and that are specialised for the use in military weapons, single weapons, hunting weapons; and bullets to be used in practice weapons by pressure and without gun powder.

Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials (article 1, paragraph 4)

“Ammunition”: the complete round or its components, including cartridge cases, primers, propellant powder, bullets, or projectiles that are used in any firearm.

Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition (article 1), Organization of American States

“Ammunition” means the complete round or its components, including cartridge cases, primers, propellant powder, bullets, or projectiles that are used in any firearm, as defined in Article I of the Inter-American Convention.

Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (article 1)

“ammunition”, meaning the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a small arm or light weapon, provided that those components are themselves subject to authorisation in the respective State Party.

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 (article 3c)

“Ammunition” shall mean the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State Party.

Protocol on Control of Firearms, Ammunition and other related materials (article 1, paragraph 2), Southern African Development Community

“ammunition” means the complete cartridge including the cartridge case, unfired primer, propellant, bullets and projectiles that are used in a firearm, provided those components are themselves subject to authorisation in the respective State Parties; ...

Report of the Panel of Governmental Experts on Small Arms (A/52/298) (section 3, paragraph 26)

- c) Ammunition and explosives:
 - (i) Cartridges (rounds) for small arms;
 - (ii) Shells and missiles for light weapons;
 - (iii) Mobile containers with missiles or shells for single-action anti-aircraft and anti-tank systems;
 - (iv) Anti-personnel and anti-tank hand grenades;
 - (v) Landmines;
 - (vi) Explosives.

Existing definitions of “parts and components”

Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition (article 1), Organization of American States

“Parts and components” means, in relation to firearms, those elements that are essential to their operation.

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 (article 3b)

“Parts and components” shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm.

Existing definitions of “explosives”

Arab Model Law on Weapons, Ammunitions, Explosives and Hazardous Material [unofficial translation] (article 1, paragraph 8)

- A. Any material/substance or a mixture of chemicals that are mixed in different percentages, and that could suddenly transform and under the effect of a catalyst to gas that has high pressure and high temperature and that would result in an explosion, such as dynamite, TNT, Potassium chloride, Nitrocellulose, gunpowder.
 - B. Explosion supplements: such as slow fuse, blasting fuse, fire and electric detonator (normal and electric capsules) and all devices used to trigger explosive materials.
- Chemical materials and explosion supplements (clause A & B) should be specified and categorised according to its chemical components, specifications, level of dangerousness, usage, in a decree by the Minister of Interior.

Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials (article 1, paragraph 4)

“Explosives”: any substance or article that is made, manufactured, or used to produce an explosion, detonation, or propulsive or pyrotechnic effect, except:

- a. substances and articles that are not in and of themselves explosive; or
- b. substances and articles listed in the Annex to this Convention.

Legal Frame Work for a Common Approach to Weapons Control Measures (Nadi Framework) (annexure C)

Any substance or article that is made, manufactured, or used to produce an explosion, detonation, or propulsive or pyrotechnic effect.

Wassenaar Arrangement

Solid, liquid or gaseous substances or mixtures of substances which, in their application as primary, booster, or main charges in warheads, demolition and other applications, are required to detonate.

Definitions of “transfer” in regional agreements

Arab Model Law on Weapons, Ammunitions, Explosives and Hazardous Material [unofficial translation] (article 1, paragraph 13)

Transfer: to move materials from one country to another.

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials (article 1, paragraph 9)

TRANSFER: Includes import, export, transit, transshipment and transport or any other movement whatsoever of small arms and light weapons, ammunition and other related materials from or through the territory of a State; ...

Statement of Understanding on Intangible Transfers of Software and Technology, Wassenaar Arrangement

“Transfers” ... covers exports from one country to another.

Annex D. Examples of provisions regarding activities and transactions

This annex contains extracts of provisions from existing instruments regarding activities and transactions that may be of relevance to an ATT.

Provisions to monitor movement of small arms

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials (chapter 2, article 5)

Procedures for Exemption

1. The request for exemption for an arms transfer is transmitted for examination to the ECOWAS Executive Secretariat and must contain information on: ...
- b) Details of the supplier—full details (name of company and representative, address, and full contact details) of all companies and individuals involved, including brokers where relevant;
- c) Details of the supply process—the number and period of shipments, the routes including transit locations, the type of transport to be used, all companies involved in importing, freight forwarding and handling, details of the storage and management of the weapons while being transferred, the time period covered by the activity for which the exemption is requested ...

Re-export provisions in existing instruments

Nairobi Guidelines (section 4)

We undertake to: ...

- b) Make every effort, in accordance with national laws and practices, without prejudice to the right of States to re-export SALW that they have previously imported, to notify the original exporting State, in accordance with their bilateral agreements, before the retransfer of those weapons; ...

Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

3. Participating States agree to ensure, as far as possible, without prejudice to the rights of States to re-export SALW that they have previously imported, that the original exporting Participating State, in accordance with bilateral agreements, will be notified before re-export/retransfer of those weapons.

Annex E. Transfer criteria nominated and committed to by states

This annex provides an overview of which states nominated each of the transfer criteria discussed in Section 8 in their submissions and which states already support similar or related criteria by being a party or signatory to one of the following instruments or arrangements: Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel; the ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials; the EU Code of Conduct on Arms Exports; the Nairobi Guidelines; the OSCE Principles Governing Conventional Arms Transfers; and the Best Practice Guidelines for Exports of Small Arms and Light Weapons (Wassenaar Arrangement).

