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I. The Arms Trade Treaty

ANDREA EDOARDO VARISCO, GIOVANNA MALETTA AND LUCILE ROBIN

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


4 Arms Trade Treaty, President of the Sixth Conference of States Parties (CSP6), ‘Announcement: Cancellation of the working group meetings and 2nd CSP6 informal preparatory meeting: 14–17 April 2020’, 18 Mar. 2020. Consultations on the draft documentation arising from the various working groups and to be considered during the second informal preparatory meeting were held during the intersessional period, with stakeholders providing written comments and suggestions on the documentation to the various authors through email exchange. See Arms Trade Treaty, CSP6, Final Report, ATT/CSP6/2020/SEC/635/Conf.FinRep.Rev1, 21 Aug. 2020.

5 Official CSP6 documents can be found at the Arms Trade Treaty website under ‘CSP6 conference documents’. See also Arms Trade Treaty, CSP6 President-designate, ‘Announcement on the format of the Sixth Conference of States Parties’, 18 July 2020.

6 CSP6 was attended by 89 states parties of the then 106 states parties and 12 of the then 31 signatories. In addition, China, which by then had acceded to the ATT, also participated in the work of the conference. See Arms Trade Treaty, ATT/CSP6/2020/SEC/635/Conf.FinRep.Rev1 (note 4), paras 11–16.
Under the written procedure for CSP6, stakeholders participated through written interventions and states parties took decisions via the silence procedure, which meant that agreement on draft decisions could be reached only on the basis of consensus.\textsuperscript{7} Thus, any state party that broke the silence by requesting an amendment or raising an objection on a decision had de facto power of veto on that decision, as no mechanism for amending a decision was in place. Some NGOs criticized the procedure for the way that it limited participation, open debate and discussion among ATT stakeholders.\textsuperscript{8}

The ATT Secretariat circulated 17 draft decisions to be considered for adoption via silence procedure, with a deadline of 17 August 2020, initially only to states parties. Following a series of objections, the decisions were then shared publicly on the ATT Secretariat website. CSP6 adopted 11 of these, including the reappointment of the current head of the ATT Secretariat, Dumisani Dladla, for a second term starting on 1 December 2020.\textsuperscript{9} The draft decisions that were not approved will be taken forward during the next ATT cycle.\textsuperscript{10} Three such decisions referred to the draft workplans for the sub-working groups of the WGETI (draft decisions 9–11) and one to welcome the CSP6 president’s working paper (decision 17). France and the United Kingdom objected to the three WGETI decisions, arguing that the silence procedure should be used ‘solely for the adoption of decisions on matters of procedure’.\textsuperscript{11} The two other rejected draft decisions referred to issues related to the implementation of states parties’ financial obligations (decision 15) and their ability to benefit from the ATT sponsorship programme and the assistance provided by the Voluntary Trust Fund (VTF) (decision 16).\textsuperscript{12}

This section summarizes key ATT-related developments and debates during 2020. It first focuses on issues related to transparency and reporting, notably a decline in public reporting and the establishment of the Diversion Information Exchange Forum (DIEF). It then looks at the status of treaty


\textsuperscript{9} Arms Trade Treaty, CSP6 President, ‘Outcome of CSP6 decision-making process via silence procedure’, 19 Aug. 2020; and Arms Trade Treaty, CSP6, Final Report (note 4), Decision 8.

\textsuperscript{10} Arms Trade Treaty, CSP6, Final Report (note 4), para. 5; and Arms Trade Treaty, CSP6 President, ‘Outcome of CSP6 decision-making process via silence procedure’ (note 9), para. 8.

\textsuperscript{11} France, Email to the ATT Secretariat, 17 Aug. 2020, and United Kingdom, Email to the ATT Secretariat, 17 Aug. 2020 (see item 6 under ‘Objections to CSP6 draft decisions not adopted via silence procedure’).

universalization and the provision of international assistance. Finally, it analyses issues related to the financial health and functioning of the treaty and concludes with discussion of the prospects for the Seventh Conference of States Parties (CSP7).

**Transparency and reporting**

*A decline in public reporting*

States parties to the ATT have two reporting obligations: *(a)* within one year after entry into force at national level, to provide an initial report to the Secretariat of ‘measures undertaken in order to implement’ the treaty and report ‘on any new measures undertaken in order to implement’ the treaty; and *(b)* to submit an annual report to the Secretariat on ‘authorized or actual exports and imports of conventional arms’.\(^\text{13}\)

CSP6 endorsed the mandate for the WGTR for CSP7 to continue work on amending the initial and annual reporting templates.\(^\text{15}\) The WGTR also discussed the disaggregation of data in annual reports and the possibility of making ‘the information in annual reports available in a searchable database that allows for queries and extracting data’.\(^\text{16}\)

