

## International Assistance and Cooperation in an ATT *Possibilities for a Future Treaty* January 2011

**Kerry Maze**  
Independent Consultant

### Introduction

The following paper was prepared as part of the project “Supporting the Arms Trade Treaty Negotiations through Regional Discussions and Expertise Sharing” undertaken by the United Nations Institute for Disarmament Research (UNIDIR) and the European Union. The project aims to support the preparatory process leading up to the United Nations Conference on the Arms Trade Treaty (ATT) and to support UN Member States in developing and improving national and regional expertise to implement effective arms transfer controls. As one of the activities undertaken in this project, UNIDIR commissioned a series of papers on a range of ATT topics to help states build their knowledge and expertise on the potential elements and substance of a future treaty.

Once states have agreed the scope and parameters of the ATT, assistance and cooperation will be key not only for operationalizing and implementing the treaty but also for garnering support for its adoption. UNIDIR thus commissioned this paper to explore the possibilities for addressing international assistance and cooperation in an ATT. The paper aims to provide states with a background on how assistance and cooperation has been approached within the ATT process including an overview of the views of states expressed on the subject. It also summarizes how related agreements and instruments approach assistance and cooperation. The paper further puts forward some suggestions of substantive and operational elements that could be considered in an ATT.

### Methodology

Preparations for the paper involved a literature review of existing literature and desk research of:

- National views submitted to the UN Secretary General on the subject (2007);
- Report of the Group of Governmental Experts (GGE – 2008);
- Statements delivered during the Open-Ended Working Group (2009) and the Preparatory Committee (2010);
- Background papers and summary reports prepared for the 2008/2009 regional meetings held by UNIDIR and the European Union as well as the 2010 Boston Symposium hosted by the University of Massachusetts.

- Assistance and cooperation addressed in existing disarmament and arms control agreements.

The preliminary draft of the paper was distributed, presented and discussed at two regional seminars held by the United Nations Institute for Disarmament Research, in Nepal (2010) and Morocco (2011) respectively. The author incorporated feedback from the discussions held during the seminars into a final version of the report.

## **Parameters and terminology of assistance and cooperation in this paper**

The focus of the paper is on “international cooperation, assistance and capacity-building”. In the field of arms control, assistance would generally involve the transfer of financial and technical resources, expertise, knowledge, experience and training from one or several states or organizations to another with the specific intention of helping that state fill its arms control commitments.<sup>1</sup> In principle, assistance should be considered to be temporary, tailored to achieving specific goals and outcomes. Its long-term and eventual aim should be to sufficiently strengthen a recipient state’s capacity for it to eventually uphold the requirements of the treaty on its own. Assistance requires a cooperative partnership between the providing and receiving entity to be successful.

Cooperation includes the regular or continuous sharing of information, the provision of mutual legal support (i.e. to facilitate cross-border investigations, extraditions, prosecutions and) or participation in the joint operations that are necessary to address the transnational nature of the legal and illicit trade in weapons.<sup>2</sup> While not all states require or request financial, technical or capacity building assistance, any state that is party to an agreement may be called upon, at any time, to cooperate. Some states, however, may require assistance and capacity building to help them cooperate effectively.

It is important to highlight that the paper is not addressing the type of technical assistance that would be considered part of the activities and transactions covered within the treaty, such as instruction, skills, training, working knowledge, consulting services and transfer of technical data that form part of, or facilitate, an arms trade. When technical assistance is referred to in this paper, it covers only the external support provided to help states implement the provisions of the treaty.

Similarly, the paper treats the issue of “victim assistance” in the same manner as it does other thematic issues that states may include in the ATT, e.g. stockpiles management, strengthening or revising legislation, building customs capacity, providing support to victims etc. Victim assistance is a theme that may or may not be included in the ATT. Assistance to victims is not about aiding or building the capacity of states to implement the treaty itself, the subject of this paper.

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1 Drawn from the definition used in the background material prepared by the Geneva Process Working Group on Assistance and Cooperation, Geneva: 2010, which was submitted by Colombia to the Chair of the 2010 Biennial Meeting of States to Consider Implementation of the UN PoA for the Chair’s personal use. The Geneva Process is an initiative of the Geneva Forum, which itself is a joint initiative of the Quaker United Nations Office, Geneva (QUNO), the United Nations Institute for Disarmament Research (UNIDIR), and the Centre on Conflict, Development and Peacebuilding (CCDP) of the Graduate Institute of International and Development Studies. See [www.geneva-forum.org](http://www.geneva-forum.org) for more details.

2 Ibid.

## Assistance and cooperation in the ATT process

### Background

Pursuant to the 2006 General Assembly resolution 61/89,<sup>3</sup> the UN Secretary General called upon states to submit their views on developing an ATT.<sup>4</sup> Forty-four of the 101<sup>5</sup> state submissions to the Secretary-General made some form of reference to the fact that the ATT should contain provisions on assistance and cooperation. An additional 14 states focused only on the aspect of enhancing cooperation.

In the national views, several states highlighted that an ATT would only be “feasible” if it factored in the capacity of states to implement the treaty and that it would depend on whether or not assistance would be forthcoming for those states that would request it. Over half of the states addressed assistance and cooperation under the heading of “draft parameters” for a treaty, wherein states noted that assistance and cooperation would be a necessary inclusion in the design and implementation of the treaty if it expects to have full and universal implementation.

The level of detail states provided on assistance and cooperation in their national submissions ranged from general statements of support, to calling for the establishment of supportive mechanisms that would facilitate assistance and cooperation, to listing a selection of priority areas for assistance and capacity-building or enhancing cooperation. Details on states’ views on the subject are explored below.