State	Terrorism			Crime			Risk of diversion			Non-state actors			Human rights			IHL			Genocide		
	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument
Albania	✓																		✓		
Algeria																					
Andorra		✓						✓													
Argentina	✓		✓			✓		✓													
Armenia		✓						✓													
Australia	✓																				
Austria	✓																				
Azerbaijan																					
Bangladesh																					
Belarus																					
Belgium	✓																				
Belize		✓																			
Benin			✓																		
Bolivia																					
Bosnia and Herzegovina	✓																				
Brazil	✓																				
Bulgaria	✓																				
Burkina Faso	✓																				
Burundi	✓																				
Canada	✓																				

State	Terrorism			Crime			Risk of diversion			Non-state actors			Human rights			IHL			Genocide				
	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument		
Cape Verde			✓			✓			✓													✓	
Chile																							
China																							
Colombia				✓			✓																
Costa Rica			✓	✓		✓																	
Côte d'Ivoire			✓	✓		✓																	
Croatia			✓	✓		✓																	
Cuba																							
Cyprus			✓	✓		✓																	
Czech Republic			✓	✓		✓																	
Democratic Republic of the Congo																							
Denmark			✓	✓		✓																	
Djibouti																							
Ecuador																							
Egypt																							
El Salvador			✓	✓		✓																	
Estonia			✓	✓		✓																	
European Union			✓	✓		✓																	
Fiji																							
Finland			✓	✓		✓																	
France			✓	✓		✓																	
Gambia			✓	✓		✓																	
Ghana			✓	✓		✓																	
Georgia																							
Germany			✓	✓		✓																	
Greece																							
Guatemala																							
Guinea			✓	✓		✓																	
Guinea-Bissau			✓	✓		✓																	
Honduras																							
Hungary																							
Iceland			✓	✓		✓																	
India			✓	✓		✓																	
Indonesia																							

State	Terrorism			Crime			Risk of diversion			Non-state actors			Human rights			IHL			Genocide				
	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument		
Ireland																							
Israel																							
Italy																							
Jamaica																							
Japan																							
Kazakhstan																							
Kenya																							
Kyrgyzstan																							
Latvia																							
Lebanon																							
Liberia																							
Liechtenstein																							
Lithuania																							
Luxembourg																							
former Yugoslav Republic of Macedonia																							
Malawi																							
Mali																							
Malta																							
Mauritius																							
Mexico																							
Monaco																							
Moldova																							
Montenegro																							
Morocco																							
Netherlands																							
New Zealand																							
Nicaragua																							
Niger																							
Nigeria																							
Norway																							
Pakistan																							
Panama																							
Paraguay																							
Peru																							

State	Terrorism			Crime			Risk of diversion			Non-state actors			Human rights			IHL			Genocide				
	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument		
Philippines																							
Poland																							
Portugal																							
Republic of Korea																							
Romania																							
Russia																							
San Marino																							
Samoa																							
Senegal																							
Serbia																							
Seychelles																							
Sierra Leone																							
Slovakia																							
Slovenia																							
South Africa																							
Spain																							
Sweden																							
Switzerland																							
Tajikistan																							
Thailand																							
Togo																							
Trinidad and Tobago																							
Turkey																							
Turkmenistan																							
Ukraine																							
United Kingdom																							
United States of America																							
Uzbekistan																							
Venezuela																							
Zambia																							

State	Regional stability			Sustainable development			Exacerbation of conflict			Corrupt practices			Legitimate defence needs			Economic considerations			Recipient behaviour			
	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	
Albania	✓						✓															
Algeria																						
Andorra		✓						✓														
Argentina			✓						✓													
Armenia		✓						✓														
Australia		✓						✓														
Austria	✓	✓																				
Azerbaijan																						
Bangladesh							✓															
Belarus																						
Belgium		✓						✓														
Belize																						
Benin			✓																			
Bolivia																						
Bosnia and Herzegovina	✓	✓																				
Brazil																						
Bulgaria	✓	✓																				
Burkina Faso	✓	✓																				
Burundi	✓	✓																				
Canada	✓	✓																				
Cape Verde			✓																			
Chile	✓																					
China	✓																					
Colombia																						
Costa Rica	✓																					
Côte d'Ivoire	✓	✓																				
Croatia			✓																			
Cuba																						
Cyprus		✓																				
Czech Republic		✓																				
Democratic Republic of the Congo																						
Denmark		✓																				
Djibouti																						
Ecuador																						

State	Regional stability			Sustainable development			Exacerbation of conflict			Corrupt practices			Legitimate defence needs			Economic considerations			Recipient behaviour				
	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument		
Egypt																							
El Salvador																							
Estonia		✓					✓																
European Union																							
Fiji	✓			✓																			
Finland		✓			✓																		
France		✓			✓																		
Gambia																							
Ghana		✓			✓																		
Georgia		✓			✓																		
Germany		✓			✓																		
Greece		✓			✓																		
Guatemala																							
Guinea																							
Guinea-Bissau		✓			✓																		
Honduras																							
Hungary		✓			✓																		
Iceland	✓																						
India																							
Indonesia	✓																						
Ireland	✓																						
Israel		✓																					
Italy		✓																					
Jamaica																							
Japan																							
Kazakhstan																							
Kenya																							
Kyrgyzstan																							
Latvia		✓																					
Lebanon																							
Liberia	✓																						
Liechtenstein		✓																					
Lithuania	✓																						
Luxembourg		✓																					

State	Regional stability			Sustainable development			Exacerbation of conflict			Corrupt practices			Legitimate defence needs			Economic considerations			Recipient behaviour		
	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument
former Yugoslav Republic of Macedonia	✓			✓			✓			✓			✓			✓			✓		
Malawi	✓			✓			✓			✓			✓			✓			✓		
Mali	✓			✓			✓			✓			✓			✓			✓		
Malta	✓			✓			✓			✓			✓			✓			✓		
Mauritius	✓			✓			✓			✓			✓			✓			✓		
Mexico	✓			✓			✓			✓			✓			✓			✓		
Monaco	✓			✓			✓			✓			✓			✓			✓		
Moldova	✓			✓			✓			✓			✓			✓			✓		
Montenegro	✓			✓			✓			✓			✓			✓			✓		
Morocco	✓			✓			✓			✓			✓			✓			✓		
Netherlands	✓			✓			✓			✓			✓			✓			✓		
New Zealand	✓			✓			✓			✓			✓			✓			✓		
Nicaragua	✓			✓			✓			✓			✓			✓			✓		
Niger	✓			✓			✓			✓			✓			✓			✓		
Nigeria	✓			✓			✓			✓			✓			✓			✓		
Norway	✓			✓			✓			✓			✓			✓			✓		
Pakistan	✓			✓			✓			✓			✓			✓			✓		
Panama	✓			✓			✓			✓			✓			✓			✓		
Paraguay	✓			✓			✓			✓			✓			✓			✓		
Peru	✓			✓			✓			✓			✓			✓			✓		
Philippines	✓			✓			✓			✓			✓			✓			✓		
Poland	✓			✓			✓			✓			✓			✓			✓		
Portugal	✓			✓			✓			✓			✓			✓			✓		
Republic of Korea	✓			✓			✓			✓			✓			✓			✓		
Romania	✓			✓			✓			✓			✓			✓			✓		
Russia	✓			✓			✓			✓			✓			✓			✓		
San Marino	✓			✓			✓			✓			✓			✓			✓		
Samoa	✓			✓			✓			✓			✓			✓			✓		
Senegal	✓			✓			✓			✓			✓			✓			✓		
Serbia	✓			✓			✓			✓			✓			✓			✓		
Seychelles	✓			✓			✓			✓			✓			✓			✓		
Slovakia	✓			✓			✓			✓			✓			✓			✓		
Slovenia	✓			✓			✓			✓			✓			✓			✓		
South Africa	✓			✓			✓			✓			✓			✓			✓		

