
Arms Trade Treaty
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The Role of Industry in Responsible International Transfers of Conventional Arms

Considerations for next steps within the framework of the Arms Trade Treaty

INTRODUCTION

1. The Arms Trade Treaty (ATT) preamble recognizes that industry, alongside civil society and relevant international organizations, can play an active role in raising awareness of the object and purpose of the ATT and supporting its implementation. United Nations General Assembly resolution 77/62 of December 2022 called for a strengthening of cooperation between ATT States Parties, signatory states, civil society, and industry to share effective practices, challenges, and opportunities for ensuring that the private sector can support a responsible international arms trade and the effective implementation of the ATT.¹ Therefore, the Ninth Conference of States Parties to the ATT (CSP9) represents an opportune moment for ATT key stakeholders to examine options to enhance the role of industry in responsible international transfers of conventional arms, as the ATT celebrates the 10th anniversary of its adoption.

BACKGROUND

2. It is the responsibility of States Parties to implement the Arms Trade Treaty (ATT). Yet, different types of industry and private sector entities play an important role in ensuring the treaty's effectiveness and universality. Arms manufacturers and export and import companies, as well as brokers, freight forwarders, logistics and transportation providers, banks and financial service providers, and insurance providers are obliged to comply with national laws, regulations, processes, and procedures that States put in place to regulate the export, import, transit, transshipment, and brokering of conventional arms in order to fulfil their ATT obligations. Therefore, the participation of industry representatives in ATT processes is important for the treaty's success.

3. The ATT should facilitate greater convergence of national arms transfer legislation and regulatory approaches around the world. This could enable industry and private sector entities to achieve compliance across many national jurisdictions in the course of their activities in an increasingly globalized trade. Such convergence can help to decrease the risk of non-compliance and the expense of undertaking activities to satisfy different national requirements for compliance. Further, it could help to close loopholes exploited by unscrupulous brokers looking to evade controls to supply entities subject to arms embargoes or engaged in other activities that are either prohibited under Article 6 of the Treaty or which undermine international peace and security and thus contribute to human suffering.

¹ United Nations General Assembly, Resolution 77/62 The Arms Trade Treaty, Adopted on 7 December 2022, A/RES/77/62, 14 December 2022, paragraph 15.

4. The ATT indicates the key elements for a national control system and criteria for States Parties to apply when making arms transfer decisions. The prohibitions and export criteria elaborated in the ATT indicate activities that constitute “irresponsible arms transfers”. National decisions to authorise or deny transfers of conventional arms are based on assessments that utilize these internationally agreed upon standards. Therefore, the Treaty should provide greater predictability in the arms transfer process and eliminate inconsistent application of rules and regulations. When the ATT is effectively implemented and adhered to, it can reduce reputational risk for industry and private sector entities involved in the international arms trade – not just the producers of conventional arms, but also those involved in financing, insurance, and the transportation of arms in the course of an international transfer. Therefore, the ATT framework provides guidance to companies involved in different aspects of the international arms trade on what constitutes responsible behaviour, corresponding to other guidance regarding responsible business conduct developed at the multilateral level, such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises,² as well as at regional, and national levels in this sphere. Therefore, the ATT complements other efforts to establish robust corporate responsibility practices with regards to the international arms trade, helping to limit or mitigate its potential negative consequences. The ATT establishes common understandings amongst the various actors in the arms transfer supply chain. Many of the most active entities along the supply chain operate in ATT State Party jurisdictions. These entities appreciate situations in which States operate according to the same basic principles to ensure that the legitimate delivery of conventional arms is not delayed due to differences in understandings of ATT obligations across the global supply chain. The ATT was not established to undermine the legitimate trade in conventional arms nor create undue additional costs or burdens for legal transactions.

5. While national governments establish legislation and regulations, industry and private sector entities need to take measures throughout the transfer chain to ensure that arms transfers are conducted responsibly and securely, and in accordance with national laws and regulations, as well as regional and international norms and standards. Industry and private sector entities are responsible for the security and safety of transfers of conventional arms and for making sure that their activities do not contribute towards or facilitate the delivery or diversion of conventional arms to situations that are prohibited under the ATT or which undermine international peace and security. To that end, robust due diligence policies and processes on human rights, record-keeping, and information-sharing are just some of the areas in which industry and private sector entities need to take action to ensure the security and integrity of an international arms transfer.³

RE-ENGAGING INDUSTRY

6. During the ATT negotiations, industry representatives shared input on the practical, everyday activities that facilitate the legitimate trade in conventional arms, as well as identifying ways in which a multilateral instrument could help to provide guidance to States on how to close loopholes and ensure a more responsible and transparent arms trade. Voices from industry and private sector entities have been less frequently heard in recent CSP meeting cycles compared to during the treaty negotiations. The Republic of Korea’s Presidency of CSP9 takes this situation as its starting point for its thematic presidency priority and asks:

