

# TAKING STOCK OF THE ARMS TRADE TREATY: PROCESSES AND FORUMS

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## I. Introduction

More than six years after the entry into force of the 2013 Arms Trade Treaty (ATT), the stakeholders of the ATT community are learning the challenges that the treaty faces in order to be effective.<sup>1</sup> While the jury is still out on whether and how the ATT has achieved its stated object and purpose, the treaty itself remains the most significant agreed regulation on the international arms trade. But it is more than this: perhaps most importantly, it is a platform that allows different actors to engage collectively and transparently in pushing for the implementation of set rules.

Effective ATT processes and forums provide the necessary basis for the states parties to coordinate international and national action to implement the treaty. The forums are the ‘spaces’ that states use to engage with each other, such as the Conference of States Parties (CSP) and its working groups and subsidiary bodies. The processes are the ‘routes’ that States will follow, both to implement the treaty and to improve the forums. They include the national reports, national implementation procedures, and the treaty’s review and amendments process. An essential step in achieving the objects and purpose of the treaty and making it a long-term success is thus to establish processes and forums that allow for effective interaction among the parties and other stakeholders.

This paper reviews the development to date of the ATT’s processes and forums and proposes ways in which they can be adapted, based on the experience since 2014.<sup>2</sup> The paper continues (in section II) by looking at the singular nature of the ATT. It then (in section III) analyses the current state of the ATT’s processes and forums and (in section IV) the challenges that they face. The paper then proposes (in section V) a possible model for their development—intended not as a mandatory option, but as an idea to stimulate the necessary discussion—to find the most effective way for the ATT to be successful. The paper closes (in section VI) with brief conclusions.

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

<sup>2</sup> Other aspects of the treaty are discussed in the other papers in this series: Holtom, P., ‘Taking stock of the Arms Trade Treaty: Scope’, Aug. 2021; Beijer, P., ‘Taking stock of the Arms Trade Treaty: Application of the risk-assessment criteria’, Aug. 2021; Stohl, R., ‘Taking stock of the Arms Trade Treaty: Universalization’, Aug. 2021; and Maletta, G. and Bauer, S., ‘Taking stock of the Arms Trade Treaty: International assistance to support implementation’, Aug. 2021.

## SUMMARY

● The 2013 Arms Trade Treaty (ATT) has a number of attached processes and forums that are aimed at enabling and promoting both the effective implementation of the treaty by states parties and its further universalization. In order to operate effectively these processes and forums need to be designed and operated in ways that reflect the ATT’s unique status as a trade treaty with a core humanitarian objective.

The ATT states parties must consider the current support architecture and the challenges that it faces. These include effectively transitioning from a negotiation to an implementation framework; avoiding inherent risks to the treaty’s objective; implementing the risk-mitigation clause; maintaining the balance between exporters and importers; preserving transparency; and implementing possible good practice options.

This is one of a series of five papers that are being produced as part of a wider project aimed at taking stock of specific aspects of the ATT—its scope, the application of the risk-assessment criteria, its processes and forums, universalization efforts, and international assistance to support ATT implementation.

SIPRI would like to thank the German Ministry for Foreign Affairs, which generously provided funding for this project.



## II. The singular nature of the ATT

A treaty is ‘a binding formal [written] agreement . . . that establishes obligations between two or more subjects of international law’.<sup>3</sup> Treaties are used for different purposes. Some—such as the United Nations Charter or the treaties on international humanitarian law—establish basic rules for international cooperation. Others aim to regulate international interactions, such as trade treaties, while some—such as the 2015 Paris Agreement on climate change—set out to coordinate aggregate action against a common threat.

In the sphere of arms control and disarmament, treaties can be classified as prohibiting or regulating. The former includes treaties whose intent is to delegitimize or prohibit the use of specific weapons. Examples include the 1997 Anti-Personnel Mine Convention and the 2017 Treaty on the Prohibition of Nuclear Weapons. Treaties that intend to regulate the use of weapons include the 1981 Certain Conventional Weapons Convention.

Different treaties thus require diverse follow-up mechanisms, depending on the purpose that they aim to achieve. A prohibition agreement requires relatively simple follow-up mechanisms because there are usually clear indications when a party breaks the agreement. A regulatory treaty requires a more sophisticated follow-up mechanism as it needs constant attention and interaction among the parties.

The Arms Trade Treaty is a unique and particularly complicated case. It is not a disarmament treaty as it does not ban any type of weapon. Nor is it an arms control treaty since it does not limit the types or quantities of weapons that a party can possess or trade. In a way, the ATT resembles an export control regime in the sense that states parties agree to self-regulate their export control systems and to include specific criteria in their licensing processes. However, unlike traditional export control agreements—such as the Australia Group or the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies—a large proportion of the ATT states parties do not produce or sell weapons.