State	Regional stability			Sustainable development			Exacerbation of conflict			Corrupt practices			Legitimate defence needs			Economic considerations			Recipient behaviour		
	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument	ATT submission	Conventional arms instrument	SALW instrument
Spain	✓	✓		✓			✓					✓				✓			✓		
Sweden	✓	✓		✓			✓					✓				✓			✓		
Switzerland	✓	✓		✓			✓					✓				✓			✓		
Tajikistan	✓	✓		✓			✓					✓				✓			✓		
Thailand	✓		✓	✓			✓		✓			✓				✓			✓		
Togo	✓		✓	✓			✓		✓			✓				✓			✓		
Trinidad and Tobago	✓			✓			✓		✓			✓				✓			✓		
Turkey	✓	✓		✓			✓					✓				✓			✓		
Turkmenistan	✓	✓		✓			✓					✓				✓			✓		
Ukraine	✓	✓		✓			✓					✓				✓			✓		
United Kingdom	✓	✓	✓	✓			✓		✓			✓				✓			✓		
United States of America	✓	✓		✓			✓		✓			✓				✓			✓		
Uzbekistan	✓	✓		✓			✓		✓			✓				✓			✓		
Venezuela	✓			✓			✓					✓				✓			✓		
Zambia	✓			✓			✓					✓				✓			✓		

Annex F. Examples of transfer criteria based on existing obligations and commitments

This annex contains extracts from existing instruments of transfer criteria based on existing obligations and commitments that may be of relevance to an ATT.

Regional and international commitments

Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel (article 1)

Transfers of conventional, non-conventional, small and light weapons, ammunition, explosives and other related materiel shall not be carried out from or to States which: ...

7. Violate resolutions and inter-American and hemispheric agreements on treaties adopted by the Organization of American States; ...

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

2. A transfer shall not be authorised if its authorisation violates obligations of the requesting States as well as those of Member States, under international law including: ...
 - c) Any other treaty or decision by which the Member States are bound, including:
 - i) binding decisions, including embargoes, adopted by relevant international, multilateral, regional and sub-regional bodies, such as the African Union Peace and Security Council, to which a State is party;
 - ii) Prohibitions of arms transfers that arise in particular treaties which a State is party to, such as OTTAWA Convention on Antipersonnel Mines, the 1980 Convention on Certain Conventional Weapons and its Protocols.

EU Code of Conduct on Arms Exports

CRITERION ONE

Respect for the international commitments of EU member states, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations

An export licence should be refused if approval would be inconsistent with, inter alia:

- a) the international obligations of member states and their commitments to enforce UN, OSCE and EU arms embargoes;
- b) the international obligations of member states under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
- c) their commitments in the frameworks of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;
- d) their commitment not to export any form of anti-personnel landmine.

Nairobi Guidelines (section 1)

We will not authorize international transfers of SALW where there is a clear risk that the transfer in question is likely to violate our obligations under:

- (a) International law, such as the Charter of the United Nations, including the prohibition on the threat or use of force and non-intervention and non-interference in the internal affairs of States;
- (b) Any other treaty or legal obligations by which we are bound;
- (c) Arms embargoes of the United Nations Security Council, or other multilateral embargoes to which we adhere;
- (d) Prohibitions on SALW transfers that arise in particular treaties to which we are parties, including, for example, the Convention on Certain Conventional Weapons and its Protocols; ...

Section 2

We will not authorize international transfers of SALW which are likely to be used: ...

- (d) To contravene bilateral or multilateral commitments on non-proliferation, small arms or other arms control and disarmament agreements to which we adhere; ...

Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

1. Each Participating State will, in considering proposed exports of SALW, take into account: ...
 - (c) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the suppression of terrorism, and on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament, and the record of respect for international law governing the conduct of armed conflict; ...

Embargoes

Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel (article 1)

Transfers of conventional, non-conventional, small and light weapons, ammunition, explosives and other related materiel shall not be carried out from or to States which: ...

5. Fail to comply with international agreements on arms embargoes or other sanctions imposed by the Security Council of the United Nations adopted pursuant to the Charter of the United Nations;
6. Fail to comply with arms embargoes or other sanctions imposed by regional organizations or pursuant to regional agreements to which States are parties; ...

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

2. A transfer shall not be authorised if its authorisation violates obligations of the requesting States as well as those of Member States, under international law including:
 - a) Obligations under the Charter of the United Nations—including:
 - i. Binding resolutions of the United Nations Security Council such as those imposing arms embargoes; ...
 - c) Any other treaty or decision by which the Member States are bound, including:
 - i. binding decisions, including embargoes, adopted by relevant international, multilateral, regional and sub-regional bodies, such as the African Union Peace and Security Council, to which a State is party; ...

EU Code of Conduct on Arms Exports

CRITERION ONE

Respect for the international commitments of EU member states, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations

An export licence should be refused if approval would be inconsistent with, inter alia:

- a) the international obligations of member states and their commitments to enforce UN, OSCE and EU arms embargoes; ...

Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991 (Disarmament Commission Guidelines)

37. States have a legal obligation to comply strictly with sanctions and arms embargoes imposed by the Security Council under the authority of Chapter VII of the Charter of the United Nations.