Two main trends characterized initial and annual reporting in 2020. The first was a decline in the level of reporting. As of 15 December 2020, 26 out of 105 (25 per cent) states parties that were due to submit an initial report had failed to do so.\(^\text{17}\) In addition, the downward trend in annual reporting continued in 2020, with only 56 out of 97 (57 per cent) states fulfilling their annual reporting obligations, the lowest compliance rate of any year so far.\(^\text{18}\)

This means that, while the number of states parties has increased, there was a proportionate and absolute fall in the number of submitted annual reports on arms transfers (figure 14.1). Among the many possible reasons, challenges and delays due to the global Covid-19 pandemic—such as ‘remote work, an inability to access information and data, and competing priorities amidst a health crisis’—might also have contributed to the particularly low levels of reporting in 2020.\(^\text{19}\)

Reporting practices in the coming years will indicate

**References**

\(^{13}\) Arms Trade Treaty (note 1), Article 13(i).
\(^{14}\) Arms Trade Treaty (note 1), Article 13(3).
\(^{15}\) Arms Trade Treaty, CSP6, Final Report (note 4), para. 39.
\(^{19}\) ATT-BAP (note 18), p. 4.
whether low levels of reporting is a continuing trend or the fall was primarily due to exceptional circumstances in 2020.

A second trend is a decline in public reporting, with a marked increase in reports that are not made public but are only available for states parties and posted on the restricted area of the ATT website. Cameroon, Chile, Kazakhstan and Palestine submitted non-public initial reports in 2020, adding to the 12 non-public initial reports submitted in previous years. In addition, 11 states parties (Albania, Cyprus, Georgia, Greece, Kazakhstan, Lithuania, Maldives, Malta, Mauritius, Palestine and Senegal) submitted a non-public annual report for 2019, and the proportion of non-public reports increased from 2 per cent for 2015 to 21 per cent for 2019. Moreover, 13 states parties indicated in their public annual report that they withheld some commercially sensitive or national security-related information in their annual reports, in accordance with Article 13(3) of the treaty. Although making reports public is not a treaty obligation, this growing tendency goes against one of the treaty’s main purposes of promoting transparency in the international arms trade.

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20 These initial reports were due for submission in 2019. ATT Secretariat (note 17).
21 ATT Secretariat (note 18); ATT-BAP (note 18), p. 9; and ATT Monitor, ATT Monitor Report 2020 (Control Arms Secretariat: New York, 19 Aug. 2020), p. 39. One state submitted a non-public report even though it did not have to submit an annual report this year.
22 ATT-BAP (note 18), p. 11; and ATT Secretariat (note 18).
23 Arms Trade Treaty (note 1), Article 1. See also Arms Trade Treaty, CSP6, ATT WGTR, Co-Chairs’ draft report to CSP6 (note 16), p. 5.
**A new Diversion Information Exchange Forum**

CSP6 adopted decision 13, which establishes the DIEF, a ‘sui generis body for informal voluntary exchanges between States Parties and signatory States concerning concrete cases of suspected or detected diversion and for sharing concrete, operational diversion-related information’, as a mechanism to facilitate the implementation of articles 11 (diversion) and 15 (international cooperation) of the treaty. Some states have shared this kind of information in similar mechanisms in the contexts of the European Union (EU) and Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies, for many years. The ATT, however, has a broader membership, and the establishment of the DIEF within the ATT will enable a higher number of states, including exporters and importers, to discuss and share information on this issue. The establishment of the DIEF ties in with the theme of CSP6. It is the result of work conducted within the framework of the WGTR and of the attempts made in past CSPs to share information on diversion cases among states parties.

That states parties adopted decision 13 on establishing the DIEF—and decision 12 on the WGTR mandate—stands in contrast to their rejection of other decisions, such as the ones on the adoption of the WGETI sub-working group workplans. Civil society organizations criticized both the procedure and the substance of decision 13, which they argued ‘undermines the ATT’s purpose of transparency and its historic inclusion of civil society’. In particular, there were questions on the functioning of the DIEF, as participation (including access to draft organizational documents and the terms of reference so far) is limited exclusively to ATT states parties and signatories. Likewise, there were requests for clarification on the process through which states could request non-state experts to participate in the forum and on how this process might challenge the independence of such experts. The DIEF will hold its first formal meeting in 2021 and states parties will review its ‘usefulness’ at the Eighth Conference of States Parties (CSP8).

