

## Transparency mechanism for an ATT

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### Introduction

The Arms Trade Treaty (ATT) discussions—ongoing at the UN since 2006—have from the beginning mostly focused on one hand the future Treaty’s goals and principles, and on the other on its scope and parameters. A third, equally important aspect of developing an ATT is its future implementation, which was a central theme at the most recent meeting of the Preparatory Committee (PrepCom), held at the UN Headquarters in New York from 11-15 July 2011.<sup>1</sup> A crucial element in this implementation discussion has been transparency and the ways in which information exchange between future States Parties to an ATT could support its functioning and effectiveness. While the format and types of information exchange to be included in an ATT will largely depend on the future Treaty’s scope, parameters and other elements, considerations on the transparency functions of an ATT should not be left until the last stages of negotiations but kept in mind throughout the preparatory process.

This paper takes a closer look at the issue of transparency as it relates to the proposed ATT and its future implementation. It is assumed that once an ATT comes into force it will be in the interests of all States Parties to show that they are acting responsibly under it and working in the spirit of the Treaty to improve global standards in responsible transfers of conventional arms. An ATT does not foresee the establishment of any kind of supranational body or system to authorize arms transfers or licensing. Hence the success of an ATT will largely depend on States’ national implementation measures, which should be undertaken in good faith, through domestic legislation and regulations, with

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<sup>1</sup> Previous PrepCom meetings were held on 12-23 July 2010, 28 February-4 March 2011 and 11-15 July 2011. The first PrepCom dedicated two informal sessions, held on 19 and 21 July 2010, to discussing issues related to the implementation and application of an ATT. The focus of the third PrepCom session was primarily on implementation aspects of the future Treaty.

decisions on the approval and denial of transfers made at the national level. However, it is hardly contestable that certain international mechanisms, such as those of transparency, assistance and capacity-building and follow-on meetings of States parties will have to be utilized to support the national-level implementation and to further strengthen the effectiveness of the Treaty.

In the following sections this paper presents different options related to transparency measures for an ATT: the paper starts with a short justification of why transparency measures are seen as an important element of regional and international security policy initiatives and what arguments States have made in support of transparency in an ATT. A close look is then taken at possible national reporting requirements under an ATT - what this could mean, what information could be covered, how often and to whom reports could be submitted, and what other possible information exchange mechanisms could be included in the Treaty. The paper also examines some proposed and existing systems of dialogue, consultations and networking, such as peer review mechanisms and dispute settlement. Finally, as a practical and national-level measure of transparency, record keeping and possibilities of further transparency enabled by technological developments are discussed.

The paper builds on the discussions held at the meetings of the ATT PrepCom, draws on previous research conducted on the topic, and where relevant presents a comparative analysis of transparency mechanisms in place in other, related instruments such as the UN Programme of Action on Small Arms and Light Weapons (UN PoA), the Convention on Certain Conventional Weapons (CCW), the Biological and Toxic Weapons Convention (BTWC), the Chemical Weapons Convention (CWC), the Ottawa Convention on Landmines and Nuclear Non-Proliferation Treaty (NPT), together with some other relevant international and regional instruments.

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## Why transparency?

Different kinds of transparency measures are used in current international policy processes, from economics and environment to human rights and security politics, for the purpose of – among other things – promoting compliance, enhancing treaty implementation,

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2 The project is a follow-on activity to a previous series of regional meetings organized by UNIDIR for the EU in 2009–2010, entitled “Promoting Discussion on an Arms Trade Treaty”. It was established by a decision of the EU Council entitled “EU activities in support of the Arms Trade Treaty, in the framework of the European Security Strategy” (2010/336/CFSP), on 14 June 2010. Reports, presentations and audio documentation of both projects can be found on the UNIDIR website, [www.unidir.org/att](http://www.unidir.org/att).

increasing mutual understanding and advancing consensus. While information exchanges between States have over centuries developed into quite detailed and open systems in some policy areas, transparency<sup>3</sup> has traditionally not been an element of security policy or States' national defence systems. It was only actually at the end of the Cold War that the approach to transparency in arms control of conventional weapons shifted dramatically towards greater openness. From the 1940s until 1990 there were no universal transparency regimes that would have voluntarily or in a legally binding format introduced equal norms of transparency to States. For most of these fifty years, the only conventional arms control regimes which existed were unilateral: weapons supplier States made their own assessments as to what exports would be destabilizing and therefore should be avoided, and decisions were made at the national level, or at the very most, among allies.

Today, the picture is quite different. Multilateralism has become a prevailing norm in international relations and transparency is often seen as crucial to the effectiveness of international agreements, including those in the field of security. Promoting transparency is often one of the most important functions which multilateral security or disarmament regimes perform, as it can not only provide the foundation for an instrument to "do well", but also enables participants to know "how well it is doing".<sup>4</sup> While transparency measures do not directly regulate or prevent activities that could undermine international security or the implementation of multilateral agreements, increased transparency is often commended for reducing interstate suspicions, improving early warning, and deterring unilateral and selfish impulses which States might otherwise yield to. It has also been noted that transparency regimes can oblige States to develop more explicit and effective national controls, open their activities to greater domestic and international scrutiny, and provide a basis on which further international regulations can later be developed.

Transparency measures can take various forms and differ both in terms of the types of information exchanged and their voluntary/compulsory nature. For example, as part of a transparency regime States can agree to exchange information about themselves or task each other or a third party to monitor and report on them. These measures can be left at the discretion of the participants, or they can be enforced through making participation a legally binding commitment, possibly coupled with monitoring and/or verification measures.<sup>5</sup>

There are multiple explanations of the need for transparency in international security policy instruments. The first and probably most straightforward reason is the need to ensure that parties to an agreement, treaty or other type of regime follow the commitments they have made. Studies have shown that uncertainty about other parties' compliance with a joint agreement is a significant challenge to international cooperation.<sup>6</sup>

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3 References to "transparency" in this paper are primarily meant in its international form, as opposed to transparency measures that States put in place domestically, for example between the executive, judicial and legislative powers.

4 Mitchell, Ronald B. 1998: Sources of Transparency: Information Systems in International Regimes, *International Studies Quarterly*, Vol.42, No. 1, March 1998, pp. 109-110.

5 For a discussion on "self-reporting", "other-reporting" and "problem-reporting", see Mitchell, Ronald B. 1998: Sources of Transparency: Information Systems in International Regimes, *International Studies Quarterly*, Vol.42, No. 1, March 1998, pp. 109-130.

6 Opinions vary on whether it can be regarded directly as an obstacle or just a factor among others. See Oye, Kenneth A. (ed.) 1986: *Cooperation under Anarchy*, Princeton: Princeton University Press;

Hence, in arms control agreements between major powers transparency measures have, when present, traditionally been primarily used to ensure compliance and monitor the level of implementation.<sup>7</sup>

In addition to enabling actors to collectively be aware of the level of implementation in a regime and to identify the direction in which the process is developing,<sup>8</sup> transparency has in many cases also been used to measure how well some particular actors in a regime are performing, what specific actions they are taking and how they are “playing along”.<sup>9</sup> These types of transparency measures are usually introduced to ensure obedience and to seek information from participants in order to prompt responses to cases in which individual actors are not fulfilling their obligations. Openness in terms of these kinds of monitoring/verification provisions has, on the international level, probably been taken the furthest in the Chemical Weapons Convention (CWC), which bans the development, production, acquisition, stockpiling, retention, transfers and use of chemical weapons and contains crucial transparency elements requiring all signatories to *inter alia* declare their holdings of chemical weapons.<sup>10</sup>

Further customary reasons for the introduction of transparency measures in political processes can include for the purpose of deterrence, reassurance or revelation.<sup>11</sup> Transparency has also long been seen as a key element in confidence and security-building measures (CSBMs), especially in the field of arms control and security politics.<sup>12</sup> According

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Keohane, Robert 1984: *After Hegemony: Cooperation and Discord in the World Political Economy*, Princeton: Princeton University Press; Krasner, Stephen D. (ed.) 1983: *International Regimes*, Ithaca: Cornell University Press, pp. 367-368.