Nairobi Guidelines (section 1)

We will not authorize international transfers of SALW where there is a clear risk that the transfer in question is likely to violate our obligations under: ...

- (c) Arms embargoes of the United Nations Security Council, or other multilateral embargoes to which we adhere; ...

Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

2. Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ...

- (d) Contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, agreements on non-proliferation, small arms, or other arms control and disarmament agreements; ...

UN Charter and Security Council resolutions

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

2. A transfer shall not be authorised if its authorisation violates obligations of the requesting States as well as those of Member States, under international law including:
 - a) Obligations under the Charter of the United Nations—including:
 - i. Binding resolutions of the United Nations Security Council such as those imposing arms embargoes;
 - ii. The prohibition on the use or threat of use of force;
 - iii. The prohibition on intervention in the internal affairs of another State.

Nairobi Guidelines (section 1)

We will not authorize international transfers of SALW where there is a clear risk that the transfer in question is likely to violate our obligations under:

- (a) International law, such as the Charter of the United Nations, including the prohibition on the threat or use of force and non-intervention and non-interference in the internal affairs of States; ...

Annex G. Examples of transfer criteria based on likely user

This annex contains extracts from existing instruments of transfer criteria based on likely user that may be of relevance to an ATT.

Terrorism and crime

Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel (article 1)

Transfers of conventional, non-conventional, small and light weapons, ammunition, explosives and other related materiel shall not be carried out from or to States which: ...

14. Fail to comply with international agreements and instruments on terrorism and related acts;
15. Allow their territories to be used to commit an act of terrorism, in violation of international instruments on terrorism adopted by the States of the Central American Integration System (SICA).

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

3. A transfer shall not be authorised if the arms are destined to be used: ...
 - d) to carry out terrorist acts or support or encourage terrorism; ...
4. A transfer shall not be authorised if is destined to:
 - a) be used for or to facilitate the commission of violent or organised crime; ...

EU Code of Conduct on Arms Exports

CRITERION SIX

The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law

Member States will take into account inter alia the record of the buyer country with regard to:

- a) its support or encouragement of terrorism and international organised crime; ...

Nairobi Guidelines (section 2)

We will not authorize international transfers of SALW which are likely to be used: ...

- (e) To support or encourage terrorist acts or to facilitate the commission of organized or violent crimes.

OSCE Principles Governing Conventional Arms Transfers (paragraph 4)

- (b) Each participating State will avoid transfers which would be likely to: ...
 - (viii) support or encourage terrorism; ...

Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

1. Each Participating State will, in considering proposed exports of SALW, take into account: ...
 - (c) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the suppression of terrorism, and on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament, and the record of respect for international law governing the conduct of armed conflict; ...
2. Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might:
 - (a) Support or encourage terrorism; ...
 - (j) Facilitate organised crime; ...

Diversion

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

5. A transfer shall not be authorised if it is likely to be diverted, within the transit or importing country or be re-exported, to unauthorized uses or users or into the illicit trade; ...

EU Code of Conduct on Arms Exports

CRITERION SEVEN

The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions

In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:

- a) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity;
- b) the technical capability of the recipient country to use the equipment;
- c) the capability of the recipient country to exert effective export controls;
- d) the risk of the arms being re-exported or diverted to terrorist organisations (anti-terrorist equipment would need particularly careful consideration in this context).

Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991 (Disarmament Commission Guidelines)

33. All arms-transfer agreements and arrangements, in particular between Governments, should be designed so as to reduce the possibility of diversion of arms to unauthorized destinations and persons. In this context, a requirement by the exporter for import licences or verifiable end-use/end-user certificates for international arms transfers is an important measure to prevent unauthorized diversion.

Nairobi Guidelines (section 3)

In considering proposed transfers of SALW, we will take into account: ...

- (e) The risk of diversion or re-export in conditions incompatible with these guidelines; ...

OSCE Principles Governing Conventional Arms Transfers (paragraph 4)

- (b) Each participating State will avoid transfers which would be likely to: ...
- (vi) be diverted within the recipient country or re-exported for purposes contrary to the aims of this document; ...

Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

1. Each Participating State will, in considering proposed exports of SALW, take into account: ...
- (j) The risk of diversion or re-export in conditions incompatible with these Guidelines, particularly to terrorists.
2. Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ...
- (c) Be diverted to territories whose external relations are the internationally acknowledged responsibility of another State; ...
- (g) Contrary to the aims of this document, be either re-sold (or otherwise diverted) within the recipient country, re-produced without licence, or be re-exported; ...

Non-state actors

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 3)

1. Member States shall ban the transfer of small arms and light weapons and their manufacturing materials into their national territory or from/through their national territory.
2. Member State shall ban, without exception, transfers of small arms and light weapons to Non-State Actors that are not explicitly authorised by the importing Member.

Annex H. Examples of transfer criteria based on likely use

This annex contains extracts from existing instruments of transfer criteria based on likely use that may be of relevance to an ATT.

Human Rights

Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel (article 1)

Transfers of conventional, non-conventional, small and light weapons, ammunition, explosives and other related materiel shall not be carried out from or to States which:

1. Commit and/or sponsor crimes against humanity or human rights violations or commit serious violations of the laws and customs of war contained in the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977 or other rules and principles of international humanitarian law applicable to situations of armed conflict between States and within States;
2. Prevent their citizens from choosing their representatives through free, fair and periodic elections by secret ballot;
3. Restrict the right of their citizens to express their political views through freedom of expression, the dissemination of ideas and information, and the right of assembly, association and organization, including the establishment of political parties;
4. Lack democratic government institutions for the formulation of national security and defence policies or the monitoring of activities by and expenditure on the armed forces and the public security of the State; ...

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

3. A transfer shall not be authorised if the arms are destined to be used:
 - a) for the violation of international humanitarian law or infringement of human and peoples' rights and freedoms, or for the purpose of oppression; ...

EU Code of Conduct on Arms Exports

CRITERION TWO

The respect of human rights in the country of final destination

Having assessed the recipient country's attitude toward relevant principles established by international human rights instruments, Member States will:

- a) not issue an export licence if there is a clear risk that the proposed export might be used for internal repression.
- b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU;

For these purposes, equipment which might be used for internal repression will include, inter alia, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with operative paragraph 1 of this

Code, the nature of the equipment will be considered carefully, particularly if it is intended for internal security purposes.

Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

Nairobi Guidelines (section 2)

We will not authorize international transfers of SALW which are likely to be used:

- (a) To commit grave or persistent violations of human rights or fundamental freedoms; ...

OSCE Principles Governing Conventional Arms Transfers

- 4. In order to further their aim of a new co-operative and common approach to security, each participating State will promote and, by means of an effective national control mechanism, exercise due restraint in the transfer of conventional arms and related technology. To give this effect:
 - (a) each participating State will, in considering proposed transfers, take into account:
 - (i) the respect for human rights and fundamental freedoms in the recipient country; ...
 - (b) Each participating State will avoid transfers which would be likely to:
 - (i) be used for the violation or suppression of human rights and fundamental freedoms; ...
 - (vii) be used for the purpose of repression; ...

Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

- 1. Each Participating State will, in considering proposed exports of SALW, take into account: ...
 - (i) The respect for human rights and fundamental freedoms in the recipient country; ...
- 2. Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ...
 - (h) Be used for the purpose of repression;
 - (i) Be used for the violation or suppression of human rights and fundamental freedoms; ...

International Humanitarian Law

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

- 2. A transfer shall not be authorised if its authorisation violates obligations of the requesting States as well as those of Member States, under international law including: ...
 - b) Universally accepted principles of international humanitarian law.
- 3. A transfer shall not be authorised if the arms are destined to be used:
 - a) for the violation of international humanitarian law or infringement of human and peoples' rights and freedoms, or for the purpose of oppression;
 - b) for the commission of serious violations of international humanitarian law, genocide or crimes against humanity; ...

EU Code of Conduct on Arms Exports

CRITERION SIX

The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law

Member States will take into account inter alia the record of the buyer country with regard to: ...

- b) its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts; ...

Nairobi Guidelines (section 1)

We will not authorize international transfers of SALW where there is a clear risk that the transfer in question is likely to violate our obligations under: ...

- (e) Universally accepted principles of international humanitarian law.

Section 2

We will not authorize international transfers of SALW which are likely to be used: ...

- (b) To commit grave breaches of international humanitarian law; ...

Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

1. Each Participating State will, in considering proposed exports of SALW, take into account: ...

- (c) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the suppression of terrorism, and on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament, and the record of respect for international law governing the conduct of armed conflict; ...

Genocide

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

3. A transfer shall not be authorised if the arms are destined to be used: ...

- b) for the commission of serious violations of international humanitarian law, genocide or crimes against humanity; ...

Nairobi Guidelines (section 2)

We will not authorize international transfers of SALW which are likely to be used: ...

- (c) To commit acts of genocide or crimes against humanity; ...

Annex I. Examples of transfer criteria considerations based on likely impact

This annex contains extracts from existing instruments of transfer criteria based on likely impact that may be of relevance to an ATT.

Sustainable development

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

4. A transfer shall not be authorised if it is destined to: ...
 - c) hinder or obstruct sustainable development and unduly divert human and economic resources to armaments of the states involved in the transfer; ...

EU Code of Conduct on Arms Exports

CRITERION EIGHT

The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources

Member States will take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They will consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

Regional stability

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

4. A transfer shall not be authorised if it is destined to: ...
 - b) adversely affect regional security; endanger peace, contribute to destabilising or uncontrolled accumulations of arms or military capabilities into a region, or otherwise contribute to regional instability; ...

EU Code of Conduct on Arms Exports

CRITERION FOUR

Preservation of regional peace, security and stability

Member States will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim.

When considering these risks, EU Member States will take into account inter alia:

- a) the existence or likelihood of armed conflict between the recipient and another country;
- b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;

- c) whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient;
- d) the need not to affect adversely regional stability in any significant way.

Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991 (Disarmament Commission Guidelines)

- 20. Arms-producing or supplier States have a responsibility to seek to ensure that the quantity and level of sophistication of their arms exports do not contribute to instability and conflict in their regions or in other countries and regions or to illicit trafficking in arms.

Nairobi Guidelines (section 3)

In considering proposed transfers of SALW, we will take into account: ...

- (c) The internal and regional situation in and around the recipient country in the light of existing tensions or armed conflicts; ...

OSCE Principles Governing Conventional Arms Transfers

- 4. In order to further their aim of a new co-operative and common approach to security, each participating State will promote and, by means of an effective national control mechanism, exercise due restraint in the transfer of conventional arms and related technology. To give this effect:
 - (a) each participating State will, in considering proposed transfers, take into account: ...
 - (ii) the internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts; ...
 - (b) Each participating State will avoid transfers which would be likely to: ...
 - (v) endanger peace, introduce destabilizing military capabilities into a region, or otherwise contribute to regional instability; ...

Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

- 1. Each Participating State will, in considering proposed exports of SALW, take into account:
 - (a) The need to avoid destabilising accumulations of arms, bearing in mind the particular circumstances of the recipient country and its region;
 - (b) The internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts and details of the recipient within that country; ...
- 2. Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ...
 - (f) Endanger peace, create an excessive and destabilising accumulation of small arms, or otherwise contribute to regional instability; ...

Exacerbation of conflict

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

- 3. A transfer shall not be authorised if the arms are destined to be used: ...
 - c) to worsen the internal situation in the country of final destination, in terms of provoking or prolonging armed conflicts, or aggravating existing tensions; ...

EU Code of Conduct on Arms Exports

CRITERION THREE

The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts

Member States will not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

OSCE Principles Governing Conventional Arms Transfers (paragraph 4)

- (b) Each participating State will avoid transfers which would be likely to: ...
- (iv) prolong or aggravate an existing armed conflict, taking into account the legitimate requirement for self-defence; ...

Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

- 2. Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ...
- (e) Prolong or aggravate an existing armed conflict, taking into account the legitimate requirement for self-defence, or threaten compliance with international law governing the conduct of armed conflict; ...

Annex J. Examples of transfer criteria considerations based on recipient country

This annex contains extracts from existing instruments of transfer criteria based on recipient country that may be of relevance to an ATT.