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24 Arms Trade Treaty, CSP6, WGTR, Co-Chairs’ draft report to CSP6 (note 16), p. 7.
25 Maletta and Bromley (note 18), p. 528.
26 Control Arms, Statement on draft decision 13, 13 Aug. 2020, p. 1. See also Pytlak, A., ‘One more time for the people in the back—transparency (still) matters!’ (note 8); and Saferworld, Statement on draft decision 13, Aug. 2020.
27 Control Arms (note 26), p. 2; Pytlak, A., ‘One more time for the people in the back—transparency (still) matters!’ (note 8); and Austria, Statement, 17–21 Aug. 2020, p. 2.
Achieving universalization remains one of the key objectives of the ATT and, as of 31 December 2020, the treaty had 110 states parties. The ATT Secretariat’s latest analysis of the trends and pace of ATT universalization confirmed that ATT membership continues to be geographically uneven, with particularly low participation in Asia (table 14.1). For instance, more than half of the states in the Asian region have not yet joined the ATT. In this regard, China’s accession to the ATT in 2020 is widely considered as a positive development, and one that could increase interest in the treaty among China’s neighbours and other partners in the Global South.

Table 14.1. Arms Trade Treaty numbers of ratifications, accessions and signatories, by region

<table>
<thead>
<tr>
<th>Region</th>
<th>States</th>
<th>States parties</th>
<th>Signatories</th>
<th>Non-signatories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>53</td>
<td>28</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>Americas</td>
<td>35</td>
<td>27</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Asia</td>
<td>29</td>
<td>6</td>
<td>6</td>
<td>17</td>
</tr>
<tr>
<td>Europe</td>
<td>48</td>
<td>41</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Middle East</td>
<td>16</td>
<td>2</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Oceania</td>
<td>16</td>
<td>6</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>197</td>
<td>110</td>
<td>30</td>
<td>57</td>
</tr>
</tbody>
</table>

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

- This figure includes the United States. On 18 July 2019, the USA announced its intention not to become a state party to the treaty.
- This figure includes the Holy See.
- This figure includes Palestine.
- This figure includes Niue and the Cook Islands.
- This figure includes Niue.
- This figure includes the Cook Islands.


Treaty universalization and international assistance

Treaty universalization

Achieving universalization remains one of the key objectives of the ATT and, as of 31 December 2020, the treaty had 110 states parties. The ATT Secretariat’s latest analysis of the trends and pace of ATT universalization confirmed that ATT membership continues to be geographically uneven, with particularly low participation in Asia (table 14.1). For instance, more than half of the states in the Asian region have not yet joined the ATT. In this regard, China’s accession to the ATT in 2020 is widely considered as a positive development, and one that could increase interest in the treaty among China’s neighbours and other partners in the Global South. In the run-up to and during CSP6, the WGTU continued to discuss ways to promote the universalization of the treaty, and some of these efforts targeted the Asian region specifically. These included South Korea’s contribution to support the translation of the ‘ATT Universalization Toolkit’ and the
‘Welcome Pack for New States Parties to the ATT’. Both documents are now available in 10 different Asian languages.\textsuperscript{33} Furthermore, the WGTU implemented outreach activities at United Nations or regional meetings, until the escalation of the Covid-19 pandemic made this impossible.\textsuperscript{34} The CSP6 president also contributed to universalization outreach efforts by launching a media campaign to raise awareness around the ATT, including an ‘ATT outreach video’.\textsuperscript{35} The WGTU continued to discuss universalization of the treaty in connection with the ATT VTF, reiterating its importance in promoting ATT participation.\textsuperscript{36}

At the end of 2020, the future position of the United States vis-à-vis participation in the ATT remained unclear. In 2019 the USA under President Donald J. Trump announced that it did ‘not intend to become a party to the treaty’.\textsuperscript{37} However, the new US administration under President Joe Biden may decide not only to reverse this decision but to also push for the ratification of the treaty (although this would require a two-thirds majority in the US Senate).\textsuperscript{38}

\textit{International assistance}

The ATT Secretariat reported to CSP6 on the activities implemented by the VTF over the last year.\textsuperscript{39} The latest report confirmed that the VTF continues to have a good financial basis on which to carry out its work. Since its establishment in 2016, the VTF has received over $8.5 million in voluntary contributions from 28 states. These contributions have since then supported, or are still supporting, the implementation of 43 projects aimed at helping states (and mostly African states) to strengthen or build capacity to implement their ATT obligations.\textsuperscript{40} As in the case of many other ATT-related activities—and other relevant assistance programmes such as the EU Partner-to-Partner (P2P) ATT Outreach Programme—the outbreak of the Covid-19 pandemic affected the implementation of previously approved VTF

projects.\textsuperscript{41} Specifically, the implementation of projects approved for the 2019 VTF cycle that did not manage to complete their activities was suspended or delayed. However, beneficiaries received an extension to complete related activities by October 2021 at the latest.\textsuperscript{42}