Similarly, in its 2008 report, the Group of Governmental Experts (GGE), which was established to examine the “feasibility, scope and parameters” of an ATT,<sup>6</sup> summarized that international cooperation and assistance was a relevant issue in the discussions on the feasibility of a treaty (Para 19) and that cooperation and assistance was also considered relevant to discussions on the draft parameters and operational mechanisms of the treaty (Para 26). The report concluded by highlighting “States in a position to do so could render assistance...upon request” (Para 29).

Over the course of the meetings held during the Open Ended Working Group (OEWG)<sup>7</sup> and the Preparatory Committee (PrepCom),<sup>8</sup> twelve individual states and six states

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3 Pursuant to paragraph 1 of General Assembly resolution 61/89 entitled “Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms” (2006), the UN Secretary General called on states to submit their views “on the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms”.

4 For a full breakdown and analysis of state views on all aspects of the ATT see Parker, *Analysis of States’ Views on an Arms Trade Treaty*, Geneva: UNIDIR, 2007 and Parker, *Implications of States’ views on an Arms Trade Treaty*, Geneva: UNIDIR, January 2008.

5 99 individual states and two states representing regional organizations (Bahamas for Caricom and Germany for the European Union) submitted their views to the Secretary-General.

6 Pursuant to paragraph 2 of General Assembly resolution 61/89, the Secretary General requested the establishment of a GGE to examine the “feasibility, scope and parameters” of an ATT. The group met on three different occasions in 2008, concluding in August 2008, submitting to the UN Secretary General *The Report of the Group of Governmental Experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms*.

7 The Open Ended Working Group met twice in New York on 2-6 March 2009 and 13 - 17 July 2009

8 The Preparatory Committee met once in 2010 in New York during the week of 12-23 July 2010. The

representing regions or regional organizations delivered statements that supported assistance, cooperation and/or capacity-building in an ATT. The Facilitator of the session “Implementation and Application of an ATT” during the PrepCom,<sup>9</sup> produced a summary report that contained a sub-section on assistance and cooperation. The paper noted, among other points, that states expressed views at the PrepCom on:

- Allowing requests for assistance to be initiated by potential recipient(s)
- Provide for assistance in implementation
- Explore possible nature and mechanism for assistance (Legislative/Legal, Administrative, Technical or Financial...etc)
- Exchange experiences in legislation related to an ATT and in its practical implementation
- On technical assistance, it can include assistance in implementation of a licensing system, training, technology transfer, industrial cooperation, stockpile management etc.)”

In 2008/2009, UNIDIR and the European Union held six regional meetings to discuss the development of an ATT. The summaries produced for each of the meetings noted that states acknowledged the importance of addressing assistance and cooperation within the ATT. In each of the meetings participants particularly stressed the need to include the establishment of a mechanism for technical support, capacity-building and assistance in a future treaty. Additionally, participants in the meeting held in the Americas and the Caribbean suggested that examples of assistance and cooperation arrangements for an ATT could be drawn from regional agreements. They also noted that there should be “increased cooperation between organizations in different regions working on similar issues in the arms trade”<sup>10</sup> and that further links should be established between the actors and institutions working on the ATT and those working on other related agreements and instruments. Participants in the meeting held in the Middle East frequently highlighted the need for more cooperation in the sharing of information. Some participants further specified the need for technical assistance and capacity-building for border controls and stockpile management.

Participants at the “Boston Symposium on the Arms Trade Treaty” highlighted that once the commitments and obligations of an ATT are established, states will have to develop a framework for providing assistance and cooperation to states. In his background paper prepared for the Symposium on “Implementation”<sup>11</sup>, Roy Isbister suggested that:

Co-operation and assistance should address all aspects of arms transfer controls, including legislation, and regulation, licensing procedures, enforcement (including

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Preparatory Committee will be meeting two more times in 2011 and 2012 respectively.

9 Preparatory Committee session held on “Implementation and Application of an ATT” New York: 19 and 21 July 2010

10 “Regional Seminar for Countries in the Americas and the Caribbean” Meeting Summary Report, United Nations Institute for Disarmament Research, Mexico City, Mexico 18–19 June 2009

11 Roy Isbister, *Background Paper: Implementation*, prepared for the Boston Symposium on the Arms Trade Treaty, Park Plaza Hotel, 29 September 2010, p.3

specific investigations, tracing requests, etc.), reporting and information-sharing, training of personnel, information-technology support.

He also encouraged for the treaty to be flexible on how assistance and cooperation might be advanced, as, for instance, “it should facilitate State interaction on a bilateral or regional basis where states so choose”.<sup>12</sup> Isbister further noted that a mechanism to help states identify needs and provide assistance could also be considered.

This section has shown that assistance and cooperation has been a common and recurring theme in the work and discussions held on developing an ATT. In total, 60 states expressed views and/or delivered statements that directly referred to assistance and/or cooperation in the context of an ATT. An additional 81 states can be added to this figure as several views and statements were submitted or delivered on behalf of members belonging to regional groups regional organizations.<sup>13</sup> Thus, 141 states overall have acknowledged the value of supportive provisions on assistance and/or cooperation to be included in the ATT whether on particular thematic priorities, or through encouraging the elaboration of a strategy or framework or establishing a facilitating mechanism. Several states referred to the important inclusion of existing regional instruments and arrangements in the ATT, particularly with respect to cooperation. States participating in regional or other related meetings echoed similar positions.

### **State views of the thematic priorities for assistance and cooperation in an ATT**

With respect to the topic of “assistance”, states most commonly referred to the need for expertise and financial and technical assistance and capacity-building to help states implement the ATT; however few states elaborated on the type or nature of activities that the capacity-building or assistance would imply or how an assistance framework or structure could work. Indeed, until the themes and parameters of an ATT have been finalized, it is difficult to make a comprehensive listing of the financial and technical resources states may require in order to implement the treaty. While a more detailed examination of assistance will be required as the ATT process advances, some of the priority areas that have emerged in the national views of states expressed to the UN Secretary General and in the statements thus far include:

#### **Assistance and capacity building**

- Customs and borders: Capacity building on strengthening customs procedures;<sup>14</sup> outreach workshops, training of governmental experts in customs and control and sharing of best practices;<sup>15</sup> strengthening structures and upgrading the skills of staff working in the customs, security, inspection and trade sectors;<sup>16</sup>

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12 Isbister, p.5

13 This figure is to show the general number of states that expressed support for addressing assistance and cooperation in the ATT. Each country was only counted once, regardless of how many statements or views they individually expressed in total. Members of a regional organization or grouping, whereby one state spoke on behalf of that organization or group, were included in the calculations when they did not present an individual statement or view.