- 7 See for example the 1975 Helsinki CBM Document, the 1986 Stockholm CSBM Document, the Vienna CSBM documents of 1990, 1991, 1994 and 1999; the 1992 Open Skies Treaty, OSCE Lisbon Document “A Framework for Arms Control”, and the ASEAN undertakings. Similar measures were also introduced sub-regionally. For example in Eastern Europe, the Cooperative Threat Reduction (CTR) programme was introduced in 1992 between Russia, Ukraine, Belarus, and Kazakhstan to help the countries of the former Soviet Union destroy their WMD arsenals and infrastructures and establish factual safeguards against the proliferation of these weapons. For this, see Larsen, Jeffrey A. 2002: *Arms Control: Cooperative Security in a Changing Environment*, London: Lynne Rienner Publishers.
- 8 Mitchell, Ronald B. 1998: Sources of Transparency: Information Systems in International Regimes, *International Studies Quarterly*, Vol.42, No. 1, March 1998, pp. 109-130.
- 9 For a discussion on these two types, which Ronald B. Michell calls “effectiveness-oriented transparency” (collective transparency) and “compliance-oriented transparency” (by members), see Mitchell, Ronald B. 1998: Sources of Transparency: Information Systems in International Regimes, *International Studies Quarterly*, Vol.42, No. 1, March 1998, pp. 109-130; see also Jervis, Robert 2000: From Balance to Concert. A Study of International Security Cooperation, in: Finel – Lord (eds.) 2000a: *Power and Conflict in the Age of Transparency*, New York: Palgrave, p. 47.
- 10 See for example Florini, Ann M. 1997: A New Role for Transparency, *Contemporary Security Policy*, Vol. 18, No. 2, p. 61.
- 11 In her article, “A New Role for Transparency”, Ann Florini divides the purposes for which transparency is used into three: first, “deterrence”, whereby parties to an agreement are afraid of the verification provisions and therefore stick to their commitments Secondly, Florini talks about transparency as a “reassurance”: openness in proving that one is complying with the rules and not breaking them. Finally, she mentions the “revelatory effect of transparency”, whereby actors receive information through transparency measures that they would not have obtained without the requirement to do so, but which can drastically change their behavior. Florini, Ann M. 1997: *Contemporary Security Policy*, Vol. 18, No. 2, p.59.
- 12 Typical CSBMs in politico-military field are exchanges of information on weapons holdings and transfers, troop movements and planned military exercises, reciprocal or voluntary visits to military facilities as well as submitting information regarding defence planning and budgets. Finel, Bernard I. – Kristin M. Lord (eds.) 2000a: *Power and Conflict in the Age of Transparency*, New York: Palgrave, p. 343.

to positive arguments for transparency as a confidence- and security-building measure, being open about ones possessions, actions and capabilities can prevent exaggerated estimates of holdings and threats by others that could otherwise perceive a potential military threat, and thus at least help reduce tensions between actors.<sup>13</sup>

The single most important and often cited case of transparency as a CSBM in international security politics is probably the United Nations Register of Conventional Arms (hereafter also referred to as the Register, the UN Register or UNRCA), where UN Member States have committed themselves to voluntarily providing information on their imports and exports of conventional armaments.<sup>14</sup> The General Assembly resolution that established the Register notes the CSBM-role of transparency in its preambular paragraphs, *inter alia* by referring to “the consensus among Member States on implementing confidence-building measures, including transparency and exchange of relevant information on armaments”, and noting that these measures are “likely to reduce the occurrence of dangerous misperceptions about the intentions of States and to promote trust among States”. Further, the first operative paragraph of the resolution “recognizes that an increased level of openness and transparency in the field of armaments would enhance confidence, promote stability, help States to exercise restraint, ease tensions and strengthen regional and international peace and security”.<sup>15</sup> Other transparency goals of the Register have been claimed to be the timely identification of trends in international arms transfers, the promotion of informed public debate and the prevention of diversion and illicit trade in arms.<sup>16</sup> Many of the countries that have supported the Register emphasize its significance as a transparency regime that legitimizes international discussion and action on conventional arms transfers and holdings.<sup>17</sup> A similar transparency measure undertaken within the United Nations mainly as a CSBM is the UN Standardized Instrument for Reporting Military Expenditures (MILEX), which covers information exchanges on national expenditures on personnel, operations and maintenance, as well as procurement and construction, research and development.<sup>18</sup>

In addition to functioning within a regime to build confidence, security or trust between parties, transparency may sometimes be used as a less direct instrumental way to support the process as a whole, to help avoid its weakening or even potential collapse, or sometimes with the hope of ultimately improving its implementation

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13 Goldman 1997, p. 29; Bates – Mak 1997, p.2; Goldschmidt 2001, pp. 349-350; Jacobson – Weiss 1998; UN SG 1992, pp. 18-19.

14 More information about the Register can be found at: <http://disarmament.un.org/cab/register.html>. The register is based on the *Transparency in Armaments* (TIA) Resolution (46/36L) adopted on 6 Dec 1991, which calls on UN Member States to submit data on the number of arms exported from or imported to their territory during the previous calendar year.

15 A/RES/46/36 L, “General and Complete Disarmament – Transparency in Armaments, 65th plenary meeting of the UN General Assembly’s First Committee, 6 December 1991.

16 Waganmakers, H 1993: The UN Register of Conventional Arms: a new instrument for cooperative security, *Arms Control Today*, April 1993, p.16.

17 See also E.Regehr: “A seat at the arms dealer’s table, *Ploughshares Monitor*, September 1991, pp. 10-16; O. Greene and other contributors to Oxford Research Group/Saferworld Foundation, *International Control of Weapons Transfers*, Bristol 1991, and Oxford Research Group, *International Control of the arms Trade*, Current Decisions report, ORG, Oxford 1992.

18 Based on information available online at <http://disarmament.un.org/cab/milex.html>. Last accessed on 07 July 2011. Resolutions establishing and developing MILEX are A/RES/35/142 B, A/RES/59/92 and A/RES/64/22.

through enhanced information exchange.<sup>19</sup> In many cases, information exchanges are also claimed to be used to underpin efforts to alter state behavior and to facilitate the evaluation of past progress by regime members in order to redesign the regime to perform better in the future.<sup>20</sup> In general, transparency in these cases is used as a means to improve a regime's effectiveness.

Furthermore, human security considerations have increasingly been included in transparency discussions, especially in recent years, in relation to both weapons of mass destruction (WMD) and conventional arms controls. Arguments put forward to promote transparency because of human security concerns converge with the need to prevent undesired flows and accumulation of weapons, preventing conflicts and crime and combating terrorism, and they function through similar mechanisms as the more traditional reasons for transparency.