² United Nations Working Group on Business and Human Rights, “Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights”, Information note, United Nations Human Rights Special Procedures, 30 August 2022, <https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>; Organization for Economic Co-operation and Development, OECD Due Diligence Guidance for Responsible Business Conduct (2018), <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

³ UNIDIR, Conflict Armament Research, Stimson Center, The Arms Trade Treaty: Assessing its Impact on Countering Diversion (Geneva: UNIDIR, 2022), <https://www.unidir.org/publication/arms-trade-treaty-assessing-its-impact-countering-diversion>; Conflict Armament Research, Red Flags and Choke Points: Procurement Networks behind Islamic State Improvised Weapon Programmes, (London: CAR, 2020), <https://www.conflictarm.com/reports/procurement-networks-behind-islamic-state-improvised-weapon-programmes/>.

- What are the potential benefits for industry and private sector entities to engage with the ATT?
- Which factors enabled the active engagement of the industry and private sector entities during the ATT negotiations?

7. Preliminary answers to these questions were revealed during a brainstorming workshop on 26 January 2023 involving 50 participants from States Parties, industry, researchers and civil society, which was co-organized by the Presidency with the United Nations Institute for Disarmament Research, the Stimson Center and Conflict Armaments Research.⁴ The brainstorming workshop provided responses to these two questions. First, industry and private sector entities engaged during the negotiation towards the ATT to ensure that the treaty would not prevent or undermine legal and legitimate international arms trade activities. Second, these entities expected the treaty to provide greater predictability in decision-making at the national level, benefiting their activities. Third, they hoped that the treaty would help to level the playing field by setting international standards to be respected by all “players” in the international arms trade.

8. In summary, the brainstorming workshop indicated that industry and private sector entities could re-engage with the ATT process if it provides them with guidance and information that can support efforts to help to prevent their activities contributing towards or facilitating the delivery or diversion of conventional arms in contravention of treaty provisions outlined in Articles 6, 7, and 11. This engagement should not only ensure responsible international transfers of conventional arms, but also support efforts to identify transactions that are irresponsible and undermine the object and purpose of the treaty. Furthermore, there is merit in encouraging States Parties and signatories to share their experience and effective practices for information sharing and outreach to industry and private sector entities involved in the international arms trade, as well as ensuring their compliance with national transfer controls and measures to implement the ATT.

9. It is also evident that CSP meetings would benefit from contributions on developments in the field of conventional arms, as outlined under ATT Article 17, from industry and private sector entities, alongside contributions from States Parties, signatories, observer states, international and regional organizations, and civil society. During CSP8, industry and private sector entities shared information on developments in marking and counter-diversion efforts that could support effective ATT implementation. In future CSP meetings, contributions could be provided of relevance for countering diversion regarding corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion, as stipulated in Para 5 of Article 11.

CONSIDERATIONS FOR CSP9 RECOMMENDATIONS

10. The ROK presidency of CSP9 is confident that finding appropriate platforms for enhancing engagement between industry and private sector entities with other key ATT stakeholders can be mutually beneficial and support efforts to achieve the effective implementation of the ATT. The following considerations are presented to ATT States Parties for inclusion in the final report of ATT CSP9 as “Recommendations”.

1. Raising Awareness

1. Each CSP President, in cooperation with the Secretariat, is encouraged to include industry outreach activities.

⁴ UNIDIR, Conflict Armament Research, Stimson Center, The Role of Industry in Responsible International Transfers of Conventional Arms (Geneva: UNIDIR, 2023), <https://unidir.org/publication/role-industry-responsible-international-transfers-conventional-arms>.

2. States Parties, the ATT Secretariat and other interested parties are encouraged to engage industry and share industry-relevant information on the ATT and developments, using the website and other appropriate measures.
3. States Parties are encouraged, where appropriate and on a strictly voluntary basis, to share their experiences and practices of effective measures including written guidance materials relating to national efforts to ensure industry awareness and compliance with national transfer control systems, as well as efforts to prevent and eradicate illicit trade and diversion, through means such as: Initial Reports and updates to their Initial Reports; statements during relevant working group sessions, preparatory committee meetings, side events, or the Conference of States Parties; and the information exchange platform on the ATT website.
4. States Parties, the ATT Secretariat and other interested parties are encouraged to invite representatives of industry and private sector entities engaged in the international arms trade to share information that may support effective treaty implementation as well as developments in the field of conventional arms and conventional arms trade during CSP working group sessions, preparatory committee meetings, and side events.
5. States Parties are encouraged to take all necessary steps to ensure that industry and private sector entities operating in their national territory conduct their business in support of the object and purpose of the treaty.