14 Bosnia and Herzegovina and United Kingdom.

15 France.

16 Thailand.

- **Disarmament, Demobilization and Reintegration;**<sup>17</sup>
- **Education:** all aspects of the arms trade,<sup>18</sup> on specific implementation issues<sup>19</sup> and on the commitments of the ATT;<sup>20</sup>
- **Information technology (IT)** equipment, training and software to facilitate the exchanging of information, knowledge and practices and data management
- **Law enforcement;**<sup>21</sup>
- **National control system:** establishing export systems; and internal controls, including setting up of a competent licensing authority; and development of expertise in all national bodies involved in the transfer control system;<sup>22</sup>
- **National legislation, administrative regulations and procedures:** Establishing and putting in place laws and procedures;<sup>23</sup> harmonizing legislation; licensing procedures
- **Marking and Tracing:** technical assistance for establishing or strengthening national systems of marking, tracing;<sup>24</sup> tracking arms;<sup>25</sup> and monitoring and controlling their movement<sup>26</sup>
- **Record keeping and inventory management**<sup>27</sup>
- **Reporting**
- **Stockpile management:** physical security,<sup>28</sup> staff training,<sup>29</sup> and specialist training in management and security;<sup>30</sup> safeguards against diversion<sup>31</sup>
- **Sponsorship programmes**<sup>32</sup>
- **Training:** general;<sup>33</sup> on new technology;<sup>34</sup> documentation and means of data communication relating to the manufacture of conventional weapons.<sup>35</sup>

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17 Morocco.  
 18 Turkey and Thailand.  
 19 Turkey.  
 20 Netherlands.  
 21 Bosnia and Herzegovina, Indonesia, Morocco, and United Kingdom.  
 22 European Union.  
 23 Bosnia and Herzegovina, South Africa, and United Kingdom.  
 24 Costa Rica.  
 25 Ecuador.  
 26 Bahamas and Costa Rica.  
 27 Brazil and Morocco.  
 28 Morocco and Bahamas.  
 29 Morocco.  
 30 Thailand.  
 31 Norway.  
 32 Hungary.  
 33 Hungary and Samoa.  
 34 Colombia.  
 35 Morocco.

- **Victim assistance**<sup>36</sup>

Three states<sup>37</sup> in particular emphasized that capacity-building and assistance to states should continue on an ongoing basis even while the ATT is under discussion. This is because it may take years to put the ATT in place and “capacity building now whether it is carried out bilaterally or as part of a coordinated international interventions, will continue to help ensure states have the capacity to implement an eventual instrument.”<sup>38</sup> Indeed, at the PrepCom, the European Union highlighted that since 2008, it and some of its member states have been providing assistance to neighbouring countries in establishing an arms export control system, including through national expat visits and staff exchanges. Further, as a result of the adoption of the June 2010 EU Council Decision, the European Union “will support UN Member States in developing and improving national and regional expertise to implement effective arms transfer controls”.<sup>39</sup>

With respect to cooperation, several states considered information exchanges, transparency and confidence-building as a form of cooperation, while others noted that effective cooperation would only be possible if there is already adequate transparency, information-exchanges and confidence among states. Specific suggestions from states to enhance cooperation included:

#### **Cooperation**

- **United Nations:** the UN would play a crucial role (and) may contribute new knowledge;<sup>40</sup> and it should be strengthened to ensure the effectiveness of arms embargoes<sup>41</sup>
- **Other instruments:** the ATT should draw from relevant international, regional and sub-regional initiatives to enhance cooperation, improve information exchange (examples listed below);<sup>42</sup> for confidence-building and cross border cooperation measures;<sup>43</sup> for addressing crime (ASEAN);<sup>44</sup> tracing (PoA);<sup>45</sup> and for improving border and customs controls (UN Global Counter-Terrorism Strategy).<sup>46</sup>
- **Other actors:** the ATT process should engage with, and the document should promote cooperation with, manufacturers, dealers, importers, exporters, and brokers.<sup>47</sup>

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36 Norway and Mexico.

37 Bosnia and Herzegovina, Italy and United Kingdom.

38 State views submitted the UN Secretary General by Bosnia and Herzegovina (para 8) and United Kingdom (para 11).

39 EU Statement delivered at the Preparatory Committee session 21 July 2010. See also EU, *EU activities in support of the Arms Trade Treaty, in the framework of the European Security Strategy*, EU Council decision 2010/336/CFSP, 14 June 2010.

40 Albania.

41 El Salvador.

42 Austria Senegal and Slovakia.

43 France.

44 Thailand.

45 India.

46 Turkey.

47 Indonesia.

- **On Mutual Legal Assistance (MLA):** there should be a framework for MLA in criminal matters.<sup>48</sup>
- **On information exchanges:** the ATT should include exchanging expertise, experiences and other relevant information<sup>49</sup> and promoting regional exchanges of information and best practices.<sup>50</sup>
- **On Customs and border management:** ATT should include the establishment of regional and bilateral arrangements on customs cooperation and regular exchange of information and experience among law enforcement bodies and expert meetings.<sup>51</sup> Exchange of information and cooperation between customs authorities and with importers and manufacturers, to build a more complete register of legally traded arms.<sup>52</sup>
- **On brokering:** Provisions on enhanced cooperation and harmonized rules for brokering.<sup>53</sup>
- **On records:** Records pertaining to transfers of conventional weapons should be kept indefinitely.<sup>54</sup>
- **On tracing:** Legal exchange of information on matters such tracing, evidence and ballistic fingerprints.<sup>55</sup>

### State views of the mechanisms to support assistance and cooperation

States frequently included assistance and cooperation, particularly the aspect of information-sharing, within an operational mechanism for implementing the ATT.<sup>56</sup> Two states suggested that there should be a framework prepared that specifically focuses on assistance,<sup>57</sup> whether or not it is accompanied by a separate mechanism.<sup>58</sup> Suggestions in the state views include:

- **Type of body:** Permanent or semi permanent implementing body, structure, support unit or secretariat, through the United Nations or a separate body, that provides a forum for cooperation.<sup>59</sup>

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48 Netherlands.

