



EU Non-PROLIFERATION CONSORTIUM

The European network of independent non-proliferation think tanks

Implementing the arms trade treaty: next steps

Seminar report
Geneva, 17-18 June 2013

Summary

This report summarizes the main points discussed at the seminar ‘Implementing the ATT: Next Steps’, organized by the European Union Non-proliferation Consortium. Concrete proposals concerning the rapid entry into force of the arms trade treaty (ATT) were discussed during the seminar, as well as the coordination of the provision of ATT-related assistance efforts both before and after the treaty’s entry into force. Seminar participants identified several barriers to early signature, ratification and entry into force for the ATT along with a range of measures that can be taken by states, regional organizations and non-governmental organizations (NGOs) to overcome these obstacles. Many of the measures are focused on helping states to map their existing transfer control systems and identify and fill gaps that may prevent treaty ratification or effective implementation. The seminar also discussed lessons learned from pre-existing assistance activities in the field of arms transfer controls and the ways in which they could be built upon and utilized by ATT-related efforts.



July 2013

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The European Union Non-Proliferation Consortium

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

The EU Non-Proliferation Consortium is managed jointly by four institutes:

- Fondation pour la recherche stratégique (FRS), Paris;
- Peace Research Institute in Frankfurt (PRIF);
- International Institute for Strategic Studies (IISS), London; and
- Stockholm International Peace Research Institute (SIPRI)

in close cooperation with the representative of the High Representative of the Union for Foreign Affairs and Security Policy.

The main aim of the network of independent non-proliferation think tanks is to encourage discussion of measures to combat the proliferation of WMD and their delivery systems within civil society, particularly among experts, researchers and academics. The scope of activities also covers issues related to conventional weapons.

For more information, visit the Consortium website, <<http://www.nonproliferation.eu>>.

I. Taking stock of the arms trade treaty negotiations

The implications of the negotiations towards an arms trade treaty (ATT)—including the July 2012 negotiating conference, United Nations N General Assembly Resolution 67/234, the March 2013 negotiating conference, the April 2013 vote in the UN General Assembly and the June 2013 signing ceremony—were examined and discussed, both in relation to the future implementation of the ATT and the international arms control and disarmament framework.

Participants at the seminar emphasized the fact that the March 2013 negotiating conference delivered the strongest text to address the negative social, economic and humanitarian impacts of the unregulated and illicit arms trade that the process could have produced. Key factors for the successful outcome included:

1. *Hard work and strong political support.* The hard work of Ambassadors Moritan and Woolcott, their teams and facilitators, as well as UN member states and civil society was of crucial importance.
2. *Willingness to make compromises.* The fact that states came well prepared and willing to make compromises was highlighted.
3. *Broad political support and ownership of the process.* The broad political support, and the extent to which it transcended traditional North–South and East–West divisions, ensured the legitimacy of the ATT process. A key example of this was the fact that procedural issues were not a major impediment for the March 2012 negotiating conference.
4. *The consensus rule and the General Assembly option.* Despite the concerns of many states, the consensus rule helped to build the broadest possible constituency of support for the ATT. However, of crucial importance for adopting the ATT was the inclusion of Operative Provision 7 (OP7) in UN General Assembly Resolution 67/234, which created the option of taking the final version of any negotiated text for adoption in the General Assembly. This option focused states on the process and created a genuine effort to work towards a consensus.

Looking forward, the importance of maintaining the broad level of political support for the ATT during the process of signature, ratification and implementation was underlined. The need to engage with states that abstained from the April 2013 vote in the UN General Assembly was also emphasized. The high level of cooperation between states and non-governmental organizations (NGOs) was also discussed and reflected on, as was the need to maintain this close partnership during the coming months and years.

