

## **The way ahead for the ATT – Challenges and opportunities for further European action**

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### **Introduction**

This brief paper presents the main points delivered during Session 2 on arms export controls at the EU Non-Proliferation Consortium's 5<sup>th</sup> Consultative Meeting. Instead of addressing the mere procedural outlook for future implementation of the Arms Trade Treaty (ATT), it presents three challenges and opportunities for further action that the EU Member States could take in implementing and supporting the globalization of the Treaty. The three topics discussed are 1) setting an example for how the Treaty should be applied; 2) developing and upholding high level of transparency; and 3) conducting outreach in striving towards both effective implementation and universalization.

The views presented in the paper are my personal observations and do not necessarily represent the views of my affiliate organizations.

### **Setting an example for Treaty implementation**

The ATT, negotiated in 2013 and in place since 24 December 2014 currently has 85 States Parties. Another 48 countries have signed the Treaty and are hence hoped to be joining it some time in the near future. Many EU MS were very active in the lead up and during the Treaty negotiations with two current EU states, the UK and Finland, as co-authors.

All the EU states have ratified the Treaty. They were also the leaders among the first 50 to ratify the Treaty and helped to secure its comparatively very rapid entry into force. These factors provide the Union a great opportunity to show continuity of policy and carry on the active legacy of their involvement in the process both nationally and as a regional body.

The EU Common Position obviously was a good background and a benchmark for European states to start from when thinking about the ATT, even though the Treaty never was meant

to be a replication or expansion of the European regime and contains some elements such as a direct reference to gender violence that are not part of the Common Position. From what I have heard, many EU states have already made some amendments to their relevant laws to reference the ATT or are considering doing so. While it might sound a bit trivial, having an explicit reference to the ATT in States Parties' respective export control legislation and regulations in addition to for example the Common Position is worth considering.

As the common but all too true mantra goes, "the main responsibility of ATT implementation lies with national authorities". Nevertheless, the Treaty did create some support structures to ensure smooth implementation. The first year and a half of implementation has – from a procedural point-of-view – produced quite a solid and straightforward implementation plan: while some details regarding for example the reporting formats and the tasks and composition of the Secretariat, there is a functioning Treaty Secretariat and a fixed schedule of annual Conferences of States Parties (CSP).

I think many of us would have wanted to see the ATT Secretariat to be fully up and running a bit earlier than what we have seen, for obvious reasons. While this is mostly only an administrative issue, as the third year of implementation approaches, it will be increasingly important to show that there is a lean but effective Secretariat with experienced and active staff that can constructively support Treaty in its path forward. In this, even the best national-level efforts are not enough.

Most if not all EU countries already had in place all the necessary required structures and legislation to start implementing the Treaty. Given this, one might have expected that the EU region would have been the absolutely champion during the early stages of implementation leading by example and encouraging others in the absence of a fully up-to-speed Secretariat.

Unfortunately, in my opinion the EU MS have not been able to deliver on this quite as well as they could have. Years 2015 and the beginning of 2016 have seen a number of debated transfers to conflict regions and with possible serious human rights consequences, some of them also by European ATT States Parties. One would naturally hope that one of the reasons why these cases of possible dubious or politically motivated transfers have been on the

press and countries' domestic political agendas so much is precisely because of the ATT, but the causalities are hard to prove.

As a leader in the EU process, it would be crucial for the EU states to lead by example in order to show also to the skeptics that the ATT can – and is already – making a difference. Effective, well-informed and carefully considered implementation of Articles 6 and 7 of the Treaty regarding prohibitions, export and export assessment are a key, as ultimately they are the articles whose interpretation will determine the Treaty's success in the coming years.

### **Transparency**

The ATT requires its Parties to share three kinds of information: the first is the initial report on implementation measures submitted within a year of when a country has become party to the ATT. Subsequently, states parties must report on additional implementation measures 'when appropriate'. The second transparency requirement is that all states have to report each year the exports and imports of conventional arms it has authorized or actually made, with the exception of ammunition and parts and components. The deadline for this is the same as in the UN Register of Conventional Arms, so 31 May, and set to cover the previous calendar year. Third, states parties are asked to submit ad hoc reports on measures they have taken to address diversion.