Corrupt practices

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

4. A transfer shall not be authorised if it is destined to: ...
- d) involve corrupt practices at any stage—from the supplier, through any middlemen or brokers, to the recipient; ...

Nairobi Guidelines (section 3)

In considering proposed transfers of SALW, we will take into account: ...

- (f) States' efforts to prevent corruption and bribery in connection with the transfer of SALW; ...

Legitimate defence needs

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

3. A transfer shall not be authorised if the arms are destined to be used: ...
- e) other than for the legitimate defence and security needs of the beneficiary country; ...

EU Code of Conduct on Arms Exports

CRITERION SEVEN

The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions

In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:

- a) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity; ...

Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991 (Disarmament Commission Guidelines)

17. States, whether producers or importers, have the responsibility to seek to ensure that their level of armaments is commensurate with their legitimate self-defence and security requirements, including their ability to participate in United Nations peace-keeping operations. ...
21. States receiving arms have an equivalent responsibility to seek to ensure that the quantity and the level of sophistication of their arms imports are commensurate with their legitimate self-defence and security requirements and that they do not contribute to instability and conflict in their regions or in other countries and regions or to illicit trafficking in arms.

Nairobi Guidelines (section 3)

In considering proposed transfers of SALW, we will take into account:

- (a) The requirements of the State to enable it to exercise its inherent right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations;
- (b) The requirements of the State to meet its legitimate self-defence and security needs, and to enable it to participate in peacekeeping operations in accordance with the Charter of the United Nations or relevant regional organizations with a peacekeeping mandate;
- (c) The internal and regional situation in and around the recipient country in the light of existing tensions or armed conflicts; ...

OSCE Principles Governing Conventional Arms Transfers

4. In order to further their aim of a new co-operative and common approach to security, each participating State will promote and, by means of an effective national control mechanism, exercise due restraint in the transfer of conventional arms and related technology. To give this effect:
 - (a) each participating State will, in considering proposed transfers, take into account: ...
 - (iv) the nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and the objective of the least diversion for armaments of human and economic resources;
 - (v) the requirements of the recipient country to enable it to exercise its right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations;
 - (vi) whether the transfers would contribute to an appropriate and proportionate response by the recipient country to the military and security threats confronting it;
 - (vii) the legitimate domestic security needs of the recipient country;
 - (viii) the requirements of the recipient country to enable it to participate in peacekeeping or other measures in accordance with decisions of the United Nations or the Conference on Security and Co-operation in Europe.
- (b) Each participating State will avoid transfers which would be likely to: ...
- (ix) be used other than for the legitimate defence and security needs of the recipient country.

Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

1. Each Participating State will, in considering proposed exports of SALW, take into account: ...
 - (e) The requirements of the recipient country to enable it to exercise its right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations;
 - (f) Whether the transfers would contribute to an appropriate and proportionate response by the recipient country to the military and security threats confronting it;
 - (g) The legitimate domestic security needs of the recipient country;
 - (h) The requirements of the recipient country to enable it to participate in peacekeeping or other measures in accordance with decisions of the United Nations, OSCE or other relevant regional organisations with a peacekeeping mandate; ...
2. Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ...
 - (k) Be used other than for the legitimate defence and security needs of the recipient country.

Economic considerations

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Material (chapter 2, article 6)

4. A transfer shall not be authorised if it is destined to: ...
 - c) hinder or obstruct sustainable development and unduly divert human and economic resources to armaments of the states involved in the transfer; ...

EU Code of Conduct on Arms Exports

CRITERION EIGHT

The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources

Member States will take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They will consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

Nairobi Guidelines (section 4)

We undertake to: ...

- (c) Ensure that, in accordance with Article 26 of the Charter of the United Nations, we take into account the nature and cost of the arms to be transferred in relation to legitimate security and defence needs and the principle of the least diversion of human and economic resources and armaments; ...

OSCE Principles Governing Conventional Arms Transfers

4. In order to further their aim of a new co-operative and common approach to security, each participating State will promote and, by means of an effective national control mechanism, exercise due restraint in the transfer of conventional arms and related technology. To give this effect:
 - (a) each participating State will, in considering proposed transfers, take into account: ...
 - (iv) the nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and the objective of the least diversion for armaments of human and economic resources; ...

Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

1. Each Participating State will, in considering proposed exports of SALW, take into account: ...
 - (d) The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and to the objective of the least diversion of human and economic resources to armaments; ...

Recipient behaviour

Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel (article 1)

Transfers of conventional, non-conventional, small and light weapons, ammunition, explosives and other related materiel shall not be carried out from or to States which: ...

4. Lack democratic government institutions for the formulation of national security and defence policies or the monitoring of activities by and expenditure on the armed forces and the public security of the State; ...
8. Do not report the totality of their arms transfers to the United Nations Register of Conventional Arms, as defined in General Assembly resolution 46/36 L of 9 December 1991;
9. Are involved in an armed conflict, unless that conflict is recognized to be an act of self-defence as set out in the Charter of the United Nations or in the Charter of the Organization of American States, or is part of a peacekeeping operation under United Nations auspices;
10. Introduce arms that pose a risk to the Central American Democratic Security Model, contained in the Framework Treaty on Democratic Security in Central America;
11. Fail to comply with an agreed ceasefire;
12. Promote nationalist, racial or religious hatred that incites to discrimination, hostility or violence, or that incites individuals to overthrow their Government or the Government of another country;
13. Are involved in actions or practices that might lead to a significant number of displaced persons or refugees; ...

EU Code of Conduct on Arms Exports

CRITERION SIX

The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law

Member States will take into account inter alia the record of the buyer country with regard to:

- a) its support or encouragement of terrorism and international organised crime;
- b) its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts;
- c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in sub-para b) of Criterion One.

OSCE Principles Governing Conventional Arms Transfers

4. In order to further their aim of a new co-operative and common approach to security, each participating State will promote and, by means of an effective national control mechanism, exercise due restraint in the transfer of conventional arms and related technology. To give this effect:
 - (a) each participating State will, in considering proposed transfers, take into account: ...
 - (iii) the record of compliance of the recipient country with regard to international commitments, in particular on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament; ...
 - (b) Each participating State will avoid transfers which would be likely to: ...
 - (iii) contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, or to decisions taken by the CSCE Council, or agreements on non-proliferation, or other arms control and disarmament agreements; ...
 - (vii) be used for the purpose of repression; ...

Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

1. Each Participating State will, in considering proposed exports of SALW, take into account: ...
 - (c) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the suppression of terrorism, and on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament, and the record of respect for international law governing the conduct of armed conflict; ...

Annex K. Example guidelines for assessing transfer decisions and implementing transfer criteria

This annex contains extracts from existing arrangements of guidelines for assessing transfer decisions and implementing transfer criteria that may be of relevance to an ATT.

Human rights

User's Guide to the EU Code of Conduct on Arms Exports (3 July 2007)

3.2.5 *The recipient country's attitude:* The following indicators should, as appropriate, be taken into account when assessing a country's respect for, and observance of all human rights and fundamental freedoms:

- the commitment of the recipient country's Government to respect and improve human rights and to bring human rights violators to justice
- the implementation record of relevant international and regional human rights instruments through national policy and practice
- the ratification record of the country in question with regard to relevant international and regional human rights instruments
- the degree of cooperation with international and regional human rights mechanisms (eg UN treaty bodies and special procedures)
- the political will to discuss domestic human rights issues in a transparent manner, for instance in the form of bilateral or multilateral dialogues, with the EU or with other partners including civil society

Sustainable development

User's Guide to the EU Code of Conduct on Arms Exports (3 July 2007)

3.8.6 What constitutes "least diversion" is a matter of judgement, taking all relevant factors into consideration. Member States should consider *inter alia* the following questions:

- Is the expenditure in line with the recipient country's Poverty Reduction Strategy or programmes supported by the International Financial Institutions (IFIs)?
- What are the levels of military expenditure in the recipient country? Has it been increasing in the last five years?
- How transparent are state military expenditures and procurement? What are the possibilities for democratic or public involvement in the state budget process?
- Is there a clear and consistent approach to military budgeting? Is there a well-defined defence policy and a clear articulation of a country's legitimate security needs?
- Are more cost-effective military systems available?

Relative levels of military and social expenditure

3.8.7 Member States should consider the following questions in assessing whether the purchase would significantly distort the level of military expenditure relative to social expenditure:

- What is the recipient country's level of military expenditure relative to its expenditure on health and education?

- What is the recipient country's military expenditure as a percentage of Gross Domestic Product (GDP)?
- Is there an upward trend in the ratio of military expenditure to health and education and to GDP over the last five years?
- If the country has high levels of military expenditure, does some of this "hide" social expenditure? (e.g. in highly militarised societies, the military may provide hospitals, welfare etc)
- Does the country have significant levels of "off-budget" military expenditure (i.e. is there significant military expenditure outside the normal processes of budgetary accountability and control)?

Aid Flows

3.8.8 Member States should take into account the level of aid flows to the importing country and their potential fungibility.

- Is the country highly dependent on multilateral as well as EU and bilateral aid?
- What is the country's aid dependency as a proportion of Gross National Income?

Exacerbation of conflict

User's Guide to the EU Code of Conduct on Arms Exports (3 July 2007) (section 3.3.3)

In considering an export licence application the competent authority must assess the internal situation of the country of destination; possible participation and role of the end-user in the internal conflict or tensions and the probable use of the proposed export in the conflict. In assessing the potential risks in the recipient country the competent authority might ask the following questions:

- What is the end-use of the proposed export (military technology or equipment)? Would the export be used to enforce internal security or to continue with the hostilities?
- Is the military equipment or technology intended to support internationally-sanctioned peacekeeping/ peace enforcing operations or humanitarian interventions?
- Is the end-user participating or closely related to a party involved in the armed conflict within the country? What is the role of the end-user in the conflict?
- If components or spares are being requested, is the recipient state known to operate the relevant system in armed conflict in the country?
- Have there been recent reports that the existing tensions might be aggravating? Is there a risk that the existing tensions might turn into an armed conflict when one or more of the participants gain access to the military equipment and technology to be exported?
- Is the recipient country subject to regional or UN embargoes because of the internal situation in the country (see also criterion 1)?

The nature of the equipment

The nature of equipment will impact the judgement of whether to approve or refuse a licence. Consideration should be given as to whether the equipment or technology to be exported actually is related, directly or indirectly, to the tensions or conflicts in the country of final destination. This will be all the more important when there already is an existing armed conflict. Some questions to consider might be:

- Is the export in nature such, that it is or could be used in an armed conflict within the country of final destination?
- Is there a risk that the existing internal tensions might turn into an armed conflict when the proposed end-user obtains access to this military equipment and technology?

The end-user

The end-user also plays an important role in the analysis. If there are concerns related to criterion 3, it is important to establish exactly for which branch of the armed forces, police or security forces the export is intended. For example, in a recipient country the army and police might be involved in an armed conflict in which the navy has no role. In this respect, the risk of internal diversion should also be considered.

More complex cases arise when equipment may be going to a research institute or private company. Here a judgement should be made on the likelihood of diversion, and the views on criterion 3 should be based on the other criteria, specifically concerns related to criterion 7, the risk of diversion.

The following might be considered:

- What is the end-user's role in the recipient state? Is the end-user part of the problem, or rather attempting to be part of the solution?
- Is the end-user involved in the internal armed conflict or tensions?
- Are there any relevant reports of such involvement?