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It was argued that the overall lesson of the ATT process should be that seeking a consensus outcome remains important for gathering the support of a broad coalition of states. However, consensus-based processes should not provide a veto for a small number of states. In this regard, OP7 was crucial, since it focused states on the process and created a genuine effort to work towards a consensus outcome—something that appeared achievable for a short period of time. In contrast, in situations where consensus is the rule and no ‘off-ramp’ is provided, there is often no incentive to negotiate.

It was proposed that the search for consensus during the ATT negotiations should also guide any future efforts aimed at amending the ATT. The ATT states that amendments to the treaty can be adopted by a three-quarters majority vote ‘(i)f all efforts at consensus have been exhausted’. However, instead of focusing on a race to sign up three-quarters of the room for a particular proposal, any such efforts should instead involve an exhaustive attempt to reach a consensus outcome, as was the case during the ATT negotiations. This principle could also guide other arms control and disarmament negotiations within the UN framework.

II. Overcoming barriers to early signature and ratification

The session identified a number of barriers to early signature and ratification, as well as possible solutions for overcoming these challenges.

1. Identifying and addressing the requirements of the arms trade treaty

States will need to establish whether or not their national systems for controlling arms exports and regulating arms transfers (including imports, transit and transshipment and brokering) are in line with the requirements laid down in the ATT. If gaps exist in an individual state's system, the state should take steps to fill them. Such a process may prove challenging for states that lack financial resources, human resources and capacity, and technical expertise.

Possible solutions

Mobilize and provide human, financial and technical assistance to help states map their national control systems, and fill any gaps that prevent ratification from taking place.

States and NGOs could utilize information made available to pre-existing reporting instruments—such those attached to the UN Programme of Action on small arms and light weapons (SALW) and UN Security Council Resolution 1540—to help states' to identify the gaps in national control systems. States and NGOs could also utilize existing guidelines, model legislation, and templates, and build upon existing outreach and assistance efforts, to help states fill any gaps in their national control systems.

2. Ensuring parliamentary support for ratification and early entry into force

In many states, parliaments will have an important role to play in the process of ratifying the ATT, including drafting and approving amendments to existing legislation or new legislation. This may prove difficult if parliamentarians have a limited understanding of the ATT or arms transfer controls.

Possible solutions

Conduct targeted seminars and provide detailed briefings in order to inform parliamentarians about the contents of the ATT and encourage their support for the ratification process.

3. Drafting and passing legislation

States may need to undertake lengthy national procedures for the drafting and passing of national legislation and related regulations.

Possible solutions

Provide legal assistance to help states draft national legislation.

4. Securing political will

A lack of political will may slow the ratification process, even in states that have signed the ATT.

Possible solutions

Organize seminars and workshops in order to mobilize political support for the ATT among states that have yet to sign or may be slow to ratify the ATT. As a first step, hold an event during UN Leaders Week in late 2013 to encourage additional signatories.

5. Identifying a national champion for ATT ratification

There may be no clear focal point at the national level to spearhead and coordinate the ratification process.

Possible solutions

Encourage all states to establish a national focal point, prior to ratification, in order to coordinate all ATT-related matters.

6. Coordinating international assistance

There will be a need to coordinate offers and requests for assistance prior to the ATT's entry into force. The ATT Secretariat will '(f)acilitate the matching of offers of and requests for assistance for Treaty implementation'. However, it is unclear how such assistance will be coordinated in advance of the ATT's entry into force.

Possible solutions

Create online mechanisms to coordinate offers of and requests for assistance. The ATT section of the UN Office for Disarmament Affairs (UNODA) website now includes a section on ATT-related activities and Control Arms will launch a website focused on implementation assistance.

7. Persuading arms trade treaty sceptics to sign and ratify

Twenty-two states abstained from the April 2013 UN General Assembly vote. Persuading these states to change their position and sign and ratify the ATT will require patient and nuanced lobbying efforts in order to address concerns without diluting the content of the treaty itself.