A less discussed potential consequence of or factor in transparency measures as part of international policy processes is their capacity for learning and mutual sharing of experiences. When transparency measures include qualitative information, relating for example to existing national practices, laws and regulations or undertaken activities, they have great potential to be used as tools for global learning.<sup>21</sup> One could also argue that sometimes transparency is used as a tool to improve cooperation between actors and in facilitating norm-change. Even though usually not referred to as *the* purpose for introducing reporting or other kinds of transparency measures, enhanced cooperation is commonly acknowledged to be a factor.<sup>22</sup>

Finally transparency is an often-quoted factor in promoting democracy, good governance and accountability, mostly at domestic level politics. In the case of arms transfer controls,

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19 For instance, when the BTWC Ad Hoc Group of the States parties failed to conclude the negotiations on the draft protocol for a legally-binding verification regime for the Convention in 2002, the way out in order to at least "keep the process alive" was to adopt a Final Report that included a decision to hold annual meetings of States Parties and experts meetings in the years leading up to the Review Conference, to discuss the topic and to exchange information. *An Arms Control Today Reader 2006: The 2006 Biological Weapons Convention Review Conference: Articles and Interviews on Tackling the Threats Posed by Biological Weapons*, November 2006. Last accessed on 07 July 2011 at <http://www.armscontrol.org/pdf/BWCReaderWebVersion.pdf>; Littlewood, Jez 2003: Substance Hidden Under A Mountain Of Paper: The BWC Experts Meeting In 2003, *News Analysis, Disarmament Diplomacy*, No. 73, Oct-Nov 2003. Even the UN Conventional Arms Register has been interpreted as "a second-best alternative" introduced as a result of an impasse in the talks to restrain global arms transfers through a "true cooperative security regime" that would have been more profound and legally binding on its participants. Lord, Kristin M. 2006: *The Perils and Promise of Global Transparency: Why the Information Revolution May Not Lead to Security, Democracy, or Peace*, Albany: State University of New York Press, pp. 39, 41. In making this claim, Lord refers to a variety of general arms control publications and case studies.

20 Mitchell, Ronald B. 1998: Sources of Transparency: Information Systems in International Regimes, *International Studies Quarterly*, Vol.42, No. 1, March 1998, p. 109.

21 This seems to be very close to what Ann Florini refers to as the "revelatory power of transparency", whereby making information publicly available automatically sets it under public pressure and enables its use by a wide variety of actors, including NGOs. Florini discusses examples from environmental protection in the case of toxic emissions. Florini, Ann M. 1997: A New Role for Transparency, *Contemporary Security Policy*, Vol. 18, No. 2, pp. 51-72.

22 In his article "International Organizations and Government Transparency: Linking the International Domestic Realms", Alexandru Grigorescu refers to a series of transparency studies and correctly notes that "in most studies at the international level, government transparency is seen as a factor that enhances cooperation among States and allows for solutions to collective action problems". Grigorescu, Alexandru 2003: International Organizations and Government Transparency: Linking the International and Domestic Realms, *International Studies Quarterly*, No. 47, pp. 643-667.

this is most clearly demonstrated in the domestic requirements of many States to report to their parliaments on licensing decisions.

### 1-2-3 of transparency practices

- a) Sources of transparency/ types of actors
  - Governments
  - Non-governmental organizations and civil society
  - News media
  - Regional and international organizations
  - Private companies and corporations
- b) Voluntary / compulsory nature
  - Voluntarily produced by State(s) themselves vs. imposed by other regime members
  - Politically vs. legally binding
- c) Process factors
  - One-time / ad hoc / continuous
- c) Number of actors involved
  - Unilateral transparency measures
  - Bilateral
  - Multilateral
  - External
- d) Level of transparency
  - Transparent to ALL
  - Transparency only within a group or selected parties

## Why transparency in an ATT?

Numerous reasons have been cited for including a reporting mechanism and other transparency measures in an ATT, among these the need to monitor and improve Treaty implementation; build confidence and ensure lucidity between relevant parties; offer a means to measure States' compliance with the Treaty; and build the basis for a peer review system of verification or other further measures.<sup>23</sup> Moreover, civil society organizations have listed the purposes of a strong transparency mechanism via public reporting in an ATT to encompass CSBMs, democratic accountability, public scrutiny, preventing diversion, improving mutual understanding and countering unfounded fears.<sup>24</sup>

While the focus in this paper is on international transparency measures, it is worth noting the important links between an ATT's possible transparency instruments at both national and international levels. Currently many States are already domestically responsible towards their parliament on arms transfer control decisions and hence exercising relatively high levels of domestic transparency. Further, several States are either

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23 Elements, options and challenges of a future Arms Trade Treaty, Report of a residential seminar, 21-22 March 2011 Glion, Switzerland.

24 Amnesty International 2011: *Our right to know: transparent reporting under an Arms Trade Treaty*, accessible at <http://www.amnesty.org/en/library/asset/ACT30/116/2011/en/c6a0310e-81fa-47eb-be10-87e596823f16/act301162011en.pdf>, last accessed 08 July 2011.

politically or legally committed to producing regular information on their arms transfer decisions or actual transfers to a regional organization or instrument. Therefore, whatever international transparency measures an ATT includes, it should take into account and build on these existing national and regional transparency practices and avoid duplication or contradiction between the different levels of openness where possible. Further, problems in transparency practices at the national level would most likely have negative consequences on the functioning of a transparency regime at international level. One of the prominent arguments made here relates to problems of corruption and how stronger controls over arms transfers at international level without anti-corruption mechanisms could undermine the effectiveness of the Treaty.<sup>25</sup> Also some defense industry coalitions are calling for national information disclosure and recording requirements to be included in an ATT, stating that “the legislative and administrative measures taken by states to authorize arms exports need to be transparent, predictable and effective”.<sup>26</sup>

## How transparency could work under an ATT

Following on from the overall goals and objectives set for transparency measures in other, related policy processes, several States have called for these to also be included in the future Arms Trade Treaty. Transparency and accountability arguments were already prominent in the submissions of States to the UN SG in 2007, when they were asked about what elements should be included in an ATT. Over 40 States noted the need for an ATT to include provisions on information- sharing, including suggestions on:

- information on transfers approved or denied transfers;
- information on “authorized arms producers, dealers, importers, exporters and, whenever possible, carriers”;
- scientific knowledge and technological information in order to prevent, detect, and investigate illicit arms manufacturing and trafficking;
- experience and know-how on controls of arms transfers; and
- Information on national legal regulations on trade and brokering activities and storage and surplus management.<sup>27</sup>

Furthermore, the issue of transparency was discussed by the Group of Governmental Experts, established in 2008 to examine the feasibility, scope and draft parameters for an ATT.<sup>28</sup> The Group examined operational mechanisms including information- sharing and exchange, reporting mechanisms and international cooperation and assistance that could be utilized to support the implementation of the future Treaty. The Group considered whether and how an ATT could promote multilateral and ad hoc exchanges of information

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25 See Bock, Tobias 2011: ‘Tackling Corruption in the Global Arms Trade: the UN Arms Trade Treaty’, *Huffington Post*, 7 March 2011, [http://www.huffingtonpost.com/tobias-bock/tackling-corruption-in-th\\_b\\_832255.html](http://www.huffingtonpost.com/tobias-bock/tackling-corruption-in-th_b_832255.html); Bock, Tobias 2011: How corruption risks may undermine the United Nations Arms Trade Treaty, *Transparency International Blog*, 11 July 2011, <http://blog.transparency.org/2011/07/11/corruption-risks-may-undermine-united-nations-arms-trade-treaty>. Last accessed 26 July 2011.

26 Wood, Andrew 2011: *Arms Trade Treaty Briefing for the Arms Industry – an Industry Perspective*, Statement made at an ATT PrepCom side event in New York, 13 July 2011.

27 Parker, Sarah 2008: *Implications of States’ Views on an Arms Trade Treaty*, Geneva: United Nations, pp.40-41.

28 The GGE was established by resolution A/RES/61/89.

between States on a periodic or case-by-case basis, and how States could be assisted in both carrying out the Treaty and evaluating its implementation. Specifically, national points of contact, the promotion of regular implementation and transparency reports were mentioned as possibilities.<sup>29</sup>

Transparency and different information exchange mechanisms that could be included in an ATT have continued to be discussed at the meetings of the Open-Ended Working Group (OEWG) and during the meetings of the PrepCom. In the March 2011 PrepCom Chair's draft paper on the future ATT, transparency is mentioned as a separate element (number 7), and includes sub-sections on reporting, information sharing, record-keeping and consultation. These elements were further discussed during the July 2011 meeting of the PrepCom, at which the Chair presented an updated draft paper on the ATT. In this latest draft, transparency is included as a sub-section under "implementation", with a title "Record keeping, reporting and transparency" (section VI, B).