Considerations based on likely impact (general)

Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons, Wassenaar Arrangement

2. Regional Balance of Forces and the General Situation in the Region
 - a. What is the nature of the relationship among the states of the region? Are there territorial claims or disputes among them, including questions of unlawful occupation with the intent of annexation? Are there economic, ethnic, religious or other disputes or conflicts among them? Are one or several states of the region prepared to use force or the threat of the use of force in a manner inconsistent with the UN Charter to resolve disputes with other states of the region?
 - b. What are the state's national security requirements? Is the state's accumulation of conventional weapons greater than that required by its legitimate defence and security interests? Does it represent an appropriate and proportionate response to a threat? Consider the balance of forces and relative capabilities (offensive and defensive) between and among neighbouring and regional states and their relative expenditure on defence. The following factors, inter alia, might be considered, both individually for each state and comparatively: Size of the armed forces of the state, including trained reserves; quantity of weapons and related military equipment in service and in store; technical characteristics of weapons; their level of performance and maintenance; level of combat-readiness of the troops, including the quality of training of military personnel and their morale; and whether the deployment and training of forces is best suited for offensive or defensive action.
 - c. What would be the perception of the state's accumulation of conventional weapons by other states in the region? Would political, historical, territorial, geographic or logistic considerations cause the accumulation to be perceived as a direct threat or to be otherwise intimidating? Does the actual balance of forces in the region provide a sound basis for such a perception?
 - d. Could the accumulation of conventional weapons lead to an increase in tension or instability in the region or to the exacerbation of an existing conflict? Would potential adversaries perceive a need to prepare, deploy, or use additional forces or countermeasures? In a crisis, would they perceive a need to risk using force first? Is the accumulation of conventional weapons difficult or impossible to counter by forces in the region? Given the relative capabilities of states in the region, would the accumulation of conventional weapons provide sufficient protection or defence to offensive assets in such a manner as to be perceived as destabilising?
 - e. Would other states in the region wish to acquire (including through national production, if possible) similar quantitative or qualitative capabilities, or acquire offsetting capabilities? Could

the accumulation of conventional weapons contribute to a destabilising regional arms race or to an accelerating process of competitive production or procurement? ...

4. Operational Capability

Equipment

- a. How would the accumulation of conventional weapons by the state affect the regional balance of forces and the situation in the region? A particular import or procurement through national production of an individual weapon, weapon system or sub-system may not be destabilising per se, but it may have a potentially destabilising character in combination with other equipment.
- b. Would an additional conventional weapons acquisition, whether by import or through national production, introduce a new capability to the region?
- c. Would an additional conventional weapons acquisition, whether by import or through national production, supplement or replace existing equipment? Would it substitute for current forces? If an import, are construction and maintenance (equipment support/spares) deals included? What is the operational life of the equipment with and without provision of maintenance?
- d. Would an additional conventional weapons acquisition, whether by import or through national production, provide the state with an additional strategic capability? Consider weapon system characteristics that have greater inherent potential to be destabilising (e.g., because they enhance power projection; there are few or no countermeasures; they contribute to the infliction of strategic harm).
- e. Would an additional conventional weapons acquisition, whether by import or through national production, provide the state with new or otherwise increased quantitative or qualitative operational capabilities, or increased sustainability? Would it allow more effective operational use of existing military assets or a bypass of force weakness? If ammunition or missiles, will the quantities significantly enhance operational sustainability?

Recipient behaviour

Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons, Wassenaar Arrangement

1. Assessment of Motivation of the State under Study
 - a. What is the state's military doctrine? How do its weapons and their deployment posture fit with the implementation of the doctrine and/or meet national security requirements?
 - b. What do we believe to be the motivation of the state in accumulating conventional weapons beyond its current holdings, either through import or national production? How are such weapons likely to be used? Does the state believe its accumulation of conventional weapons is necessary in the exercise of its right to self-defence in accordance with the UN Charter? Does the state wish to gain a tactical or strategic advantage, status or national prestige, improved indigenous production capability, a capability to reverse-engineer or entrance to the export market? If conventional weapons or military technology are being acquired through import, does the state provide valid and credible end-use/end-user or re-transfer assurances? Are there risks of diversion to unauthorised end-use/end-users?
 - c. What are the general directions of the state's foreign policy? Is there a clearly identifiable risk that the state would use its weapons offensively against another country or in a manner inconsistent with the UN Charter; assert by force a territorial claim; or otherwise project power in a region?
 - d. Are the quantities involved in the state's accumulation of conventional weapons inconsistent with its likely requirements, suggesting possible diversion to an unauthorised end-user or efforts to reverse-engineer?

- e. Is there a clearly identifiable risk that the weapons might be used for the violation and suppression of human rights and fundamental freedoms? ...
3. Political/Economic Standing/Status of the State
 - a. Has the state signed and/or ratified relevant international or regional agreements and treaties pertaining to arms control and limitation, non-proliferation, and confidence and security building? What is its record of compliance with those agreements and treaties? Does the state participate in the UN Register of Conventional Arms? Does the state comply with internationally-recognised human rights, anti-terrorism and non-proliferation norms? Does the state have the intention to develop weapons of mass destruction (WMD); does it possess WMD; what are its views on the use of WMD? What is the general nature of the state's political system and what is the level of internal stability? Is there a civil armed conflict?
 - b. What is the state's military expenditure? What percentage of GDP does it spend on the military? Is the information it gives on its military expenditures open and accurate, or does it seek to conceal the true costs?
 - c. Does the accumulation of conventional weapons by the state exacerbate an already economically insupportable burden of defence? Does it risk economic or social destabilisation, either nationally or regionally?
 4. Operational Capability

...

Manpower

- f. Is the additional conventional weapons acquisition, whether by import or through national production, appropriate given the manpower capabilities of the state? Consider equipment/manpower levels, training, combat experience and leadership/ morale.
 - g. If acquired by import, is a training package being provided in conjunction with the import?
 - h. Will the equipment itself enhance manpower effectiveness (e.g., simulators)?
5. Acquisition of Military Technology
 - a. Would the acquisition of particular technology, whether by tangible or intangible means or by indigenous development, provide a substantial technological advantage to the state's military capability? How will it affect the regional balance of forces and overall regional situation?
 - b. If by import, would the acquisition itself, or the terms of the deal, such as offset agreements, lead to an indigenous production capability?
 - c. If by import, is a design or technology package being provided in conjunction with the acquisition?
 - d. If by import, is there a possibility of reverse engineering, inter alia, does the acquisition involve components, spares or prototypes that can be reverse-engineered?
 6. Other Factors
 - a. Would an additional conventional weapons system, if acquired by import, put the exporter's national forces or those of its friends and allies or of a UNSC-approved operation at risk?
 - b. Does the method used to import the additional conventional weapons raise concerns about how the weapons are likely to be used?
 - c. Would the equipment or technology (including any training) be at risk of diversion to terrorist groups and organisations, as well as individual terrorists?