At its essence, the ATT is a humanitarian agreement. As a means of protecting human lives, it establishes a responsibility for each state party’s commercial licensing procedures to consider the ways in which exported weapons will or could be used.

It requires international cooperation to prevent the diversion of weapons. The treaty thus allows for constant communication between exporters, importers, and transit or trans-shipment countries to allow for joint work. The ATT also provides open spaces for non-state actors to cooperate in the achievement of its goals.

The major distinguishing feature of the ATT arises from its main objective; it is not about the weapons themselves but about the ways in which they are or could be used. It does regulate trade, but with a humanitarian reasoning at its core. That is why it does not limit its regulation to licencing requirements about the end user but also the end use of the weapons. In other words, when making their licencing decisions, exporters have to take into account both who will be the final user of the arms and how those weapons will be used.

<sup>3</sup> Shaw, M., ‘Treaty’, *Encyclopaedia Britannica*, 27 Aug. 2019.



This mixture of regulation of trade and protection of human rights make the ATT a unique treaty that requires a unique system for interaction and support.

Because of this complex continuity from export via the user to use, implementation of the ATT requires well-functioning processes for the interaction of state parties and for the participation of non-state actors—from the private sector and non-governmental organizations (NGOs). While implementation of the treaty requires national action, the biggest benefit of the ATT is establishing a platform where states can cooperate and, when needed, demand accountability from each other. In this sense, the success of the ATT will be proportionate to the ability and resolve of the states parties to engage with each other.

Because of the singular nature of the ATT, there is no unique model to guide its operation, and the states parties need to find or devise the best solutions to make it work. Nevertheless, good practices from the implementation processes of other international agreements can provide some guidance in this respect.

Now that the treaty has bedded down and its institutionalization has advanced, it becomes especially important to analyse the current state of the ATT's processes and forums. Even though many changes can be made without the need to amend or expand the treaty, this moment provides a good opportunity to review the current state of the treaty, assess what has worked, and decide what needs to change.

### III. The state of the ATT processes and forums

Starting with the adoption of the Arms Trade Treaty on 2 April 2013, the states parties, signatories, observers and non-state actors have met on multiple occasions in yearly cycles to report on and promote the implementation of the ATT. The first conference of states parties, held in 2015 after the entry into force of the treaty on 24 December 2014, established in the rules of procedure for the conferences that future CSPs would meet annually.<sup>4</sup> Since then, a week-long CSP has been held each year in late August or early September. These meetings have been held either in a host country (Mexico and Japan), at the ATT Secretariat's seat in Geneva or, as a consequence of the Covid-19 pandemic, through written procedure with no in-person meeting. The number of preparatory sessions or meetings of working groups and subsidiary bodies is not defined in writing. Nevertheless, as often happens in international bodies, it is now widely expected that informal consultations and two preparatory meetings will precede each CSP.

The CSPs can be divided into two phases. The first phase included the first three CSPs, in 2015–17, which focused on creating the treaty's operational system. During this period, the positive feeling surrounding the adoption of the ATT still prevailed. These CSPs adopted rules of procedure for the ATT conferences and financial rules, and chose the seat of the ATT Secretariat and decided its procedures.<sup>5</sup> They also established the Working Group on

<sup>4</sup> Arms Trade Treaty, 1st Conference of States Parties, 'Rules of procedure', ATT/CSP1/CONF/1, 25 Aug. 2015, Rule 11(1).

<sup>5</sup> Arms Trade Treaty, 1st Conference of State Parties, Final report, ATT/CSP1/2015/6, 27 Aug. 2015, paras 21, 24, 25.



Transparency and Reporting (WGTR), the Working Group on Effective Treaty Implementation (WGETI), and the Working Group on Treaty Universalization (WGTU).<sup>6</sup>

The second phase included the fourth, fifth and sixth CSPs, in 2018–20, which made decisions that moved the treaty regime from operationalization to implementation. During this phase, the difficulties of achieving the goals of the treaty started to be revealed. Decisions taken in this phase focused on working methods and the tasks that the Secretariat must undertake to facilitate reporting and implementation, including the Voluntary Trust Fund (VTF) and the sponsorship programme.<sup>7</sup> These CSPs also considered issues regarding the institutional architecture of the treaty, including the establishment of the Diversion Information Exchange Forum (DIEF).<sup>8</sup>

#### IV. Challenges for the ATT processes and forums

Moving from diplomatic to technical engagement is a complicated endeavour, but it is essential for the success of a treaty. This process is a natural part of the follow-up to any treaty. In the case of the Arms Trade Treaty, it may be especially complicated since the parties must deconstruct the diplomatic ambiguity that negotiators used to achieve general agreement. As they do this, they must resist the natural urge of diplomats—and, indeed, non-state actors—to renegotiate the text by advocating for interpretations that are closer to their liking. Giving in to this urge would shatter the negotiated balance and would weaken the support for the ATT among its members, limiting its effectiveness.