Transparency and national reporting have also been widely discussed topics at the series of EU-UNIDIR regional meetings on the ATT, both in the first project "Promoting Discussion on an Arms Trade Treaty" and in its successor "Supporting the Arms Trade Treaty Negotiations". The need to establish some kind of transparency mechanism as part of an ATT's implementation system has been brought up in all regions where project activities have taken place, and while States' views regarding the detailed nature of national reporting and other transparency mechanisms vary, there seems to be a general call for an ATT to improve transparency of international transfers of conventional arms by increasing the level of information shared between the Treaty's State Parties.

Suggested transparency measures (at the international level) for an ATT include:

- National reporting
- Other forms of information exchange
- Consultation mechanisms
- Networks of contacts
- Peer review mechanisms
- Dispute settlement
- Record-keeping

The following sub-sections will address each of these in turn, highlighting the main issues to be considered as well as potentially problematic areas.

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29 United Nations General Assembly, *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*, A/RES/63/334, 26 August 2008.

## National reporting

As a means of increasing transparency under an ATT, States have most commonly referred to the possibility of utilizing a regular national reporting system and thereby also to support the Treaty's implementation. This has been seen as the primary mechanism to facilitate monitoring of the Treaty's status and development and to demonstrate compliance with its requirements. At the first meeting of the PrepCom in 2010 it was noted "regular (annual) reports by States on implementation are essential and will be at the heart of information-sharing and transparency under the ATT".<sup>30</sup> Calls for regular national reporting were also frequent in the subsequent implementation discussions during the third PrepCom meeting in July 2011.<sup>31</sup>

While no country has come out publicly against national reporting as part of an ATT, views regarding the substance of such an information exchange, its possible format, frequency, nature and purpose vary. Most commonly, States seem to be advocating on one hand information exchange on States' national implementation mechanisms, such as on the establishment and updating of regular laws and regulations, and on the other hand the exchange of statistical information about transfers of arms that will fall under the auspices of the Treaty. Many views have been expressed regarding the exact types of weapons that should fall under the Treaty and opinions also vary with regard to the possible coverage of the reporting mechanism. States also seem to have varying views on the need for and details of the pre-defined format in which information should be exchanged. The following sub-sections address these different possible elements of national reporting one-by-one, by suggesting viable solutions for an ATT and building on existing instruments and lessons learned from related information exchange regimes.

National reporting under an ATT should include two types of exchanges: reporting on national implementation efforts, and reporting on transfers of items falling under the Treaty's scope.

### What to report about?

#### *National measures taken to implement the ATT*

An ATT is likely to require its States parties to undertake some legislative and administrative measures to adapt their national arms transfer control systems to comply with the obligations of the Treaty. Following this requirement, the majority of States involved in the discussions about an ATT's future implementation seem to agree that some kind of system should also be established to allow all concerned parties to monitor and assess how the Treaty is functioning and whether it is actually being implemented by its Parties. Reporting on national implementation efforts and established practices would no doubt answer this need by providing an overview of what is already in place in different States and where greater efforts required. It could also, for instance, allow independent research institutes to further examine existing systems, gaps and good practices that could then be utilized to strengthen the implementation of the Treaty as a whole.

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30 Preparatory Committee on ATT, *Facilitator's Summary on Implementation and Application*, 22 July 2010.

31 For statements made during the PrepComs, see <http://www.un.org/disarmament/convarms/ATTPrepCom/Statements.html>, last accessed 26 July 2011.

In addition to providing information to other Treaty members on how well a State is doing, national reporting on implementation would allow States themselves to demonstrate that they are complying with their obligations under the ATT. Suggestions regarding the exact elements of a national implementation reporting system vary, covering inter alia references to information exchanges on laws and regulations, structure of national systems, enforcement mechanisms and contact points.

Possible items to be included in national implementation reporting:

- Relevant national laws, regulations and administrative processes necessary to implement the ATT's obligations;
- description of the national system for authorizing and licensing the transfers of conventional arms under the scope of the Treaty;
- procedures followed during the licensing process;
- samples of documents required during the process;
- penalties or other appropriate measures for Treaty violations;
- national control list of those items subject to the Treaty;
- bodies tasked with controlling arms transfers and overseeing Treaty
- implementation domestically;
- national contact points for the provision and receipt of information and requests pursuant to an ATT.

Of the items listed above, in addition to the general description of national systems and recent developments, the exchange of information on legislation (preferably translated to one of the UN's working languages) could be a particularly valuable exercise. Some countries are already submitting such information under resolution A/RES/57/66, which established a system for the exchange of national legislation, regulations and procedures on the transfer of arms, military equipment and dual-use goods and technology.<sup>32</sup> Similar provisions are also included under the BTWC, which invites States "to enact specific legislation or take other regulatory measures relevant to this Article to make available the appropriate texts to the United Nations Centre for Disarmament [now the Office for Disarmament Affairs], for the purposes of consultation".<sup>33</sup>

Information on national implementation efforts could either be submitted in a free format or according to a predetermined table or set layout. Given the differences in States' national systems and needs with regard to the establishment of an ATT's implementation framework, a strict uniform format would not seem to be the best solution for this type of reporting. Rather, States could be encouraged/required to include information on

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32 United Nations General Assembly, National legislation on transfer of arms, military equipment and dual-use goods and technology, A/RES/57/66, 30 December 2002.

33 Biological Weapons Convention, Final Document of the First Review Conference, paragraph 2, Article IV, p. 7. The Second Review Conference invited States Parties to continue to provide such information and texts, and the Third and Fourth Review Conferences encouraged all States Parties to provide such information and texts in the future. The Sixth Review Conference encouraged States Parties to provide appropriate information on any such measures they have taken, as well as any other useful information on their implementation, to the United Nations Department [now Office] for Disarmament Affairs. Paragraph 12, Article IV section, p. 11.

certain elements (such as those specified in the box above) in their submission, while the exact format would be left up to each State to decide. In this way, the information exchange would have to follow a kind of checklist but would remain flexible according to the specific situation and needs of each State.<sup>34</sup> In the CCW, this type of information exchange is specified as follows:

The High Contracting Parties will provide information to the Secretary-General in advance of the Meeting [Meeting of the High Contracting Parties], which will be circulated by the Secretary-General to all the High Contracting Parties, on any of the following matters:

- (a) Dissemination of information on the Convention and its annexed Protocols to their armed forces and to the civilian population;
- (b) Steps taken to meet the relevant technical requirements of the Convention and its annexed Protocols and any other relevant information pertaining thereto;
- (c) Legislation related to the Convention and its annexed Protocols;
- (d) Measures taken on technical co-operation and assistance; and
- (e) Other relevant matters.<sup>35</sup>

#### *Statistical reporting on arms transfers*

In order to be effective, an ATT should, in addition to establishing reporting on steps taken to implement an ATT, require/recommend States to report on their control activities undertaken as part of the Treaty, i.e. transfers undertaken/licenses granted (imports, exports, transits) under an ATT, meaning the actual statistical data related to these transfers. One of the basic decisions to be taken about what to report on relates to the point at which information should be collected and shared: whether States should report on arms transfer licenses granted (and/or denied) or actual transfers that have taken place during the reporting period (for instance the previous calendar year). Most advocates of national reporting seem to prefer exchanging information on licenses rather than transfers. This is substantiated on one hand by the political decision behind granting/denying a license as forming the basis of an ATT's *raison-d'être* and on the other hand by difficulties relating to the collection of concentrated data on actual arms transfers. To ensure relevant and comparable reporting, a decision will have to be made in favor of either licensing reporting, transfer reporting or a combination of the two. In any case, mixing the two systems, whereby some countries would report on licenses and others on transfers, would make it very difficult to compare and follow transfers, as licensing and corresponding deliveries do not always take place within the same year or even the years immediately following the license.