This year by the end of June, some 49 countries had submitted their initial reports, and 36 had produced their first annual report. All except 4 EU MS have submitted their initial report, but only 17 have given their annual data. The date of the submission of both the initial report and the first annual report varies according to when a country joins the Treaty, but clearly some EU reports are running late. Further, the Treaty gives the option for a country to keep its information restricted to other States Parties only. The Secretariat website indicates that three countries, among them one EU state, have so far chosen this option.

Compiling all the necessary data and to be as open as possible within the timeframe can prove challenging, especially as despite having electronic means available, many EU countries are among large exporters and importers of conventional arms. However, to me

transparency is one of the key building blocks of the Treaty and as a CSBM it could be another potential selling point for other States to join the Treaty.

The delays and gaps in reporting and the fact that there currently is no set reporting templates in place for the information exchanges has undoubtedly affected the level of transparency that has been reached during the first 1,5 years. Intensive consultations are ongoing to resolve the remaining issues, which indeed would need to be sorted out before the next round of reports are due to come in by the end of May 2017. This would also allow for a more informed and constructive debate in the third CSP, due to be held during the latter half of the same year.

To summarize, in order to live up to its traditions of transparency and active development of information exchange regimes, it would be crucial to ensure that all EU MS report on the ATT; that they do it as comprehensively as possible; allow the reports to be publicly available; and submit their information by the deadline each year. If the most developed and active supporters of the Treaty do not do it, it will be difficult to argue to others that they should.

### **Outreach and support to other States and States Parties**

The European Union has since 2008 been actively engaged in promoting first the idea and discussions about a possible ATT, then its negotiations, and now through a series of targeted outreach and assistance programmes. Feedback from the recipient states and regions appears to be overwhelmingly positive and will hopefully result in some concrete results in the near future in terms of both effectiveness of implementation efforts and Treaty universalization. This is an area where the EU continues to have a variety of expertise and also some funds to offer and should continue to do so.

Having been successful in the past does however not mean that one should lose sight of the future. Even though there still is some lack of knowledge about the Treaty on the ground, the times of trying to push universalization with seminars and other usual outreach events has passed. At this point, seminars do not bring more accessions.

What should be increasingly looked at now is identifying specific political and technical triggers in different countries especially in Asia-Pacific and parts of Africa to develop individually tailored political dialogue and assistance programmes, training and expert exchanges to a selected number of further partner countries. In this, the division of recipients into different groups should be considered: for those countries that are failing to join or implement the ATT because of political reasons, intensified political dialogue both by the EU and individual MS should be considered. Countries that have expressed genuine interest and intention to join the Treaty and establish or improve their systems, could possibly identify further specific assistance needs and work together with EU experts in improving their capacity.

Further, the assistance efforts would somehow need to be better aligned and coordinated. This is an issue that tends to come up whenever assistance and cooperation is being discussed. The ATT presents a relatively new process that could take the lead and show an example of how it is possible to complement rather than duplicate efforts. Having several multilateral and national actors plus civil society targeting the same country with similar outreach events and training within a year or just a few months or weeks is not an ideal solution, to say the least. Taking a positive spin on it, this is another area where the EU could take a lead and show an example in the coming years of how the ATT implementation can be effective, coordinated and focused. Depending on available resources, for example an inter-organizational or even inter-disciplinary mapping exercise of attitudes and needs could be considered, following to a certain extent the model of some WMD processes.

### **Concluding thoughts**

The EU and its MS were been champion in bringing the ATT to the UN, starting negotiations and shaping the form of the final Treaty. To honor this legacy and continue the policy chosen by many MS in terms of the need to improve controls of international conventional arms transfer controls, the EU has an important role in keeping the process going. No matter how simplistic and silly it sounds, having the ATT was only the start of making a difference. Unfortunately, what experience from other disarmament processes such as the small arms Programme of Action or the landmine treaty have shown, as time goes on some agreements and instruments may start losing importance and funding even if the problems that were

behind creating them in the first place have not disappeared: diplomats move on, expertise gets lost, new policy processes and priorities step in and take the wind out of the old ones, butterflies fly to the next flower. I hope we have learned our lessons from past disarmament agreements and know that the Arms Trade Treaty is way too important to let us lose its momentum.