49 Cyprus.

50 Austria.

51 Turkey.

52 Ecuador.

53 Belgium.

54 Brazil.

55 Colombia.

56 Argentina, Bosnia and Herzegovina, Colombia, Ecuador, European Union, France, Hungary, Ireland, Netherlands, Norway, Serbia, South Africa, Spain, United Kingdom and a joint statement of states of Americas and Caribbean: Argentina, Chile, Colombia, Guatemala, Jamaica, Mexico, Peru, Trinidad and Tobago, and Uruguay.

57 Netherlands and Spain.

58 Netherlands.

59 Hungary.

- **Type of assistance related activities to be undertaken:** clearinghouse; provision of expert assistance<sup>60</sup> and technical assistance (i.e. drawing up national legislation and export control systems<sup>61</sup>); national capacity building;<sup>62</sup> helping states understand their ATT commitments.<sup>63</sup>
- **Types of cooperation related activities to be undertaken:** fact-finding;<sup>64</sup> information exchange;<sup>65</sup> point of contact for reporting;<sup>66</sup> information on export licenses granted or denied;<sup>67</sup> system of exchanging and disseminating information on the disarmament and arms control mechanisms used by each country.<sup>68</sup>

## Assistance and Cooperation in other instruments and mechanisms

States frequently emphasized that the ATT should reflect the content of other instruments, agreements and mechanisms and should take advantage of existing mechanisms in order to avoid duplicity and to minimize the costs and burdens placed on states. Several existing instruments and agreements address assistance and cooperation in the instruments and/or through supportive implementation mechanisms.

### Legally binding instruments

A selected example of the legally binding international instruments that states have referred to in their discussions on an ATT and that have specific provisions dedicated to assistance and cooperation include:

- Convention of the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC or Biological Weapons Convention – 1975).
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC or Chemical Weapons Convention - 1997).
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention – 1999).
- Convention on Cluster Munitions (CCM or Cluster Munitions Convention – 2008)

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60 Serbia.

61 South Africa.

62 Hungary.

63 Netherlands.

64 United Kingdom.

65 Norway, Serbia, United Kingdom.

66 Norway, Serbia, United Kingdom.

67 France.

68 Ecuador.

- Protocol V (Explosive Remnants of War - 2006) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects (1983) (Protocol V).
- Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (Firearms Protocol - 2001).

Each of these instruments contains one or more Articles on assistance and cooperation. The Biological Weapons Convention has the most limited provision on assistance, only establishing in Article VII to assist states that have been exposed to a danger as a result of a violation of the treaty; the Article does not include provisions on assistance to implement the treaty. In each of the other documents, State Parties are given the right to request and receive assistance while State Parties—in a position to do so—are committed to providing assistance. The Chemical Weapons Convention, Cluster Munitions Convention, Ottawa Convention and Protocol V establish the rights of states “to participate in the exchange of relevant equipment, material and scientific and technological information” relevant to the implementation of their respective treaty.<sup>69</sup>

Overall, the documents highlight throughout their texts that assistance can be provided on a bilateral basis or through national governments or provided by/through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis. Protocol V, the Ottawa Convention, the Cluster Munitions Convention and the Chemical Weapons Convention make specific references to trust funds established to support the Convention’s implementation.

Only the Chemical Weapons Convention provides a specific definition of assistance while the other instruments list activities that could be covered by assistance such as destruction, clearance, awareness raising and risk education, rehabilitation and social and economic reintegration and, for some instruments, victim assistance. The Ottawa Convention and the Cluster Munitions Convention both include provisions about providing assistance for the development and implementation of national strategies, which would thus be the main vehicle for organizing and channeling assistance to affected states.

Information-sharing obligations in the instruments generally relate to states reporting and submitting information to databases established by the Secretariat or Implementation Support Units.

Implementation bodies or Secretariats support implementation of each instrument; however the modalities for an implementation support unit, and related assistance mechanisms, for the CCM, the most recent disarmament instrument to be agreed, has yet to be confirmed.

The Office of Disarmament Affairs serves as the Secretariat for the Biological Weapons Convention and Protocol V. Both of the instruments have the respective support of a three-person implementation support unit (ISU). The United Nations Office on Drugs

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69 The Chemical Weapons Convention (Article 10.3), Cluster Munitions Convention (Article 6.3), Ottawa Convention (Article 6.2) and Protocol V (Article 8.4).

and Crime is the depository for the Firearms Protocol, though the Secretariat has limited resources available to support states in their implementation of the Firearms Protocol. The Organization for the Prohibition of Chemical Weapons (OPCW) and the Geneva International Centre for Humanitarian Demining (GICHD) are non-UN entities that serve as the implementation bodies to their respective agreements. Articles 9 through 11 of the Chemical Weapons Convention outline specific steps for the OPCW to handle and dispatch, as appropriate, assistance in the event of an emergency.