The ATT's forums have an essential role in establishing the international architecture required to implement the treaty. Meanwhile, much of the implementation of the ATT takes place at the national level, so the forums have a limited role (although there may be a divergence of views on the nature of ATT implementation). However, international support for implementation, cooperation and peer oversight, all via the ATT forums, are integral parts of the ATT's implementation system.

Due to the commitment of the actors involved in the post-negotiation process—be it states, civil society organizations, international organizations and at times committed individuals representing these actors—the CSPs have advanced a platform (i.e. the processes and forums for discussion and coordinated implementation of the ATT) that represents a remarkable start, even if a somewhat slow one.

Nonetheless, some challenges for the processes and forums of the ATT remain, as outlined in the following subsections. Finance is an overriding

<sup>6</sup> Arms Trade Treaty, 2nd Conference of State Parties, Final report, ATT/CSP2/2016/5, 26 Aug. 2016, para. 26; and Arms Trade Treaty, 3rd Conference of State Parties, Final report, ATT/CSP3/2017/SEC/184/Conf.FinRep.Rev1, 15 Sep. 2017, paras 21, 24.

<sup>7</sup> Arms Trade Treaty, 4th Conference of State Parties, Final report, ATT/CSP4/2018/SEC/369/Conf.FinRep.Rev1, 24 Aug. 2018.

<sup>8</sup> Arms Trade Treaty, 5th Conference of States Parties, 'Reflections on the process of the Conference of State Parties', Working Paper presented by Costa Rica and Mexico, ATT/CSP5/2019/CRI.MEX/538/Conf.WP, 27 Aug. 2019; and Arms Trade Treaty, Working Group on Transparency and Reporting, 'Terms of Reference (ToR) concerning the Diversion Information Exchange Forum', ATT/CSP6.DIEF/2020/CHAIR/632/Conf.DIEFToRS, 23 July 2020.



challenge that affects the overall forums, processes and implementation of the treaty, but it is not addressed further here.

### **Moving from an idea to implementation: From the diplomatic to the operational**

To make the ATT work, it must move from being a set of good-intentioned words on paper to become a guide to action for national use and an international platform to allow for cooperative implementation.

There is a continuing need for periodic meetings, including the need for the CSP and its subsidiary bodies to tend to administrative and diplomatic issues. Furthermore, in-person meetings are needed to reach agreements, share practices and even to maintain a strong commitment of states parties to the ATT.<sup>9</sup> While a diplomatic role remains, it is mainly in the areas of promotion, universalization and, perhaps, future revisions to the treaty.

More importantly, the ATT now requires those directly involved in the trade in weapons and in the prevention of their diversion to engage and work cooperatively through ATT processes and forums. This includes custom officers, licencing officials, national registry experts, prosecutors and law enforcement agents. Working through ATT processes and forums allows for operational implementors to establish day-to-day technical engagement with each other.

For example, currently information sharing is mostly done bilaterally or among small groups of countries involved in other instruments, such as the European Union's Working Party on Conventional Arms Exports (COARM) or the Wassenaar Arrangement.<sup>10</sup> While such working methods are needed and should not be diminished, the better that the ATT's information-sharing arrangements work, the more its implementation can mature.

Establishing processes and forums that allow for operational implementation is at the core of the challenges facing the states parties. Nevertheless, on occasion, discussions on changes to the processes and forums have centred on the required length and timing of meetings. Instead of debating the time allowed for annual meetings, it is important to understand the ATT's implementation needs, so processes and forums can then be established to fulfil them.

This is of particular importance for information sharing on action that states need to take in a timely manner, such as regarding diversion or licencing decisions. On these issues the question should be about how to facilitate communication based on the pace of work, rather than the number of meetings. The establishment of the WGETI and the DIEF were important steps, but systems for the continuous exchange of information might be needed. For example, the participating states of the Wassenaar Arrangement meet in a plenary meeting for two days each year, but the national authorities engage constantly.

<sup>9</sup> Brockmann, K., *Challenges to Multilateral Export Controls: The Case for Inter-regime Dialogue and Coordination* (SIPRI: Stockholm, Dec. 2019).

<sup>10</sup> On information sharing in COARM and the Wassenaar Arrangement see Beijer (note 2).