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34 While also recommending information exchange on national implementation efforts, Holtom and Bromley propose that "due to the concerns -- regarding the provision of inadequate information concerning transfer control systems, a standardized reporting form could also be drafted for the one-off report on the transfer control system". Holtom, Paul – Mark Bromley 2011: *Implementing an Arms Trade Treaty: Lessons on Reporting and monitoring from Existing Mechanisms*, SIPRI Policy Paper 28, July 2011, p. 35.

35 Final Report of the Third Review Conference 2000, Annex II- *Decision on a Compliance Mechanism Applicable 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*, Paragraph 5, p.16.

Ideally, an ATT should include reporting on both granted and/or denied licenses and actual transfers.

As noted above, reporting on licenses would provide information on how States are implementing the Treaty and following its parameters, as licensing decisions essentially follow on from States' implementation of the Treaty's transfer criteria. This would probably also be the easier reporting requirement for States to fulfill, as governments typically keep reasonably good records on licensing decisions. However, an equally important and complementary aspect of information exchange would be reporting on actual transfers. Firstly, because deliveries based on one licensing decision can be broken down to separate batches of deliveries, which can take place over an extended period of time (over one or more reporting phases). Secondly, despite having been approved, actual deliveries of items might not necessarily transpire. There can be several reasons for this, including changed political circumstances in the recipient country or various commercial considerations. While licensing decisions are relatively well recorded and centralized, it might prove more challenging for States to keep comparable and aggregate records on actual deliveries. For example, the experience of the EU in annual reporting on arms exports has shown that it is easier for States to produce information on licenses granted than on deliveries, where information is not always centrally maintained but rather depends on individually collected customs data. Separate reporting could of course be added on an ad hoc basis, for example in cases where a previously granted export license has been revoked or cancelled due to changed circumstances in the recipient country or other factors. However, given the goal of transparency and the reasons given for it, the most comprehensive solution would be to include systematic reporting on both licensing and actual transfers in an ATT.

If licenses were to be included in reports, the specific details of these which should be included in national reporting, and whether reporting should follow an agreed-upon general or detailed format, are also still under discussion. In their submissions to the UN Secretary-General in 2007, States proposed a wide range of elements which could or should be incorporated into reported licensing information, including:

- the identity of the recipient or end-user;
- the quantity of arms transferred;
- the type of arms transferred;
- the value of the transfer;
- the age of the arms transferred (e.g. new or second-hand);
- the identity of the source or supplier (e.g. manufacturing company, surplus government stocks);
- the identity of the broker or intermediary (where applicable);
- details of all licences granted in association with the transfer (including export, transit and import licenses);

- the nature of the transaction (e.g. sale, loan, commercial, non-commercial, private or public, conversion, repair);
- the intended use of the arms (e.g. for national police forces);
- the date of the transfer; and
- details of the delivery of the arms (including the methods of transport; customs references; the dates of departure, transit and delivery; and the identity of transporters involved in the delivery) .<sup>36</sup>

Civil society organizations are generally calling for quite extensive and detailed mandatory reporting on arms transfers, which would closely reflect ATT obligations regarding both the types of weapons and types of transactions that are to be controlled, and specific numbers of licenses, types of equipment, destinations, values and other details through a uniform reporting format.<sup>37</sup> While this would undoubtedly in many ways be the ideal and maximalist solution from the perspective of public transparency, it is unlikely to be universally accepted or applied due to the legitimate security concerns and commercial interests of those involved. Hence a more viable solution seems to be the exchange of some form of aggregate data on licenses issued, possibly specifying the types of weapons, total values and destinations. For example, the US issues about 85,000 licenses annually – to report on each and every one of these would probably not serve the purpose of the ATT’s reporting mechanism. Some kind of aggregation of data will therefore be needed. In addition, the exchange of information on transfers would provide valuable information about real-life transfers and trends and about the practical implementation of an ATT. However, it remains to be seen how the statistical reporting on licenses and deliveries could be implemented to keep the transparency mechanism relevant but not too burdensome or risky from the point-of-view of national security concerns.

Contrary to reporting on national implementation efforts, the adoption of some kind of common reporting format to facilitate reporting on the statistical aspects of an ATT’s implementation seems pertinent. A common reporting format would likely make it easier for States to submit reports, provided that the requirements regarding its details are not too onerous. For example, in terms of types of weapons transferred, the reporting format could follow the categories of items listed under the scope of an ATT. Alternatively it could be left up to States to decide which categorization to use, as long as the categories are explained in conjunction with the report. The latter might prove more resource-efficient for many States already submitting reports to other multilateral instruments or arrangements (for instance EU reporting according to the EU Common Military List, or Wassenaar reporting according to its control lists). However, it would make it more difficult to compare the submitted data. Indeed, one advantage of utilizing a common reporting format is that it would ideally simplify the comparison of data provided by States and enable better identification of trends over time. Examples of common formats can be found in many related international and regional instruments, and their utilization as a basis or an inspiration for an ATT’s reporting system should be further examined.

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36 Parker, Sarah 2008: *Implications of States’ Views on an Arms Trade Treaty*, Geneva: United Nations, pp.41-42.

37 See for instance Amnesty International 2011: *Our right to know: transparent reporting under an Arms Trade Treaty*, accessible at <http://www.amnesty.org/en/library/asset/ACT30/116/2011/en/c6a0310e-81fa-47eb-be10-87e596823f16/act301162011en.pdf>, last accessed 07 July 2011.

At a minimum, States should exchange data on licenses granted, indicating what transactions have been authorized, for the transfer of which weapons, in what quantity, to which recipients and for what end use. Ideally, this should be combined with reporting on actual deliveries, where similar details would be provided.

As is the case with most aspects of the Treaty currently under consideration, the aspects of scope and implementation are also linked – the details of the Treaty’s future reporting mechanism will depend on the final decision on which weapons, equipment and activities it is to cover. However, reporting and transparency should not be confused with or understood as implementation of the Treaty itself. For example, many countries have raised concerns about the inclusion of ammunition in an ATT’s possible reporting mechanism. There are two main reasons for this. Firstly, the volume of ammunition transferred is many times that of weapons and equipment. Secondly, as ammunition is a consumable good it is the real fuel of strategic attacks and warfare. Therefore some States have argued that revealing the volume and other trends of ammunitions transfers would render their security strategies vulnerable. Similar concerns have also been expressed with regard to reporting on technology transfers (or licensed production overseas) and transfers of parts and components. These are no doubt valid concerns, and should be addressed in an ATT. However, implementation of the Treaty should again not be confused with its transparency mechanism.

Due to the wide variety of options available for national reporting and other transparency measures under an ATT, a viable option would be to include different transparency requirements for different types of weapons and/or transfers in the Treaty. Information deemed particularly sensitive for national security reasons or due to commercial considerations could be exempt from an ATT’s reporting requirements, or information exchanges on these items or activities could be more limited than on others. Claiming that a category of weapons or equipment should not be included in a Treaty because of its limited transparency potential is insufficient to justify its complete exclusion. For example, States could undertake to annually report the aggregate numbers of licenses (type of transactions, numbers, value, destination, end-use, etc.) for certain categories of weapons and more limited totals or general statistics on others, such as ammunition (for example only the total number of licenses issued). This approach – while a sacrifice in terms of full transparency – might help strike a balance between openness on the one hand, and national security and commercial concerns on the other.