In general, the implementation support units and the secretariats of the above instruments have undertaken concrete activities in assistance and cooperation in one or more of the following ways:

- Facilitating the development of, or preparing, model legislation;
- Facilitating the development of, or preparing, knowledge products such as background papers or manuals;
- Facilitating information sharing, particularly through the development of websites, electronic databases, managing national reports and keeping lists of experts, agencies, national points of contacts, lists of activities implemented, information on new technologies etc.;
- Providing sponsorship to attend relevant meetings;
- Organizing conferences, seminars, workshops;
- Organizing and/or delivering training; and
- Facilitating the matching of assistance needs and resources

With respect to the Ottawa Convention, States and organizations participate biannually in inter-sessional meetings specifically on the subject of assistance and cooperation. In order to make best use of the inter-sessional meetings, the meetings follow a method known as the 4Ps. In other words, states use the meetings to express their “Problems”, “Plans” to address the problems, “Progress” made and “Priorities” for assistance. In order to help states prepare for the inter-sessional meetings, questionnaires on the subject are distributed to relevant States Parties well in advance of meetings and bilateral meetings are held to better understand requests for assistance. Further, States receiving sponsorship to attend the meetings are required to perform certain activities to make the most use out of their participation in the meetings.<sup>70</sup>

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70 Brinkert, *Lessons from the implementation of the Anti-Personnel Mine Ban Convention for possible applicability with respect to the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, background paper, Geneva: Geneva International Centre for Humanitarian Demining, November 2008.

## Non-legally binding instruments

The Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (PoA - 2001) and the International Instrument to Enable States to Identify and Trade, in a Timely and Reliable Manner, Illicit Small arms and Light Weapons (ITI - 2005) are international non-legally binding instruments. In Section II of the PoA, states commit at the regional level to support disarmament, demobilization and Reintegration, and to provide technical assistance to help states respect moratoria or other measures on the transfer and manufacture of SALW. States are also encouraged to support related regional action programmes. Section III of the PoA encourages states to provide assistance, upon request, and to cooperate on no fewer than thirteen specific thematic areas:<sup>71</sup>

- Conflict prevention;
- Coordination and engagement with international and regional information-sharing networks and mechanisms;
- Customs and borders;
- DDR;
- Destruction and disposal;
- Drug trafficking, transnational crime and terrorism;
- Law enforcement;
- Marking and tracing;
- Mutual legal assistance;
- Research for greater awareness and understanding of the illicit trade in SALW;
- Stockpile management and security;
- Strengthening legislative frameworks;
- Sustainable development.

The nature of the assistance encouraged in the PoA centers primarily on information exchange, coordination and training. In addition, there are two commitments in Section IV of the PoA that encourage states to provide assistance on all aspects of implementation of the PoA.

With respect to the ITI, Section IV encourages states, upon request, to provide the technical and financial assistance necessary to implement all commitments of the ITI and to promote the development and sharing of new technologies and equipment that facilitate the implementation of these issues.

The UN Office of Disarmament Affairs (ODA) has a broad secretarial mandate to support implementation of the PoA and the ITI; however, budgetary support to perform clearing

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71 This list was drawn directly from Maze, *Searching for Aid Effectiveness in Small Arms Assistance*, Geneva: UNIDIR, 2010.

house or assistance-related implementation support functions is not included within this mandate. ODA thus relies on voluntary contributions to finance assistance and cooperation related activities of the PoA; it is thus limited in the amount of support it can provide states. Nevertheless, one such supportive initiative of ODA has been the development of the electronic site “Programme of Action- Implementation Support System” (PoA-ISS).<sup>72</sup> The PoA-ISS facilitates information-sharing on the PoA by making national reports and best practice guidelines available online. The site also is in the process of making an electronic database available that will help states identify their needs for international assistance, highlight relevant priorities and procedures of donor governments and help match needs with available resources. ODA further extracts requests for assistance from national reports and presents them in a booklet for distribution among states in order to promote dialogue between affected states and donors.

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is another politically binding instrument.<sup>73</sup> Its mandate primarily is designed to promote cooperation, transparency, exchange of views and information and greater responsibility in transfers of conventional arms and dual-use goods and technologies. States meet on a regular basis to voluntarily exchange information. With a view to promoting cooperation, States are also required to provide, on a semi-annual basis, notifications of arms transfers, which currently cover the seven categories of the UN Register of Conventional Arms and to report transfers or denials of transfers of certain dual-use items.

Primarily an instrument that promotes cooperation, the Secretariat and Member States have openly expressed at international meetings to provide advisory and/or technical assistance to states. When elaborating on export controls for MANPADS, states agreed that they will “when and as appropriate, provide to non-participating States, upon their request, technical and expert support in developing and implementing legislative basis for control over transfers of MANPADS and their component” and “technical and expert assistance in physical security, stockpile management and control over transportation”.<sup>74</sup> Also, at their 2004 Wassenaar Arrangement Plenary Meeting, the Secretariat and Member States expressed their willingness to provide assistance on the development of effective export controls to those States that request it.<sup>75</sup> At the 6<sup>th</sup> Plenary of the Wassenaar Arrangement, participating states expressed their continued willingness to provide advisory and/or technical assistance in the implementation of the ECOWAS Moratorium.<sup>76</sup>

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72 See <[www.poa-iss-org](http://www.poa-iss-org)>.

73 *Wassenaar Arrangement on Export Controls for Conventional Arms Dual-Use Goods and Technologies, (1999) Guidelines & Procedures, including the Initial Elements as amended and updated in 2003, 2004, 2007, 2009*, Wassenaar Arrangement Secretariat, Vienna: January 2009.

74 “Elements for Export Controls of MANPADS (adopted 2003 and amended 2007) in “Basic Documents” for the Wassenaar Arrangement on Export Controls for Conventional Arms Dual-Use Goods and Technologies”, compiled by the Wassenaar Arrangement Secretariat, Vienna: January 2010, p. 34.