### **Developing the role and capacity of the ATT Secretariat**

The complicated nature of the ATT requires a body to maintain the information-exchange platforms and help states implement the treaty. The size and nature of the ATT Secretariat was an issue that required special attention during the treaty's negotiation. Some states argued in favour of a minimum-sized implementation support unit, while others were in favour of a fully fledged secretariat. The final text establishes a mid-point approach that recognized that the ATT needs an effective secretariat but maintains ATT implementation as a state party-led process.<sup>11</sup>

As the ATT advances through the establishment of implementation processes, the requirements for the Secretariat will increase. The states parties will need to allow for its efficient growth. This is not to create a large bureaucracy, but to allow it to be an effective one. Today's ATT Secretariat might not have the capacity to aid the day-to-day implementation of the treaty, as required by the ATT, at the same time as it supports the work of the new treaty mechanisms.

The parties should also reconsider the administrative status of the head of the Secretariat, who is currently appointed to a level far below the counterparts of other treaty-administering bodies in the UN system. This puts ATT representatives at a bureaucratic disadvantage that may limit the ATT Secretariat's capacity to interact with other secretariats and units.

### **Maintaining balance between exporters and importers**

One of the biggest challenges during the ATT negotiations, and another thing that makes the ATT unique, is that the treaty is not a private club for weapon exporters. It is an agreement between exporting, importing, and transit and trans-shipment countries. During the negotiations, countries that do not produce weapons feared that they were simply legitimizing a decision by exporters on their ability to access arms that they might need to exercise their right to self-defence and satisfy their public safety needs. They asked what they would gain from joining the ATT. If the treaty were to become only about national trade licensing commitments, then non-producing countries would not need to join. But if the goal were to be the setting of humanitarian rules for the trade of arms and the prevention of their diversion, then the more countries that join, the stronger it becomes. So, the negotiations took the text in a direction that created incentives for all countries to join.

The ATT, while respecting national decisions on export licensing when they follow the treaty regulations, establishes a shared responsibility for the licensing state to ensure that exported weapons are not misused or diverted.<sup>12</sup> In addition, it requests that all states parties work together to ensure responsible trade and requires that each party designates a national authority to enforce the national control system and act as the contact point for an information sharing system.<sup>13</sup> Most importantly for some net importer countries, the ATT establishes an equity format that allows for importing, transit and trans-shipment countries to be consulted and to

<sup>11</sup> Arms Trade Treaty (note 1), Article 18.

<sup>12</sup> Arms Trade Treaty (note 1), Article 11.

<sup>13</sup> Arms Trade Treaty (note 1), Article 5.



provide information to be used by exporting countries in their licence decision-making.<sup>14</sup>

The idea underlying the ATT is for all states to pursue the responsible trade in (and use of) weapons when they are needed. This goal is better achieved by having as many parties as possible promoting mutual respect for the ATT norms. Should the relationship between exporters and importers become unbalanced and return to the pre-ATT ways of carrying out business—when decisions by exporters often failed to address the concerns and needs of import, transit and trans-shipment countries—then implementation of the ATT will deteriorate and the interest of importing parties in taking part in its work will decline.

### **Implementing the risk-mitigation provision**

A unique aspect of the ATT that deserves special treatment is the risk-mitigation provision of Article 7(2). This creates an avenue for exporting and importing states to work together to ensure that weapons are used according to the licence agreements and to reduce the possibility of diversion. The underlying idea is to reduce incentives for weapons to be bought from the exporter with the lowest standards in its licensing processes, including states not party to the ATT. Instead, an option for the importing and exporting states to agree measures to minimize the risks of unlawful use and diversion of exported arms would allow responsible exporters to maintain their obligations while not losing markets. In addition, importing states would receive support to implement programmes and systems to adhere to their international commitments under the ATT.<sup>15</sup>

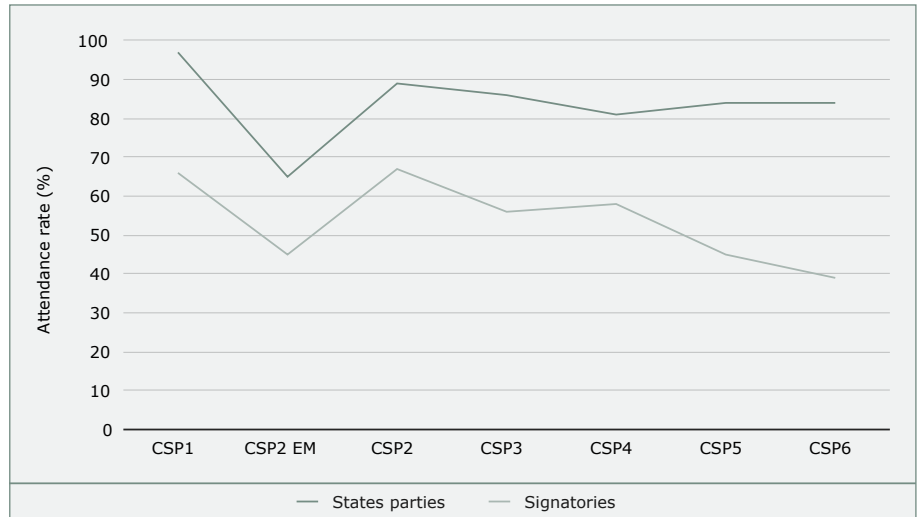
The risk-mitigation provision can be an effective tool to help end users ensure a legal use of the weapons that they receive and for responsible exporters to maintain markets if they are willing to assume a shared responsibility for the use of the weapons. This gives options for an exporting state that might be under pressure from domestic manufacturers to allow a specific export. However, for this tool to work, transparency is needed, and ways to share good practices among the states parties, and include other involved actors when needed, are essential.