Similar adjustments might have to be made with regard to reporting on exports vs. imports of weapons falling under the auspices of an ATT. This might prove challenging as an ATT is intended to be not only an export control Treaty, but rather a universal instrument covering all types of transfers of arms and all States, regardless of whether these are mostly importing or exporting States, or involved in trade through transit or brokering activities. Therefore one could argue that both export and import data, as well as data on transfers should be included in an ATT’s reporting instrument. However, some concerns have been raised citing the strategic significance of import reporting, where it has been noted that detailed reporting on imports could reveal more about national defence capabilities than deemed acceptable, especially to small importing States.

To balance between transparency needs and national security concerns, reporting on certain items, such as ammunition, technology transfers and parts and components, could be more limited/aggregated than information exchanges on other types of weapons and activities under the auspices of the ATT.

In addition to the possibility of differentiated reporting on different items or activities falling under an ATT, another much discussed issue is the possible reporting on denied licenses.

Even in initial submissions of their views in 2007, many States already called for the exchange of information on international transfers which had been denied, including:

- the identity of the requesting party or state;
- the quantity of arms requested;
- the date of the request;
- the reasons for denying the transfer; and
- other related information.<sup>38</sup>

These suggestions were reflected in the June 2011 version of the Chairman's draft paper on the ATT, in which it was suggested that under an ATT, "States Parties shall notify the States involved in a denied transfer, as well as the Implementation Support Unit of authorizations refused - - in written form no later than 30 days after the denial".<sup>39</sup> These denial notifications would have to contain, at a minimum, information about the arms denied, the intended recipient and end-user; and the basis on which the decision to deny the transfer was made. While many states are strongly advocating the inclusion of denial reporting as an important transparency measure, strong doubts have been raised. It seems that States opposed to denial reporting are most commonly concerned about its potential political/reputational effects on States whose transfers are denied, as well as the possibility that information on denials could be used by others to undercut deals and profit from another State Party's more restrictive policies. It has also been noted that previous examples of denial reporting, within the EU or the Wassenaar Agreement for instance, are all within supplier groups and are not universal in coverage. Following these comments, the articles referring to denial reporting were modified in the 13 July 2011 revised version of the Chairman's paper, where it was suggested that States keep record of denied transfer applications and "when considering a potential transfer denial - - are encouraged to consult with each other in order to take into account any relevant information to allow the recipient the opportunity take any necessary measures to avoid a denial of transfer", but reference to denial reporting was removed.<sup>40</sup> The issue of denial reporting continues to appear in States' interventions on an ATT, and it is undoubtedly an issue that will require further elaboration.

It has been suggested that before authorizing any transfers, States Parties should always check that no transfers which are essentially identical to those on which it has received

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38 Parker, Sarah 2008: *Implications of States' Views on an Arms Trade Treaty*, Geneva: United Nations, pp.41-42.

39 Chairman's draft paper on implementation, June 2011.

40 Chairman's revised draft paper on implementation, 13 July 2011.

a refusal notification under the terms of this Treaty are authorized. If such denied transfers exist, the State Party that refused the transfer should be consulted and any information or reasons provided for the refusal should be taken into account. Hence information exchanges on denials would form part of a consultancy mechanism rather than a reporting system. This process could also enhance common rules, as the timely sharing of information on a denied transfer authorization by any one ATT member would help ensure that the same transfer is not authorized by another ATT party. It has further been suggested that States could provide aggregated information on denied licenses in their annual reports on arms transfers, and possibilities to develop this information exchange could be later taken up by follow-up meetings or review conferences.<sup>41</sup> Alternatively, reporting on denials could be included as a voluntary measure at first, with the possibility of developing it into a mandatory element at a later stage.<sup>42</sup> This seems to be the most feasible solution to the question of denial reporting.

Reporting on transfer license denials could be included as a voluntary measure at first, with the possibility of developing it into a mandatory element at a later stage.

#### **Why COMTRADE may be an unsuitable basis for reporting<sup>43</sup>**

The United Nations Commodity Trade Statistics Database (UN COMTRADE) is an electronic database hosted by the UN Statistics Division, which brings together reports from over 170 reporting States on their annual international trade statistics data detailed by commodities and partner countries. This data also includes arms and ammunition categories. The data in COMTRADE is presented in a standard format with consistent coding and valuation. The UN COMTRADE is the largest depository of international trade data, and contains well over 1.7 billion records from over 45 years.

While it might sound both feasible and resource-efficient to use COMTRADE as the basis for reporting under an ATT, the system also has some serious shortcomings, because of which it would not be sufficient or suitable as the sole reporting system or database to follow the implementation of an ATT.

First, as with other related instruments such as the UN Register for Conventional Arms, COMTRADE was developed for a very different purpose to that of an ATT's information exchange mechanism. It is primarily a *trade* and *customs* database, and information is submitted and classified according to this purpose.

Further, though quite detailed, the categories of items listed in COMTRADE are not uniform with those developed in regional or international conventional arms instruments, so they do not always provide the necessary information about items, nor do they provide correct classification of items to be suitable for an ATT.

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41 Holtom, Paul – Mark Bromley 2011: *Implementing an Arms Trade Treaty: Lessons on Reporting and monitoring from Existing Mechanisms*, SIPRI Policy Paper 28, July 2011, p. 37.

42 Elements, options and challenges of a future Arms Trade Treaty, Report of a residential seminar 21–22 March 2011 Glion, Switzerland.

43 More arguments about the pros and cons of COMTRADE reporting for an ATT can be found in Amnesty International 2011: *Our right to know: transparent reporting under an Arms Trade Treaty*, p.5, accessible at <http://www.amnesty.org/en/library/asset/ACT30/116/2011/en/c6a0310e-81fa-47eb-be10-87e596823f16/act301162011en.pdf>, last accessed 23 September 2011.

Finally, instead of recording licenses granted and/or denied, COMTRADE data only records transfers which have actually occurred. It also only covers the monetary value of transfers, along with the origin and recipient State – data about, for example, the quantity of items transferred, transit States or the end-user within the recipient State are not covered.

The need to agree in advance on the expected nature and level of detail of the possible national reporting system has been widely stressed. Some States have suggested that the reports that would form a central building block in the transparency system of an ATT could, in addition to containing information on licenses and/or actual deliveries, also include the sharing of information that would assist States in their implementation efforts, e.g. data on problematic actors or trade routes, on tracing requests and outcomes, on breaches of the Treaty, or on ongoing prosecutions under relevant national laws.

Information sharing on these aspects, both within States and with external partners, would undoubtedly assist in ensuring the functioning of existing control systems and in identifying possible implementation challenges that might require assistance. Further, it has been noted that national administrative and technical capacities should be considered when developing a transparency mechanism for an ATT and that the varying capacities of States should be taken into account. In this regard, the possibility of regional or region-based reporting to ease the fulfillment of this commitment has also been suggested. Finally, some States have cautioned against a too rigid or expansive transparency mechanism and called for careful consideration of the confidentiality of sensitive information associated with possible reporting.

### **When / how often to report?**

Another basic thing to decide when embarking on an information exchange regime is to agree on how often information should be exchanged. This will naturally depend on many other factors related to the transparency mechanism, such as what information is to be submitted, but it seems logical to argue that frequent reporting would be important in an instrument that deals with numerous, repetitious activities and changing trends, such as the ATT. Following the discussion above, it is suggested that States consider two types of reporting in particular – implementation reporting and transfer license reporting.