75 “2004 Plenary Meeting of the Wassenaar Arrangement”, Vienna: 9 December 2004, in “Basic Documents” for the Wassenaar Arrangement on Export Controls for Conventional Arms Dual-Use Goods and Technologies”, compiled by the Wassenaar Arrangement Secretariat, Vienna: January 2010, p. 90.

76 “Public Statement” Sixth Plenary of the Wassenaar Arrangement, Bratislava: 1 December 2000, in “Basic Documents” for the Wassenaar Arrangement on Export Controls for Conventional Arms Dual-Use Goods and Technologies”, compiled by the Wassenaar Arrangement Secretariat, Vienna: January 2010, p. 81.

## Regional instruments

There are several legally and non-legally binding regional instruments relevant to discussions on assistance and cooperation, especially in the area of Small Arms and Light Weapons (SALW). Three regional organizations in particular, the European Union, Organization of Security Co-operation in Europe (OSCE) and the Organization of American States (OAS) have developed SALW instruments that include provisions on providing assistance. For instance, with an emphasis on the prevention of SALW accumulation and removal of SALW from conflict settings, Articles 4 through 6 of the European Union Joint Action set out thematic areas that the European Union will support through assistance. The stipulated areas for assistance include controlling and eliminating surplus SALW, promoting confidence building measures, DDR, collection and victim assistance. Decisions to provide assistance depend on direct requests made from states and are decided on a case-by-case basis.

The OSCE Document<sup>77</sup> on SALW lists areas where financial, technical or consultative assistance can be provided, upon request, to participating states. These activities include monitoring, collection, stockpile management, reduction and disposal of SALW and advice or mutual assistance in the area of border controls. Annexes to the OSCE Document include the steps that the Forum for Security Co-operation and states take upon receiving a request for assistance, such as needs assessment missions and project plans and evaluations.<sup>78</sup> The OSCE Document on Stockpiles of Conventional Ammunition similarly includes sections on the transparency about needs and assistance, scope of assistance and procedure, model questionnaires for donor and requesting states and an illustrative guide of the procedures for handling requests for assistance.<sup>79</sup>

With respect to assistance and cooperation in the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Explosives, Ammunition and Other Related Materials (CIFTA)<sup>80</sup>, Articles 15, 16 and 20 focus on information-sharing, technical assistance and the exchange of experience and training. To support implementation of the treaty, the Organization of American States (OAS) has prepared a range of model legislation and regulations for states to draw upon. Further, in the area of providing assistance, the OAS establishes its priorities including a work plan for implementing that assistance, at its annual conference. Although it does not have a specific budget for providing assistance, it acts as a clearinghouse by facilitating the mobilization of resources and promoting requests from states.

Other regional organizations, such as the African Union, East African Community and Economic Community of West African States (ECOWAS), channel donor funding to support the implementation of regional SALW instruments.

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77 OSCE, *OSCE Document on Small Arms and Light Weapons*, 24 November 2000.

78 Forum for Security Co-operation, Update of FSC Decision no. 15/02 on *Expert Advice on Implementation of Section V of the OSCE Document on Small Arms and Light Weapons*, OSCE Document FSC.DEC/11/09, 25 November 2009.

79 *OSCE Document on Stockpiles of Conventional Ammunition*, OSCE Document FSC.DOC/1/03, 19 November 2003.

80 OAS, *Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Explosives, Ammunition and Other Related Materials (CIFTA)*, 1998.

There are also several organizations or initiatives that have been established with the sole purpose of supporting or facilitating implementation of SALW instruments and national action plans. The Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA) is the depository of the Nairobi Protocol on SALW.<sup>81</sup> Largely dependent on donor funding, the Center serves as the main clearinghouse for assistance and implementation support for the Protocol.

Under the auspices of UNDP, the South Eastern and Eastern Europe Clearinghouse for the Control of SALW (SEESAC) not only serves as a clearing house of assistance projects but it also provides assistance in the areas of project development, technical advice, project monitoring and evaluation support. Based in part on the SEESAC model, the Central American Programme on Small Arms Control (CASAC) provides technical advice and support to states and, through mobilizing donor support, finances SALW activities; and the ECOWAS Small Arms Control Programme works closely with donors and UNDP to implement activities that support implementation of the regional ECOWAS Convention on SALW.<sup>82</sup>

The regional branches of the Office of Disarmament Affairs, based in Nepal (Asia-Pacific), Togo (Africa) and Peru (Latin America and Caribbean) provide technical support to implementation of the PoA and other arms control instruments, particularly with respect to the development of legislation, information exchange, awareness raising and the facilitation of meetings.

The international and regional instruments and mechanisms listed above are not exhaustive.<sup>83</sup> In particular, there are several organizations not examined here that specialize in cooperation such as the World Customs Organization, Oceania Customs Organization and several law enforcement organizations such as INTERPOL and regional law enforcement agencies such as in Europe, East Africa, South Africa and the Pacific. These organizations promote and facilitate cooperation on specialized issues such as customs and enforcement and may also provide assistance to enhance the capacity of their member states to cooperate on these issues. Further study on the modalities of these organizations would be useful for drawing lessons on enhancing cooperation within an ATT.

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81 RECSA, *Nairobi Protocol for the Prevention, Control, and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa*, 2006.

82 ECOWAS, *Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials*, 2009.

83 For a more elaborated look at the assistance and cooperation in international and regional instruments, see *Maze Searching for Aid Effectiveness in Small Arms Assistance* Geneva: UNIDIR 2010 pp. 3-19.

## Taking assistance and cooperation in the ATT forward

In the preparatory discussions for an ATT, it is essential to consider a) what may be the substantive elements of assistance and cooperation in an ATT; b) the possible mandate and activities related to assistance and cooperation that could be undertaken by an operational mechanism; and c) next steps for preparing assistance and cooperation into the planning and designing of an ATT.