Possible solutions

One option would be to emphasize that ATT ratification would serve to demonstrate the effectiveness of a state's national control system and would bring associated benefits. Another option would be to use attendance at the first conference of states parties—and the possibility of influencing debates about the implementation of the ATT—as an inducement for ratification. On both counts there is a need to tread cautiously and to take into consideration a variety of complex political issues.

III. Identifying key priorities for international assistance efforts

Most of the discussions during the session focused on ways in which assistance could be provided to help states establish whether or not their arms transfer controls were in line with the requirements laid down in the ATT and take steps to fill any existing gaps. In this regard, the key elements of an effective arms transfer control system in line with ATT requirements were outlined. These include:

- Effective legislation;
- A control list;
- Administrative capacity for controlling arms exports and regulating transfers;
- The ability to conduct a national risk assessment against the criteria contained in the ATT;
- Inter-agency and inter-ministerial cooperation mechanisms;
- Enforcement mechanisms;
- International cooperation mechanisms, including the designation of a national contact point;
- Record-keeping mechanisms; and
- Reporting mechanisms.

It was noted that for some states, meeting the requirements laid down in the ATT will require new laws and regulations, while in other states modifications to secondary legislation and/or legal ordinances would be sufficient. Furthermore, key elements of an arms transfer control system, such as maintaining effective systems of inter-agency cooperation, can prove time-consuming and expensive. In many cases, maintaining and implementing the transfer control system post-ratification will require ongoing assistance by states, regional organizations and NGOs.

The reporting requirements associated with the ATT were also discussed. It was emphasized that compiling and submitting the type of reports required by the ATT can be a burden for both small and large states. At the same time, it was noted that many states that complain about 'reporting fatigue' have the worst records in this field. Participants therefore discussed synergies that could be developed between the ATT reporting requirements and the reports associated with the UN Programme of Action on SALW and the UN Register of Conventional Arms.

It was emphasized that all assistance efforts should be focused on the needs of the beneficiary states. In addition, resources should be developed that specifically target the needs of smaller states with limited arms exports and/or imports. Many of these states will not have effective arms transfer controls in

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place but will not have the need or resources to create and maintain a complex system. It will be important to ensure that any arms transfer control system created by these states meets the requirements of the ATT while not generating unnecessary administrative or financial burdens.

IV. Ongoing capacity-building efforts of relevance to the arms trade treaty

The session discussed various ongoing activities aimed at strengthening arms transfer controls that may be of relevance to ATT-related assistance efforts. In particular, it was noted that Australia, Japan, the United States, and European states have a long track record of providing assistance to states seeking to strengthen their arms transfer controls. The EU, the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS) and UN agencies are also active in this field. Much of the assistance provided by these organizations is focused on improving transfer controls systems for dual-use goods and technologies. However, since the laws and regulatory systems are usually the same for conventional arms and dual-use goods, such efforts can also be relevant to ATT-related assistance activities.

These ongoing efforts have generated guidelines, model legislation and templates that could also be of use when providing ATT-related assistance. In certain cases, they may provide on-going seminars and workshops to which ATT-related elements could be attached. For example, it was noted that modules on ATT implementation could be added to ongoing assistance efforts relating to the implementation of UN Security Council Resolution 1540.

The session also discussed the large number of ATT-specific assistance efforts by states, regional organizations and NGOs that are planned or ongoing. In particular:

- Small Arms Survey and the Geneva Academy are preparing a legal commentary on the ATT;
- The Stimson Center is preparing a project to assist states to understand the measures they need to take in order to ensure effective implementation of the ATT, as well as a baseline survey of states' ability to do this;
- SIPRI has produced a summary of obligations contained in the ATT to help states identify gaps in their national control systems;
- New Zealand is planning to draft and disseminate minimal model legislation for states in the Pacific region;
- A workshop for parliamentarians will be held in Dar es Salaam, Tanzania, on the issue of ratification;
- Mexico and Parliamentarians for Global Action are planning a series of workshops for parliamentarians in Latin America and the Caribbean to discuss ratification-related issues;
- The EU is planning to issue a Council Decision to fund ATT-related implementation assistance efforts;
- The Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECOSA) is planning an African regional meeting;