Article 7(2) can be a powerful tool to strengthen the ATT and better achieve its goals. However, there is a potential for it to be misused. A claim that identified risks have been mitigated—but without real action to prevent diversion or misuse—could create a pretext to allow an export that should otherwise be denied.

Two of the biggest challenges to treaty implementation are ensuring that the risk-mitigation provision is not being misused; and learning from good practices in risk mitigation. The latter must include socializing programmes and actions taken by exporters, importers, and transit and trans-shipment countries to reduce the risk associated with the unlawful use and diversion of weapons.

<sup>14</sup> Arms Trade Treaty (note 1), Article 7(6).

<sup>15</sup> Arms Trade Treaty, Fourth Conference of States Parties, Working Group on Effective Treaty Implementation (WGETI), Chair's draft report, ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep, 20 July 2018, annex D, 'Possible measures to prevent and address diversion'.



**Figure 1.** Attendance at conferences of states parties of the Arms Trade Treaty  
CSP = conference of states parties, EM = extraordinary meeting.

*Note:* The graph shows the number of states attending as a proportion (%) of the total number of states parties or signatories at the start of the conference.

*Sources:* Arms Trade Treaty, 1st Conference of States Parties, Final Report, ATT/CSP1/2015/6, 27 Aug. 2015, ; Arms Trade Treaty, 2nd Second Conference of States Parties Extraordinary Meeting, Final Report, ATT/CSP2/2016/EM/6, 29 Feb. 2016; Arms Trade Treaty, 2nd Conference of States Parties, Final Report, ATT/CSP2/2016/5, 26 Aug. 2016; Arms Trade Treaty, 3rd Conference of States Parties, Final Report, ATT/CSP3/2017/SEC/184/Conf.FinRep.Rev1, 15 Sep. 2017; Arms Trade Treaty, 4th Conference of States Parties, Final Report, ATT/CSP4/2018/SEC/369/Conf.FinRep.Rev1, 24 Aug. 2018; Arms Trade Treaty, 5th Conference of States Parties, Final Report, ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1, 30 Aug. 2019; and Arms Trade Treaty, 6th Conference of States Parties, Final Report, ATT/CSP6/2020/SEC/635/Conf.FinRep.Rev1, 21 Aug. 2020.

### **Maintaining and strengthening engagement and universalization**

As the novelty of the ATT has faded and the intricacies of implementation have surfaced, the number of states engaging in the ATT processes has slowly but steadily declined. With an exception for an extraordinary CSP in 2016, each year a smaller proportion of states parties and signatories has attend the meetings (see figure 1). While multiple factors can account for the falling participation, one presented by some attendants at annual CSPs is the feeling among some non-exporting countries, especially those without robust national authorities, that the meetings do not attend to their issues or provide a space where they can contribute.<sup>16</sup>

A further contributing factor is the decision to base the ATT Secretariat in Geneva. This has led to a series of specific challenges. Some states lack representation in Geneva, with no permanent mission or only a small presence. This is true particularly for some smaller developing countries that tend to be importers. For some states that do have a presence in Geneva, the ATT meetings are attended by permanent diplomatic representatives who tend to engage in diplomatic negotiations instead of treaty implementation. This has been demonstrated by some of the chairs of the working groups.

<sup>16</sup> This observation is based on author interviews with state party delegates and NGO representatives who have attended CSPs.





While, in general, they have done a good and well-intentioned job, some lack the technical expertise for day-to-day implementation.

Even among countries with a larger presence in Geneva, only a few have delegates deployed to their missions with expertise in export control systems; most such experts are either in the capital or in Vienna. Moreover, the cost of sending delegates to Geneva and the intricacies for some countries of obtaining multiple-entry visas for Switzerland have also become constant concerns.<sup>17</sup> There are also positive aspects to the ATT presence in Geneva. It is the base for many trade experts (as it hosts the World Trade Organization) that could be more involved in the ATT forums, and it is the centre for the UN's human rights institutions.

The challenge is to get the states parties to become active participants in the ATT processes. This includes by making participation at the technical level more accessible for all countries. Simultaneously, treaty universalization must be promoted, while ensuring that new adherents do not find the process more burdensome than useful.