### Consideration on some substantive elements

The paper earlier listed the types of issues that some states consider important to be included in an ATT. These were:

- Assistance: customs and borders; disarmament, demobilization and reintegration; education; law enforcement, national control systems; national legislation, administrative regulations and procedures; marking and tracing: record keeping and inventory management; reporting; and stockpile management.
- Enhancing cooperation: brokering; customs and borders; information exchanges; mutual legal assistance; record management; and tracing.

The nature of the assistance states described can be summarized broadly as:

- Financial and technical assistance, sharing of expertise and on new technology, equipment, information-sharing, training, capacity-building, outreach, strengthening partnerships and IT support.

Only once the parameters of an ATT have been agreed, will it be possible for states to have a better understanding of the resource implications that the ATT will have on states. Effective implementation of the ATT will require the coordination and cooperation of several national authorities; and the strength of its overall implementation thus depends on the capacity of each of entity. The types of assistance and capacity-building a state may require therefore, may not be for the most visible weaknesses or for those issues that are easily captured in a list. Therefore, the provisions in the ATT should be flexible enough for states to base their requests for assistance on detailed and objective needs assessments.

The substantive elements of an ATT would also have to address the voluntary or obligatory nature of financing ATT assistance activities. Across the range of arms control instruments, states are granted the right to request assistance and the responsibility of requesting it generally falls on the potential beneficiary. The right of a state to request assistance may contradict, however, with criteria on when a state may qualify for receiving assistance. For instance, the ATT may consider disqualifying a state from receiving assistance for a period of time if that state participated in a questionable transfer. States may further question the political will of a requesting state to implement the ATT if the state recently could afford to purchase weapons. Similarly, in order for a state to be eligible to transfer weapons within an ATT, it may be required that state have to prove certain minimum capacities in this area; and thus questions may rise as per why the state requires assistance when it was expected to have had already these capacities in place. States may thus consider

including a timeframe in the ATT between when a state has purchased weapons and when they qualify for receiving assistance.

With respect to the provision of assistance, the typical language used in treaties is for states “in a position to do so” to provide assistance. Australia noted in its PrepCom statement that assistance should be voluntary. Other states have referred to the establishment of trust funds or suggested using fees levied on industry to help finance assistance. Without firm commitments on where and how assistance will be available, developing states will have difficulty making long-term strategies to implement the ATT as the assistance they receive may be ad hoc in nature or not enough to sufficiently meet their needs.

Assistance is frequently considered to be an incentive for developing states to sign on to a treaty. If assistance is viewed as an incentive to adopt the ATT, there would have to be some kind of resource mobilization mechanism devised in order to provide some assurance that resources will be available and accessible, as appropriate to states that adopt the treaty. This is especially relevant if the ATT were to include timeframes for implementing certain aspects of the treaty. Indeed, timeframes for implementation would impact the priorities and expectations of requesting and providing assistance.<sup>84</sup> States may thus consider including some procedural elements in the ATT such as establishing inter-sessional, regional meetings or sessions during ATT meetings to promote the matching of needs and resources and to discuss lessons learned in the implementation of assistance.

As stated above, both the Ottawa Convention and the Cluster Munitions Convention refer to the preparation of national assessments and for states requiring assistance to prepare national action plans/strategies. In both treaties states in a position to do so are called upon to help, if required, prepare such strategies. The strategies are also used as the base for channeling assistance. The preparation of national action plans has also become a common activity in the area of PoA implementation. While the PoA does not require the preparation of such plans, several international and regional best practice guidelines recommend it and it is increasingly seen as a step towards building effectiveness in small arms assistance.<sup>85</sup>

Other points from the existing treaties that may be relevant to consider for the ATT could include establishing the right of states to the exchange of equipment and scientific and technological information;<sup>86</sup> and for beneficiary states to facilitate the entry and exit of personnel, materiel and equipment associated with the assistance.<sup>87</sup>

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84 The Ottawa Convention sets out specific timelines for states to implement its provisions. In its statement delivered at the PrepCom, the European Union suggested that certain aspects of the treaty could be negotiated to include a timeframe for its implementation.

85 See Maze, *Searching for Aid Effectiveness for Small Arms Assistance*, Geneva: UNIDIR 2010, p.6. See also, for instance, South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, *Regional Micro-Disarmament Standards / Guidelines 4<sup>th</sup> ed.*, Belgrade, 20 July 2006.

86 The Chemical Weapons Convention (Article 10.3), Cluster Munitions Convention (Article 6.3), Ottawa Convention (Article 6.2) and Protocol V (Article 8.4).

87 Cluster Munitions Convention (Article 6.10).

## **Considerations for the mandate and activities to be undertaken by an operational mechanism**

Several states have noted that assistance and cooperation should be an important mandate of any operational mechanism or implementation support unit established. As this paper has shown, there is precedence for establishing mechanisms that undertake technical and advisory support to states, prepare materials (manuals, model legislation, databases), organize meetings, trainings, workshops and facilitating the matching of needs and resources for assistance. Some of these mechanisms lie within the United Nations i.e. Biological Weapons Convention and Protocol V, while others work outside of the United Nations, i.e. Ottawa Convention and the Chemical Weapons Convention.

A central body/unit should take the lead in developing tools to support consistent, measurable, accountable and transparent approaches to assistance. This would facilitate the tracking of progress made and highlighting challenges in the area of coordinating, delivering, implementing and evaluating that assistance.

There are numerous existing international and regional organizations and mechanisms that would be a natural vehicle for supporting implementation of an ATT. There could be thus discussions held about providing existing organizations or mechanisms with a mandate and/or resources to support assistance and cooperation related activities of the ATT. However, these discussions should not preempt having a central body/unit tasked with coordinating an overall approach to assistance in addition to playing a facilitating role among states, organizations and civil society who provide or receive assistance and a coordination role to disseminate information useful for preventing duplication of work.