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- Control Arms is planning a series of regional meetings and will develop an implementation assistance website;
- Saferworld will carry out national assessments in a limited number of countries to identify the different types of ATT-related implementation assistance that will be needed;
- Geneva Forum is working on needs assessment seminars;
- Small Arms Survey is looking at the interface between the ATT and other existing instruments such as the UN Programme of Action on SALW and the UN Firearms Protocol; and
- Amnesty International is updating its guidelines on human rights and arms export controls.

The possibility of using Official Development Assistance (ODA) funds to support ATT-related assistance was discussed. It was argued that such funding would be appropriate, given the impact of the illicit arms trade on economic and social development. However, it was noted that donor governments might be unwilling to use ODA funds in this way and that NGO support for such a reallocation might be required.

The meeting also received a briefing on the United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR), an interim trust fund set up by UNODA on 7 June 2013 to provide support for early ratification. So far, the initiative has been backed by Australia, Denmark, Germany, the Netherlands and Spain. Its priority for 2014 is to support early ratification of the treaty by as many countries as possible via the provision of legislative and technical assistance.

V. Identifying capacity-building successes and failures

Seminar participants received information about the process of revising and updating the transfer control systems in Albania and Mexico. The two processes contained a number of differences and similarities, as well as several lessons for ATT implementation and ATT-related assistance activities. In particular:

1. Political will is essential to the success of reforming a state's arms transfer controls

One of the keys to the success of the reform processes in Albania and Mexico has been strong political commitment at the highest level to support the process over a sustained period of time.

2. Modernising a state's arms transfer controls can be a time-consuming and complex process

In Albania and Mexico, the process of reforming the transfer control system has been a time-consuming and complex operation involving the coordination of several ministries and government agencies.

3. Reforming a state's conventional arms transfer controls could be carried out in parallel with revisions to its dual-use transfer controls.

Albania and Mexico revised and updated their transfer control system for conventional arms and dual-use goods and technologies at the same time. This made sense because of overlaps in primary legislation, national authorities and implementation processes.

4. States, regional organizations and NGOs can help states to strengthen their arms transfer control system

In Albania and Mexico, efforts were made to draw upon the experience of other states and regional organizations. Albania received training and assistance from the EU via the German Federal Office of Economics and Export Control (BAFA), from the US-run Export Control and Related Border Security (EXBS) programme, and from the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC). Mexico held a series of seminars on export controls involving international experts and discussed its reform process with the OAS and the 1540 Committee.

5. The creation and use of software tools is likely to be a key component of any process of reforming a state's arms transfer controls

Reforms of the transfer control systems in Albania and Mexico involved the development and adoption of new software tools to facilitate the issuing of licences and processes of inter-agency coordination. These software tools are seen as essential for managing work-flows and keeping track of licences issued.

6. Donor states should coordinate their assistance efforts

In Albania, efforts by donor states to coordinate their outreach and assistance efforts have helped to reduce duplication in the provision of support. This has also helped to focus such support on the areas that are of greatest value to Albania.

7. International assistance efforts for developing states could utilize expertise from other developing states

It was suggested that the expertise developed by officials in Albania and Mexico could be used to help other states implement ATT-related reforms of their arms transfer controls. This could be provided either in the form of externally funded or 'in-kind' assistance. It was noted that the US-run EXBS programme uses officials it has trained through its outreach and assistance efforts to train officials in other states in the same region, or states that have similar legal systems and challenges.

8. There is not a 'one-size-fits-all' solution with regards to arms transfer controls assistance efforts

Determining which type of arms transfer control system is most suitable for a particular state depends on a range of factors, including the size of its trade and its political and legal traditions. The ATT recognizes this reality and focuses its attention on what states are obliged to do, not on how they should do it. This is something that should be borne in mind when states are revising their national control systems and when states and NGOs are offering assistance in this field.