2. Sharing practices and policies

6. States Parties are encouraged to develop, as a living document to be reviewed and updated regularly, as appropriate, a list of possible reference documents to be considered by States Parties for ensuring industry compliance with national control systems to implement the ATT and conduct responsible international transfers of conventional arms. Such documents could also contain possible reference documents that provide guidance and support to industry efforts to conduct risk assessments in compliance with ATT Articles 6, 7(1), 7(4), and 11(2).

ANNEX A

LIST OF POSSIBLE DOCUMENTS TO BE CONSIDERED BY STATES PARTIES FOR ENSURING INDUSTRY COMPLIANCE WITH NATIONAL CONTROL SYSTEMS TO IMPLEMENT THE ATT AND CONDUCT RESPONSIBLE INTERNATIONAL TRANSFERS OF CONVENTIONAL ARMS

The following public documents with associated links are referenced as optional sources that States Parties may choose to draw from, when relevant and useful, to assist them to ensure that industry and private sector entities engaged in the international conventional arms trade comply with national control systems to implement the ATT and conduct responsible international transfers of conventional arms. Use of these documents is not to be seen as mandatory. A State Party may also draw on other sources of information to assist it in implementing its obligations, such as reports from Government agencies, Embassies, foreign Governments, international and regional organizations.

The list is not exhaustive and the fact that a document is referenced on the list does not imply that States Parties endorse its findings.

A. STATES PARTIES

ATT State Party competent national authorities for export, import, transit/transshipment and brokering provide useful information on their websites to provide guidance on how industry can comply with national legislation and regulations for regulating international arms transfers and implementing the ATT. This section provides examples of national guidance to support industry compliance with national transfer control legislation and regulations that have been made publicly available, with a focus on guidance for establishing and maintaining internal compliance programmes.

- Australia. [Defence Export controls – How to comply](#)
- Canada. [Export and brokering controls handbook](#)
- Flanders. [Internal Compliance Program – A practical guide on the added value and implementation of an ICP for export provided by the Strategic Goods Control Unit of the Government of Flanders](#)
- France. [Ministère de la Défense, Direction générale des relations internationales et de la stratégie \(DGRIS\)](#)
- Germany. [Germany Internal Compliance Programmes – ICP](#)
- Netherlands. [Guidelines for compiling an Internal Compliance Programme](#)
- Switzerland. [Internal Compliance Programme – Export Control Regulations](#)
- United Kingdom. [Export Control Compliance Code of Practice](#)

B. ARMS TRADE TREATY

- Arms Trade Treaty. [List Of Possible Reference Documents To Be Considered By States Parties In Conducting Risk Assessment Under Article 7](#)
- Arms Trade Treaty. [List Of Possible Reference Documents To Be Considered By States Parties To Prevent And Address Diversion](#)
- Arms Trade Treaty. [Possible Measures To Prevent And Address Diversion](#)
- Arms Trade Treaty. [Possible Voluntary Guiding And Supporting Elements In Implementing Obligations Under Article 6 \(1\)](#)

C. UNITED NATIONS

- United Nations. [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework](#)
- UN Human Rights Office of the High Commissioner. [Frequently Asked Questions about the Guiding Principles on Business and Human Rights](#)
- UN Working Group on Business and Human Rights. [Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights](#)
- UN Working Group on Business and Human Rights and UNDP [Heightened Human Rights Due Diligence for business in conflict-affected contexts; A Guide](#)

D. REGIONAL ORGANISATIONS AND OTHER MULTILATERAL ORGANISATIONS/MECHANISMS

- European Union. [Commission Recommendation \(EU\) 2019/1318 of 30 July 2019 on internal compliance programmes for dual-use trade controls under Council Regulation \(EC\) No 428/2009](#)
- European Union. [Commission Recommendation \(EU\) 2021/1700 of 15 September 2021 on internal compliance programmes for controls of research involving dual-use items under Regulation \(EU\) 2021/821 of the European Parliament and of the Council setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items](#)
- Wassenaar Arrangement. [Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies](#)

E. NON-GOVERNMENTAL

- American Bar Association. [Defense Industry Human Rights Due Diligence Guidance](#)
- Amnesty International. [Outsourcing responsibility: human rights policies in the defence sector](#)
- Flemish Peace Institute. [Due diligence and corporate liability of the defence industry: Arms exports, end use and corporate responsibility](#)
- Saferworld, [Strategic trade control outreach and industry compliance: tools and resources.](#)
- Stockholm International Peace Research Institute. [Challenges and Good Practices in the Implementation of the EU’s Arms and Dual-User Export Controls](#)