If existing structures or mechanism are undertaking ATT related activities, there should be formal memorandums of understanding, cooperation agreements, coordination frameworks and joint partnerships established between the organization and the central body/unit responsible for implementing the ATT. This would be necessary to ensure that there is some coherency in the approaches made for identifying needs for assistance, the design and implementation of action plans, and the channeling, administering, evaluating and sharing of information on assistance. Not only would consistency in approaches facilitate the overall tracking of assistance and cooperation for the purposes of measuring implementation of the ATT, but it would also help build a knowledge reservoir of lessons learned that could be shared across regions. Such bodies would be thus actively included and involved in all of the relevant ATT meetings that address assistance and cooperation.

It may also be appropriate to dedicate specific international meetings to address specialized and technical matters of cooperation in order to meet the specific and technical needs of the many aspects of cooperation such as public and confidential information sharing for the denial or revocations of licenses, on registered brokers and brokering activities, seizures of illicitly trafficked weapons, alerts on the style and formal of fraudulent end-user certificates, facilitating bilateral information exchanges on transshipment activities etc.

## **Preparing for discussions on assistance and cooperation in the ATT**

Although discussions on assistance and cooperation depend on other elements of the ATT being agreed beforehand, early planning of assistance and cooperation into the design of

an ATT will save valuable time in getting its implementation underway. It may thus be useful for states to further consider and discuss more in depth the best practices for the practical implementation of assistance and the tools already available to help facilitate assistance. States and related organizations would benefit from studying and considering the lessons learned in operationalizing tools and other assistance mechanisms so as not to repeat the same mistakes or lose time learning the same lessons. There is also a need to look specifically at the best practices and the types of supportive mechanisms best suited for promoting enhancing practical cooperation, including building the capacity of states to cooperate effectively.

Since the benefits of the ATT will only be realized if all state parties are able to fully implement its measures, it is important for states to consider how to make assistance as effective as possible. There has been some study on the issue of “effectiveness” for international assistance on the subject of SALW.<sup>88</sup> Below are some of the key lessons that emerged from these studies that could be applied to the ATT context:

- Assistance should complement and not replace a state’s national resources; and recipient states should take the lead, possibly with the support of donors, in establishing sufficient national institutional capacity to adequately request, organize, coordinate, monitor and evaluate the assistance it receives.
- Assistance should be based on objective assessments and be part of an organized national or regional strategy. The strategies should include performance and success indicators, which donors and recipient states can discuss, modify and formally agree upon in the terms of reference of each project. At the end of the assistance projects, both donors and recipient states should prepare joint or independent project evaluations and reviews.
- Donor states and organizations should prepare strategies or policy statements that outline their objectives for providing assistance over a defined period of time.
- Donor states and organizations should aim to be predictable in the assistance they are able to provide so that recipient states can prepare realistic short, medium and long-term implementation plans.
- Donor states and organizations should allow for some flexibility on how financial assistance can be used so that the assistance can be tailored to a state’s needs.
- States should aim to harmonize, to the extent possible, certain procedures related to assistance such as, for instance, creating common templates for requesting, evaluating and reporting on assistance; encouraging states and organizations to jointly undertake needs assessments or diagnostic reviews; and pooling financial, technical and human resources.
- States should agree on a template to promote consistency in the manner states report on assistance, such as devising a simple system for codifying assistance

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88 See Maze, *Searching for Aid Effectiveness for Small Arms Assistance*, Geneva: 2010.

projects, in order to make it easier to gather and compare data and to track and measure assistance delivered within the framework of the ATT.

States could consider these lessons, particularly when discussing the modalities of an operational mechanism for assistance.

## Conclusion

This paper has provided an overview of how states have approached the issue of assistance and cooperation in the ATT; explored assistance in related international and regional instruments; and outlined a few substantive and operational aspects of assistance that states may wish to build upon or take forward as the preparations for the ATT continue.

The paper did not aim to evaluate or judge the quality or feasibility of the suggestions made by states or of the practices of other instruments or mechanisms; it will be up to states to negotiate the most appropriate terms for handling assistance and cooperation in the ATT in due course.

In order for states to continue their preparation for discussing assistance and cooperation in an ATT, further study may be needed to gain a more in depth look at the lessons of existing operational mechanisms and modalities, particularly in the area of cooperation. Some of the key questions raised in this paper that states could consider as they prepare their positions on assistance and cooperation are:

- Should there be a trust fund to assist states in implementing the ATT and how could that trust fund be financed?
- Should assistance be an incentive for states to agree to the ATT and what may the terms of that incentive be? And what implications would these incentives have on donor resources and in designing a framework for assistance?
- Should arms producing states and/or industry be obliged to contribute international assistance?
- Should there be criteria on which states should qualify for assistance? For instance, if states recently purchased weapons or plan to purchase weapons.
- Should support for implementing ATT assistance be delegated to existing international and regional mechanisms?
- Could assistance in the ATT be part of a larger framework for providing and facilitating assistance and capacity-building on arms control more broadly, such as the PoA?

States have overwhelmingly spoken in favour of including provisions on assistance and cooperation in an ATT and there is precedence for establishing supportive frameworks that facilitate the coordination, channeling and implementation of assistance, cooperation and capacity-building. It is critical that states consider the best practices and lessons in the area of assistance in the design of an ATT document and accompanying mechanisms. Such attention early on will save valuable time in realizing the underlining goals and full potential of an ATT.



# UNIDIR RESOURCES

## About UNIDIR

The United Nations Institute for Disarmament Research (UNIDIR)—an autonomous institute within the United Nations—conducts research on disarmament and security. UNIDIR is based in Geneva, Switzerland, the centre for bilateral and multilateral disarmament and non-proliferation negotiations, and home of the Conference on Disarmament. The Institute explores current issues pertaining to the variety of existing and future armaments, as well as global diplomacy and local tensions and conflicts. Working with researchers, diplomats, government officials, NGOs and other institutions since 1980, UNIDIR acts as a bridge between the research community and governments. UNIDIR's activities are funded by contributions from governments and donor foundations.