VI. The role of international and regional organizations

The potential role that regional and international organizations could play in helping to facilitate the ATT's entry into force and assist with treaty implementation were discussed. Specific activities highlighted included:

1. Holding seminars for officials and parliamentarians to discuss and inform processes of ATT ratification and implementation;
2. Drafting and disseminating guidelines and best practice documents to help states assess their ATT-related needs and priorities;
3. Coordinating and delivering targeted assistance to help enable states to ratify and implement the ATT; and
4. Holding workshops where officials can discuss issues relating to ATT implementation and arms transfer control enforcement more generally.

Activities carried out by SEESAC and the UN Regional Centre for Peace and Disarmament in Asia and the Pacific (UNRCPD) were discussed, along with potential lessons provided by these activities for future ATT-related activities by regional and international organizations. Specific lessons learned included:

1. The importance of engaging with a wider range of government ministries

Regional ATT-related events should seek to include officials from the Ministry of Foreign Affairs and other government ministries, including the Ministry of the Interior, the Ministry of Defence and the security services. These officials often have control over aspects of government policy that relate to ATT implementation but may not be as knowledgeable or enthusiastic about the ATT itself. In addition, these events should be structured to allow a lot of time for informal discussions to take place.

2. The importance of utilizing good resources and solid reasons to support the ATT

The value of good quality NGO resources in helping to dispel myths about the ATT was emphasized. There was a discussion of the reasons that could be used to convince officials of the value of the ATT. One of the reasons provided for persuading reluctant states to sign and ratify the ATT is that it should be done 'for the sake of your neighbours and hope they do the same'.

3. Regional information sharing can be rewarding but hard to establish

SEESAC has created and facilitated a process of regional information sharing in the field of arms transfer controls. While this process took time to establish, it has reaped significant rewards in terms of building trust among officials and helping to inform states' export licensing decision-making. Such mechanisms

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may be useful in other regions as a forum for discussing ATT implementation or arms export controls more generally. At the same time, it has been hard to persuade officials from military intelligence services to attend, even though they are often central to the process of assessing arms export licence applications.

4. Any assistance provided by regional and international organizations should target states' needs

Through close cooperation with states in its region, SEESAC has sought to identify and provide the assistance that is most needed. In recent years, such assistance has included the provision of software systems that allow licensing officials to keep track of the licences issued and easily generate reports, and the creation of a regional database of arms brokers.

VII. International assistance after the arms trade treaty has entered into force

It was noted that states often have different views of the relationship between treaty ratification and treaty implementation. While some states ensure that all elements of implementation are in place before ratification occurs, others may ratify before the process is fully complete. In this regard, it was noted that the report on national implementation of the ATT is due one year after ratification is complete. This may provide a ‘grace period’, allowing states to continue working on implementation even after ratification.

Differing views were expressed concerning whether state parties to the ATT would be able to request and receive assistance after the ATT’s entry into force. On the one hand, it was argued that all states that have ratified the ATT should be in a position to implement the treaty in full once it has entered into force. However, this may serve to limit states’ willingness to request assistance after entry into force for fear that they will be accused of failing to uphold their treaty responsibilities. On the other hand, it was pointed out that, under Article 16.1, states parties may request and receive assistance with implementation after entry into force. It was also noted that ATT non-compliance would likely be treated differently than in other international treaties. In particular, any request for assistance would likely meet a favourable response if the state complied with reporting requirements and showed a willingness to improve their arms transfer control systems where necessary.

Participants discussed the option of prioritizing assistance for states that have signed and ratified or have signed but have not ratified by the time of the first conference of states parties. It was noted that the goal of ‘universalization’ of the treaty meant that it might be useful to maintain a mechanism separate to the ATT trust fund (such as UNSCAR) in order to assist states in preparation for ratification.