In 2020, the Covid-19 pandemic affected not only the implementation of the assistance projects supported by the VTF, but also the work of the VTF itself. For example, the VTF had to postpone the plan to test the ‘Guidance for VTF Project Evaluation’, approved at the Fifth Conference of States Parties (CSP5) on projects completed in 2019, and reduce the number of planned outreach visits.\textsuperscript{43} However, the VTF was still able to implement a few activities aimed at improving its effectiveness and helping states to submit quality applications, such as uploading a ‘model’ grant application form to the VTF web page.\textsuperscript{44}

**Other issues related to the functioning of the treaty**

The core functions of the Secretariat, as well as the costs of the CSPs and subsidiary bodies, are all supported through the financial contributions that all ATT states parties and signatories, as well as states attending the CSPs as observers, are obliged to provide.\textsuperscript{45}

However, the fact that a significant number of states are failing to pay their assessed contributions has raised concerns about the financial health of the ATT and, consequently, the likely impact on its processes and key activities.\textsuperscript{46} As of 15 December 2020, 58 out of the 150 states that have been obliged to make contributions since 2015 were behind with their payments, creating an accumulated deficit of $424,405.19.\textsuperscript{47} To address the issue of financial liquidity, CSP5 mandated the ATT Management Committee to prepare guidelines on the implementation of Financial Rule 8.1(d), which would entail suspending the voting rights and other prerogatives within CSP bodies for states that have not paid their financial contributions for two or more years.\textsuperscript{48}

Since then, the Management Committee has drafted a possible procedure for allowing states in arrears to ‘discharge’ their financial obligations through

\textsuperscript{41} E.g. in the case of the EU P2P ATT Outreach Programme, many activities were postponed or moved online in the second half of 2020. See Charatsis, C. et al., *EU P2P Newsletter*, no. N.10 (Oct. 2019–Apr. 2020), pp. 2–3. See also the EU P2P ATT Outreach Programme virtual seminars on the YouTube channel of Expertise France.


\textsuperscript{44} ATT Secretariat, ‘Voluntary Trust Fund (VTF)’, [n.d.].


\textsuperscript{48} Arms Trade Treaty, ATT/CSP1/CONF/2 (note 45).
a multi-year payment plan. However, this proposal (part of decision 15) was rejected as several states parties raised objections, arguing that more time for reflection was needed. Notably, states parties also rejected the adoption of decision 16, which stated that states parties should have not been prejudiced by Financial Rule 8.1(d) in applying for support from the VTF or the Sponsorship Programme. In this case, objecting states’ arguments included that decisions on the VTF and the Sponsorship Programme are beyond the scope of Financial Rule 8.1(d). These matters have been deferred to CSP7.

Conclusions and prospects for CSP7

The impact of the Covid-19 pandemic on regular ATT processes in 2020 was severe, reducing the effectiveness of the ATT decision-making processes and the provision of international assistance; limiting opportunities to promote the universalization of the treaty; and limiting civil society participation in ATT-related processes, which negatively affected transparency and the possibility of open debate.

At CSP6, Ambassador Lansana Gberie from Sierra Leone was elected as president of CSP7. He has announced that the focus of his presidency will be on strengthening efforts to eradicate the illicit trade in small arms and light weapons and ensuring efficient stockpile management. The new president will face several tasks, alongside practical challenges related to the ongoing Covid-19 pandemic in 2021. First, the new ATT cycle will need to take forward the draft decisions that were not adopted during CSP6. The non-adoption of decisions 9, 10 and 11 implies that the WGETI sub-working groups do not yet have agreed multi-year workplans. Second, developments in 2021 might clarify whether the downward trend in reporting on arms transfers and arms transfer controls and on the ATT will continue, and whether and how the implementation of the DIEF might impact on transparency. Third, the financial situation of the ATT will remain an issue of concern with many states still failing to comply with their financial obligations.

49 Arms Trade Treaty, Management Committee (note 12).
50 The decision was opposed by Canada, France, Netherlands and the UK in a joint response and separately by Guatemala. See Arms Trade Treaty, ‘CSP6 Decisions’; and Arms Trade Treaty, CSP6 President-designate, ‘Decision 15: Management Committee Proposal’ (note 12).
51 The decision was opposed by Canada, France, Netherlands and the UK in a joint response and by Costa Rica and Panama in separate responses. See Arms Trade Treaty, ‘CSP6 Decisions’ (note 50); and Arms Trade Treaty, CSP6 President-designate, ‘Decision 16: Application of Rule 8(1)d’ (note 12).
52 Arms Trade Treaty, CSP6, Final Report (note 4), para. 42.
53 This is in accordance with decisions 3, 6 and 7. Arms Trade Treaty, CSP6, Final Report (note 4), paras 34 and 37. See also Arms Trade Treaty, ‘President’, [n.d.].
54 Arms Trade Treaty, CSP6, Final Report (note 4), para. 42.