As steps taken to implement an ATT (the first suggested type of information exchange) would likely consist of issues such as changes in legislation, administrative structures or national contact points, it does not seem likely that States would have large amounts of changes to report every year. Hence a sensible solution to this information exchange could be to have it as “one-off”: all States parties to an ATT would be required to report on their current implementation structures and other relevant elements within the first calendar year of joining the Treaty (for example by 31 May or 180 days after ratifying the Treaty). After that, reporting on implementation developments would be required whenever relevant, i.e. whenever a States has taken new steps to implement the Treaty or its implementation conditions have changed. This model of “one-off reporting” is used for instance in the Organization of Security and Co-operation in Europe (OSCE), where the SALW Document of 2000<sup>44</sup> stipulates that:

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44 OSCE Document on SALW, 2000.

The participating States will exchange with each other, by 30 June 2001, available information on relevant national legislation and current practice on export policy, procedures, documentation and on control over international brokering in small arms in order to use such an exchange to spread awareness of “best practice” in these areas. They will also submit updated information when necessary.

One-off information exchanges can be criticized mainly because of their irregular/undetermined schedule: after the first round of reporting it will be difficult to construe whether a State which has not submitted further information has taken no new steps to implement the Treaty, or whether it is just not reporting these developments. Absence of an annual deadline and the routine of reporting might also make it more difficult for the relevant officials to remember their reporting requirements and keep the information exchanged updated. One solution to this could be that, should there be an ATT Implementation Support Unit (ISU) or similar arrangement, this body could not only be tasked with the compilation of national reports from States Parties, but also with circulating reminders about upcoming/past information exchanges, including a reference to this standing “one-off reporting” requirement. Depending on the ISU’s capacities, it could also engage with States more directly to discuss their implementation reporting and, for instance, point out possible omissions.

While national implementation modalities of an ATT in its future States Parties are likely to be rather slow-moving, the practical implementation of the Treaty in terms of arms transfer licensing will be a very frequent activity in most States. One benefit of States reporting on their transfer decisions would be to identify trends in the arms trade and be able to react to possible changes in these patterns. Hence to be meaningful, possible reporting on States’ arms transfer statistics would require the establishment of more stringent and frequent deadlines than one-off reporting. A common suggestion has been that information on weapons and equipment transferred under the ATT’s provisions could be exchanged on an annual basis. This appears both sensible and doable.

National reporting on granted and/or denied licenses should be done annually, whereas reports on national implementation efforts could be submitted as one-off and subsequently updated when relevant.

Exchanging information on an annual basis on licenses granted during the previous calendar year would allow for relatively swift monitoring of arms transfer trends and thereby fulfill an important goal of an ATT’s transparency regime. Most States that already produce reports on their arms transfer activities currently publish their data on an annual basis, whether for domestic purposes or under other international arrangements, so annual ATT reporting would conform to their existing practices. In fact, reporting under most other international and regional arms control instruments takes place annually.

Using a calendar year as the basic time period for reporting would seem the most logical option. Given that it takes some time for national authorities to compile and process data on licensing decisions, States could be requested to exchange this information every year by the 31st May, for instance – covering the period 01.01-31.12. of the previous year. Again, this is a model followed by many other instruments and the results have been encouraging. It is also the system used in the UN Conventional Arms Register, where Member States are invited to “communicate by 31 May their reports to the UN Register

on the export and import of conventional arms and additional background information for the previous calendar year.”<sup>45</sup>

Finally, the CWC for instance requires the States Parties involved in the transfer of chemicals included in the Convention to notify the Technical Secretariat of the transfer “not less than 30 days before” the transfer takes place. In this case the information exchange takes place *before* the action occurs, not afterwards, as under the UN Register for example. It is hard to imagine that a requirement or even a recommendation of prior information exchange could be included in an ATT or similar instruments for a multitude of reasons, including both national security and commercial considerations. However, some deadlines to the reporting could be suggested, depending on when licensing decisions have been made. For example, as an alternative to the annual calendar year reporting suggested above, an ATT could require States to report within a certain period after a licence is granted. However, multiplied to apply to all future States Parties this would likely become a more burdensome and complicated/confusing system than sticking to simple, annual reporting by a common deadline.

### **Whom to report to?**

Related to the timing of national reporting is the question of whom States Parties should report to. While it might seem like a self-evident or irrelevant question, it is important as it relates to the goals and objectives of the Treaty. Traditionally, transparency mechanisms and most regional arrangements have been developed for CSBM purposes and hence have been established as instruments *between* States, who have undertaken to exchange information amongst each other/to each other.<sup>46</sup> In their most concrete format, these information exchanges involve the physical sending of reports from one capital to all other ones. Theoretically at least, this type of reporting would not require any additional support or monitoring system, as it would be left to each State to make sure that it had both sent its own report and received reports from others. A network of contact points, when added to the reporting regime, would ensure that missing information could be requested. Despite sounding quite promising, this type of transparency mechanism can in practice prove challenging to implement, especially in a large multilateral context, where exchanges between parties often require multiple mailing and double-checking. Hence multilateral transparency systems in both regional and international fora tend to nominate a central depository for reports, to which all States send their information, which is consequently circulated among all other relevant parties (or made publicly available, for example on the internet). Having a depository for the information would also facilitate the public (or more restricted) availability of all reports in one place, rather than requiring domestic records to be kept by States Parties.

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45 A/RES/46/36 L, “General and Complete Disarmament – Transparency in Armaments, 65th plenary meeting of the UN General Assembly’s First Committee, 6 December 1991, Annex ‘Register of Conventional Arms’, Paragraph 2, Section (c). And put a link to the 2011 UNRCA Factsheet. <http://www.un.org/disarmament/convarms/Register/DOCS/20110201-RegisterFactsheet.pdf>

46 For example under the OAS Convention it is noted that “*States Parties shall exchange among themselves, in conformity with their respective domestic laws and applicable treaties, relevant information on matters such as...*”; and in the OSCE SALW Document, participating States “*will, as a first step, conduct an information exchange among themselves and on an annual basis, not later than 30 June, beginning in 2002, about their small arms exports to, and imports from, other participating States during the previous calendar year. The information exchanged will also be provided to the Conflict Prevention Centre (CPC)*”. Stress added by the author.

Usually in the UN context, and also for example in the Ottawa Convention, States are recommended or requested to submit information to the UN Secretary-General.<sup>47</sup> In practice, this usually means that national reports are sent to the designated body within the UN Secretariat or an independent ISU, which functions as the Secretariat of a Treaty or an Agreement.<sup>48</sup> For example, the UN PoA tasks the UN SG directly with the circulation of information and refers only indirectly to States' responsibility to submit national reports. In the PoA, States undertake "to request the Secretary-General of the United Nations, within existing resources, through the Department for Disarmament Affairs (now ODA), to collate and circulate data and information provided by States on a voluntary basis and including national reports, on implementation by those States of the Programme of Action".<sup>49</sup>

Depending on what implementation support mechanisms will be included in the future ATT, it may be advisable to follow the model of an ISU/Secretariat as a depositary for information exchanged through national reporting. The specific tasks of the ISU in this regard (circulation of exchanged reports/compilations; issuance of reminding letters; posting information online in public or restricted fora, etc) could be specified in the Treaty itself or possibly determined during follow-on meetings convened to discuss the modalities of implementation support.

Finally, related to the question of the intended recipients of the information exchanges is the issue of open or restricted reporting – should the elements of an ATT's transparency mechanism be made publicly available so that national implementation measures and arms transfer trends, for example, could be freely accessed on the internet, or should they be solely for use by States Parties? Examples of both types of information exchanges can be found in existing regional and international instruments. All data submitted to the UN Register of Conventional Arms is public and available on the internet for all interested parties to consult.<sup>50</sup> On the other hand, information exchanges on SALW within regional organizations such as the OAS and the OSCE, for example, are restricted and for the use of participating States only. Under a separate article on "Confidentiality", the OAS Convention leaves both options open, depending on States' wishes: "the States Parties shall guarantee the confidentiality of any information they receive, if requested to do so by the State Party providing the information. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure".<sup>51</sup> Also the BTWC maintains a secure

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47 Under "transparency", the Ottawa Convention states that "Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party on...". And "The Secretary-General of the United Nations shall transmit all such reports received to the States Parties". Information exchanged includes both national implementation measures and statistical data on stockpiled and destroyed anti-personnel mines.