The discussion on the ATT Secretariat noted that two models were discussed during the negotiations: those of the Biological Weapons Convention (BWC) and the Chemical Weapons Convention (CWC). The key challenge in discussing such an issue now is that the funding mechanism for the Secretariat and its full range of tasks is not known. However, it was also emphasized that the list of tasks outlined in Article 18.3 will be sufficient for the Secretariat in the short-term and that further duties are to be designated at the conference of states parties. One of these duties could be trying to keep track of the different forms of ATT-relevant assistance that states are offering and requesting.

The issue of assistance and cooperation on interpretation was discussed. It was noted that the ATT is open to interpretation in a number of respects and that states will look for guidance on implementation. There will also be a need to create common understandings of a number of articles—especially articles

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6 and 7—since some of the language in the text is rather vague. This is an area in which the experience of the EU with regards to developing the User's Guide—which assists states with implementation of the EU Common Position and was introduced as a method for helping states to understand some of the elements that are covered by the ATT—could be helpful.

Article 11 on diversion was discussed, including the emphasis it places on cooperation. It was emphasized that cooperation, and in particular information sharing, was the key in the fight against diversion and that improving practices in this area was a main aim of the article.

VIII. Conclusions

Some of the key lessons from the seminar highlighted and discussed in this session included:

1. Overcoming immediate barriers to ratification

Focused efforts are required to ensure quick and problem-free ratification processes in states seeking early entry into force for the ATT. In this regard, it was recognized that it is crucial to ensure that legislatures understand the importance of the ATT. Therefore, ATT awareness raising for parliamentarians is an important short-term priority, with work already planned for Latin American parliamentarians in this regard. It is also important to ensure that parliamentarians focus not only on ensuring quick ratification but that they also remain engaged in the issue and push for strong implementation and enforcement. It was also stressed that arms producers and traders are an important constituency to engage with during the ratification and implementation phases.

2. Establishing a national focal point

To ensure early ratification and entry into force it is important for states to quickly establish a ‘national focal point’ for the ATT. This agency or ministry should provide leadership and promote ratification with other relevant agencies and ministries. The national focal point should also ensure that the system that is put in place to fulfil ATT obligations is effective, and can be responsible for coordinating national action plans.

3. Learn lessons from other international assistance efforts

While it is accepted that there is no one-size-fits-all system to effectively fulfil ATT requirements, and that it should be for each state to determine the nature of their own system, it can be very useful to learn lessons from others and exchange good practices. Further, it is perhaps worth undertaking a careful assessment of ways in which existing assistance programmes can be leveraged for assistance to put in place a system to fulfil the ATT’s obligations and goals.

4. Getting creative with regards to international assistance

UNSCAR has an ambitious agenda and it will be a challenge to try to coordinate or map assistance efforts related to the ATT. However, the ATT provides an opportunity to become creative when thinking about international assistance. One example of this is thinking about how states could provide ‘in-kind’ assistance to each other. In particular, states that have undertaken reforms of their transfer control systems—but which are not the ‘usual

suspects' with regards to international assistance in this area—could provide experience and training.

5. Keep the momentum going

Since the adoption of the ATT, efforts have continued to promote early signature and ratification of the treaty. Attention will now be focused on states that voted for the ATT in the April 2013 vote in the UN General Assembly but have not yet signed, as well as those that have signed as they move towards ratification. It will be important to explore ways to engage with these states at the regional level and encourage peers, as well as provide support for civil society efforts in this regard. Other measures could include utilizing the high-level event at the General Assembly in 2013 and the long list of activities discussed at the New Zealand Mission to the UN on 4 June.

6. Longer-term efforts to achieve the universalization of the ATT

It is also worth thinking in a more long-term way—that is, beyond early entry into force—about how to keep momentum going, as the ATT process will not be finalized with entry into force. In particular, it will be important to think about how to engage with and encourage those states that abstained from the vote in the General Assembly in April 2013 to sign and ratify the ATT.