### **Establishing an effective review process**

Unlike other treaties, the ATT does not establish a set review process. Instead, Article 20 opens the possibility for treaty amendments starting six years after entry into force and recurring every three years after that. This creates, in essence, a continuous review process at the disposal of states parties.

Review processes are complicated as they can disrupt the delicate balance that was needed to reach agreement on a treaty text itself. Nevertheless, they are sometimes needed to keep a treaty current and to address any issues not covered by the negotiation process. The ATT was negotiated in New York in a conference open to all UN members. It was then approved by the UN General Assembly.<sup>18</sup> The negotiations thus had to accommodate diverse positions in a body with universal membership that did not transfer as a whole to the ATT. Some issues that were impossible to address in the broader setting should now be negotiable among the states parties. Indeed, during the original negotiations, some delegations—including the progressive coalition of West African and Latin American states—understood that a possible future protocol to clarify some of the missing definitions in the treaty or to expand agreements regarding the scope to the ATT would eventually be necessary.<sup>19</sup>

Another element of the ATT that requires regular review is its dependence on other international agreements to help describe or interpret parts of the treaty. For example, the UN Register of Conventional Arms (UNROCA) is essential to have a full reading of the scope of the treaty.<sup>20</sup> As these instruments are revised, the state parties must understand the effect on the ATT.

While it might be too early to know what revisions or corrections are needed to the ATT, a process to address such needs based on Article 20 should be

<sup>17</sup> Control Arms, 'Ways to increase states' participation in ATT meetings', 30 May 2017. See also Beijer (note 2).

<sup>18</sup> UN General Assembly Resolution 67/234 B, 2 Apr. 2013.

<sup>19</sup> On the scope of the treaty see Holtom (note 2).

<sup>20</sup> Arms Trade Treaty (note 1), articles 2(1) and 5(3). See also Holtom (note 2).

established. In the meantime, good practices and guidelines can help clarify areas of ambiguity in the treaty and allow for effective implementation.

### **Ensuring transparency, including participation of non-state actors**

From the beginning, the negotiation of the ATT relied on the support of non-state actors, particularly organized civil society groups. The treaty itself was imagined in a way that requires the participation of highly specialized and professional non-state actors that, in many cases, possess expertise not available to many states. They would be able to support, question and influence processes and forums associated with implementation of the ATT. Their role today is as essential as it was during the negotiations.

While states need to be able to keep some information confidential, it should not become the norm. This must be reiterated as there appears to be movement towards holding fewer open meetings, especially DIFE sessions.<sup>21</sup> The CSP rules of procedure clearly state that ‘The plenary meetings of the Conference shall be public unless the Conference decides otherwise’.<sup>22</sup> This implies that open meetings should be the default, and a meeting should only be closed on a case-by-case basis when states so decide. Non-state actors need to maintain their place within the process for implementation of the ATT to be successful.

## **V. Options for adaptation of the ATT processes and forums**

As the implementation of the Arms Trade Treaty progresses, stakeholders gain a better understanding of what is needed for effective implementation. The processes and forums of the ATT need to respond to these needs. While good practice can be taken from other instruments and institutions, the uniqueness of the ATT requires particularly relevant answers.

The institutionalization of the treaty has been making advances, but it now needs to enter a new phase that creates separate platforms for its technical implementation and diplomatic governance. The following is a proposed adaptation of the ATT processes and forums that addresses the challenges identified in section IV and allows for effective implementation. This is not presented as the only option but as a way of provoking thought on ways to strengthen the ATT and make its implementation effective and efficient.

When designing an architecture of this nature it is important to address the previously identified challenges and, above all, make it implementable by setting it up as a useful platform for operational work. Systems for day-to-day continuous cooperation need to be complemented with working groups that may only need to meet once or twice a year. Many of the necessary functions

<sup>21</sup> Control Arms, Statement on Draft Decision 13, 6th ATT Conference of States Parties, 13 Aug. 2020, p. 1; Pytlak, A., ‘One more time for the people in the back—transparency (still) matters!’, *ATT Monitor*, vol. 13, no. 4 (27 Aug. 2020); Saferworld, Statement on Draft Decision 13, 6th ATT Conference of States Parties, 17–21 Aug. 2020; Stohl, R., *Reporting During a Pandemic: Reflections on the Arms Trade Treaty 2019 Annual Reports* (ATT-Baseline Assessment Project: Washington, DC, Oct. 2020); and Maletta, G. and Bromley, M., ‘The Arms Trade Treaty’, *SIPRI Yearbook 2020: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2020), p. 529.

<sup>22</sup> Arms Trade Treaty, ATT/CSP1/CONF/1 (note 4), Rule 13.



are already being carried out by the working groups and mechanisms established by the CSPs; others still need to be addressed.

In the proposed structure (see figure 2), the CSP is maintained as the premier forum of the ATT, set up to receive input from working groups and other subsidiary bodies. Its role is to make decisions and hold open working sessions. It is also the ultimate body where states parties can address issues that should be resolved in the working groups and other subsidiary bodies but which might prove too complicated and require a diplomatic platform. This includes questions regarding actions that might be contrary to the letter and spirit of the ATT. As now, the CSP would be led by an elected president and supported by the ATT Secretariat and the ATT Bureau, consisting of the president and the four vice-presidents.

### **The Subsidiary Body on Implementation and Transparency**

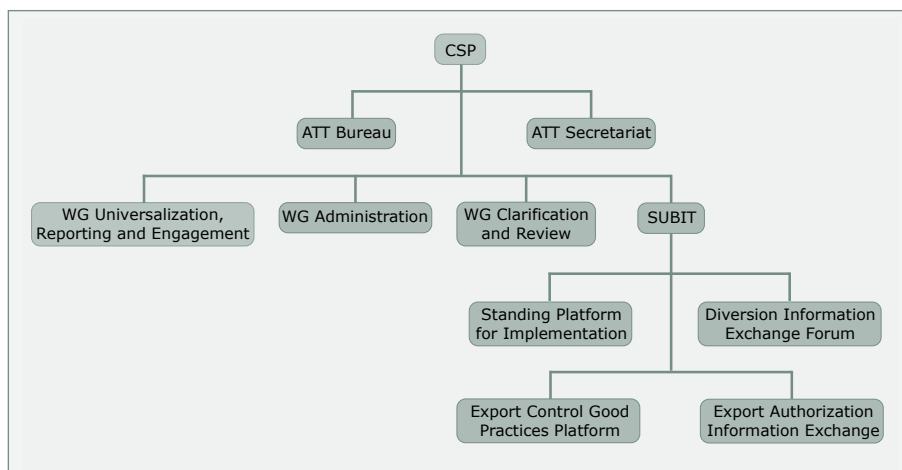
The establishment of the standing Working Group on Effective Treaty Implementation and its sub-working groups was a good but limited step. The ATT could be better served by establishing a Subsidiary Body on Implementation and Transparency (SUBIT), based on Article 17(4)(f) of the treaty, to replace the WGETI. The new SUBIT—with a membership comprised of all states parties—would become the predominant technical forum of the ATT, although it can allocate its work to smaller groups of experts.

To address the necessary balance between exporter and importer countries and following examples from other fields (e.g. the UN Framework Convention on Climate Change), the SUBIT could be led by two technical experts, one from a primarily exporting country and another from a primarily importing country. In this way, a balance of interests from countries with different position in the arms trade can be easily considered. The two co-chairs of the SUBIT could be elected by the CSP for a term of 2–4 years to ensure the possible implementation of multiyear work plans.

The SUBIT would report to the CSP and be supported by the ATT Secretariat. Its meetings should be open. It could establish a standing virtual day-to-day working platform for national authorities and incorporate the DIFE to facilitate cooperation to address diversion. This system would take the form of an Export Authorization Information Exchange system that would facilitate dialogue and information sharing on national decision-making on export licences in accordance with Article 7(6). This system would allow a state to address a question that it might have regarding another state's licencing decisions and risk-mitigation exemptions. Addressing such operational needs at a technical level would avoid, when possible, a diplomatic confrontation.

The SUBIT would also establish an Export Control Good Practices Platform to allow countries to share knowledge on their national systems at a technical level, including their approaches to the risk-mitigation provision.

In its work, the SUBIT could include transparency practices to share information, taking on some of the tasks currently assigned to the WGTR. This could also be the group to review the initial and annual reports of the states parties, although a case can be made for these reports to be reviewed in a more diplomatic, rather than technical, setting. Technical questions on



**Figure 2.** Proposed structure of the processes and forums of the Arms Trade Treaty

ATT = Arms Trade Treaty, CSP = Conference of States Parties, SUBIT = Subsidiary Body on Implementation and Transparency, WG = Working Group.

Source: Author's proposed structure.

a country's licence approvals could be easier to deal with in the SUBIT than diplomatic issues, but there are some cases in which a diplomatic exchange may be needed, requiring the issue to be taken up at the CSP level.

The ATT requires openness to questioning and even challenges in order to achieve its goals and objectives. While no country likes to be challenged on what it may consider a national matter, openness to the multilateral process is essential. Ultimately, no country should be giving arms trade authorizations that it is unable, or unwilling, to defend in a forum such as the SUBIT.

### Additional working groups

The CSP would receive reports and act on proposals that emanate from working groups. The work of these groups would be directed by a delegate appointed by the Bureau and they would be comprised of interested state parties. They differ from the SUBIT since their membership need not to be universal and their chairs could be appointed and serve for 12-month periods. The working groups would be supported by the ATT Secretariat. The following three working groups could be established.

1. *The Working Group on Universalization, Reporting and Engagement.* This working group would initiate and follow up on efforts to expand the ATT membership and promote universal reporting. It would not review reporting, but it would encourage parties to report. With most of the work on reporting handled in the SUBIT, this working group could combine the remaining tasks of the current WGTR and WGTU, as well as addressing engagement opportunities. It would, for example, explore opportunities to engage with other regimes, international organizations, industry and NGOs. While industry and NGOs should also be included in the work of the SUBIT, this working group could focus more directly on issues regarding representation and participation. A case can be made to also include the Voluntary Trust Fund in this working group, as it is essential for universalization and reporting



efforts. Alternatively, the VTF could be managed within the SUBIT because of its goal of helping countries in the technical implementation of the treaty.

2. *The Working Group on Administration.* This would take over the work currently done by the six-member Management Committee. Establishing a working group for this task opens the group up to all interested states parties, and therefore allows for its work to be more inclusive.

3. *The Working Group on Clarification and Review.* This working group would address gaps in the ATT, divergent views on treaty implementation and new challenges. It would also serve as a channel to discuss any future needs and any proposals to review the treaty.

### **Pattern of meetings**

The CSP could maintain an annual in-person meeting as a way not only to further the work of parties and engaged actors, but also to maintain international engagement on the issues that the ATT addresses. This would allow the exchange of ideas between delegation experts, civil society, industry representatives and international organizations. The CSP would review, and act on when necessary, the work and proposals of the SUBIT and working groups, as well as attending to all the other obligations established in the treaty and the rules of procedure. With the establishment of day-to-day implementation systems and technical bodies, the CSP could limit its preparatory meetings to one per year, held in a hybrid in-person and virtual model that allows for maximum participation. The UN and the UN Development Programme (UNDP) could be asked to assist participation by allowing the use of the virtual connection capabilities in their centres around the world, as they have done for other bodies. In this way the participation challenge (see section IV) can be addressed through the use of virtual participation technologies, while also maintaining an in-person meeting at least once a year.

The SUBIT could maintain standing day-to-day work using technology and, when needed—as decided by the group and approved by the CSP or the Bureau—hold expert meetings in Geneva or elsewhere. For example, small meetings in Vienna could take advantage of the export control expertise there. Indeed, holding meetings of subsidiary bodies in different locations can help with participation and universalization of the ATT, without incurring the cost of hosting a full CSP meetings outside Geneva.

The SUBIT should hold a yearly in-person meeting just before the CSP to approve all information that will be submitted to the CSP. This would reduce the travel needs for those countries that want their technical representatives to participate in the CSP.

The working groups that report to the CSP could hold mid-year hybrid sessions and then meet in person just before the annual CSP meeting to approve all information that will be submitted to the CSP. Since regular work will be done throughout the year, meetings of the working groups to approve particular action should mostly be formalities, except for divisive issues that need to be tackled directly in the CSP.

If funding permits, as in the SUBIT case, working group meetings could occasionally be held outside Geneva to allow for greater attendance.



In addition, the Secretariat or president could consult with the Swiss Government on multiple-entry visas for those attending the meetings to help ease attendance.

## VI. Conclusions

After six years of initial implementation, stakeholders in the Arms Trade Treaty have a better understanding of the challenges related to its implementation. This experience must now be used to establish effective processes and forums to allow the states parties and engaged actors to maximize the use of the platform created by the treaty in order to fulfil its main purpose: ‘Contributing to international and regional peace, security and stability; Reducing human suffering; [and] Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties’.<sup>23</sup> To achieve this, the ATT regime must leave the diplomatic negotiation stage behind and advance to the stage of continuous technical implementation.

The ATT is the best instrument that states currently have at their disposal to deal with the unregulated trade in weapons, which causes loss of life, human suffering, insecurity and instability, and hampers development around the world. Having a treaty is not enough; effective implementation is required. At the core of the ATT itself is the need to do so in an equitable, transparent and multilateral way.

<sup>23</sup> Arms Trade Treaty (note 1), Article 1.



## Abbreviations

ATT	Arms Trade Treaty
CSP	Conference of States Parties
DIEF	Diversion Information Exchange Forum
NGO	Non-governmental organization
SUBIT	Subsidiary Body on Implementation and Transparency
UN	United Nations
VTF	Voluntary Trust Fund
WGETI	Working Group on Effective Treaty Implementation
WGTR	Working Group on Transparency and Reporting
WGTU	Working Group on Treaty Universalization

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# TAKING STOCK OF THE ARMS TRADE TREATY: PROCESSES AND FORUMS

ROBERTO DONDISCH

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