48 The UN Office for Disarmament Affairs is the Secretariat for the implementation of the UN Programme of Action on Small Arms and Light Weapons, the UN Conventional Arms Register, and the Military Expenditures. ODA collects national reports submitted by States and – according to its mandate – posts them online for public transparency. In the BTWC, the ISU, which was established inter alia to support the Convention's implementation, is also tasked with the collation and circulation of data between Member States.

49 UNPoA, Sec. II, para. 33.

50 Also this information exchange was originally meant to be restricted for the use of States only.

51 OAS Convention, Art XII.

website on CBM information that is administered by the ISU and accessible only to the States Parties to the Convention.

In the case of an ATT, a decision on open or restricted information exchanges will depend on the information that will be exchanged, its details and level of sensitivity. While some have raised the possibility of including an information exchange under an ATT that would be available only to States Parties to the Treaty, or even to a more limited number of States, depending on the issue in question, most States seem to see national reporting under an ATT as a public exercise and would rather make submitted information accessible to all interested parties. As a general approach to the information exchange mechanism this seems to be the most straightforward and logical procedure. Many States already place their national transfer decisions under domestic scrutiny in their parliaments, and statistical data on transfers of conventional arms are also widely available on the internet via the UNRCA, COMTRADE and independent databases.

Reporting on both national implementation efforts and actual licenses/transfers should be public and made available on the internet.

A stronger argument than the restriction of public knowledge about arms transfers, but supporting restricted reporting, could be the utilization of a restricted information exchange mechanism as an incentive for States to join the Treaty. If some information were to be exchanged only amongst the parties to a Treaty and were unavailable to States outside the Treaty, new members might feel more inclined to join and participate in the transparency mechanism. However, this would require the Treaty to include deeper/different types of information exchanges than currently under discussion. While the natural way forward at this stage will likely be the submission of reports to an open forum, the possibility of including further, more restricted, thorough and tailored information exchanges between States Parties should not be completely overlooked.

### **Compulsory or voluntary reporting**

One further crucial point to be decided in an ATT's transparency mechanism will be the nature of the reporting: will States parties to the Treaty be *required or obliged* to exchange information, or will the information exchange be made voluntary through an *encouragement or recommendation* to submit information. Examples from current transparency regimes vary from voluntary encouragements to obligatory standardized reporting. As in most other issues relevant to an ATT's information exchange, this aspect should not be seen as "either-or". While it would naturally be the most straightforward way to decide that all information exchanges between States Parties are to be uniform and obligatory for example, this might raise reservations with some States. Hence more detailed/divided reporting requirements could be considered. For example, building on the text above about the different types of information exchange and their frequency, States could decide that the first one-off submission of national implementation measures and provision of annual aggregate statistical data on arms transfers (according to specified rules) would be obligatory to all States parties, while the submission of updates or the provision of additional data, such as detailed information about the numbers and values of licenses granted and/or denied, would remain voluntary.

For example, in its resolution of 2002 on "National legislation on transfer of arms, military equipment and dual-use goods and technology" the General Assembly "*encourages*

Member States to provide, *on a voluntary basis*, information to the Secretary-General on their national legislation, regulations and procedures on the transfer of arms, military equipment and dual-use goods and technology, as well as the changes therein, and requests the Secretary-General to make this information accessible for Member States”<sup>52</sup> (emphasis added by the author).

On the other hand, information exchange under the Ottawa Convention is mandatory to all States Parties, who “undertake to provide information to the database on mine clearance established within the United Nations system, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance” and a range of other measures, such as national implementation efforts, total of stockpiled mines with details, location of mined areas, destroyed mines, and status of mine-clearance programmes. The information provided must be updated by the States Parties annually, covering the last calendar year, and reported to the UN SG no later than 30 April of each year.<sup>53</sup> The Convention also includes voluntary exchanges added in its later revisions, covering information not included in its compulsory reporting and pertaining to, among other things, assistance provided in mine clearance, and the rehabilitation and socio-economic integration of mine victims.

### **What to do with the reports?**

Should an ATT include transparency provisions in the form of public national reporting, it would quickly assemble a considerable body of new data on arms transfers which would become available not only to States but international organizations, research institutes and civil society actors.

If public reporting were to be required or encouraged under an ATT, an ISU (if established) could be tasked with producing a review or assessment of the reports submitted by States to assess compliance and/or to identify trends and developments in the international arms trade. In this, the model of reporting under the UN Security Council Resolution 1540 in particular has been mentioned as potentially useful, as it includes a follow-up system whereby the Secretariat (or for example an ISU under an ATT) can request updated or more detailed information from States after their initial submission.<sup>54</sup> The level to which an ISU would be involved in compiling, analyzing or assessing the data submitted by States will naturally depend on the resources that an ATT’s States Parties are willing to commit to such a Unit, but it seems like a path worth pursuing.

An Implementation Support Unit could be tasked to produce statistical overviews or analyses of the information submitted by States through the national reporting mechanism.

In any case, should the information submitted by States be made publicly available as suggested in the sections above, civil society organizations such as NGOs and research institutes are likely to be active users of the information and will probably produce their

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52 A/RES/57/66

53 Ottawa Convention, Articles 6 and 7.

54 Holtom, Paul – Mark Bromley 2011: *Implementing an Arms Trade Treaty: Lessons on Reporting and monitoring from Existing Mechanisms*, SIPRI Policy Paper 28, July 2011, p. 35.

own analyses and commentaries on the national reports submitted by States. However, being outside the UN system and independent of the Treaty's implementation mechanism, these analyses would be outside States' control, whereas reports or compilations provided by the ISU could be submitted for further discussion in meetings of States Parties or in other fora, and their objectivity could thereby be monitored by the States Parties.

### **Overcoming problems of inadequate capacity and reporting fatigue**

As can be seen from existing regional and international reporting mechanisms, one of the central challenges faced by such information exchange systems is the level of participation; so far no instrument has managed to achieve the full participation of its members in reporting, and references to problems in complying with reporting obligations are common whenever issues of information exchange are discussed. Several reasons for less-than-universal participation in different reporting instruments have been identified. These include lack of political will, political or security concerns, lack of awareness, reporting fatigue and inadequate State capacities, to mention just a few.<sup>55</sup>

Issues such as perceived security concerns or a possible lack of political will to participate in information exchanges are difficult to tackle and should be both taken into account when designing transparency measures and considered on a case-by-case basis during the implementation phase. Somewhat easier challenges to encounter are inadequate or missing reports that are a result of lack of awareness about the reporting requirements, as these can be largely overcome by different awareness-raising efforts by other States, civil society organizations or the regimes themselves. In previous years, for example the PoA has managed to gain quite good levels of reporting, undoubtedly thanks to a variety of measures such as regional and international seminars, national-level consultations, and information packages and reminder notices sent out by the Secretariat and the Chairpersons of the BMSs.

An additional challenge to reporting is related to States' limited capacity to both collect information and to submit it to different regional and international fora. This is most often referred to as an issue for small island states and developing nations, but has also been identified to be a problem in industrialized States, which for example in the case of conventional arms transfer reporting often have a large number of various activities to record and to disseminate. In these instances, inadequate capacities are often linked to or made more acute by multiple different types of reporting requirements, which can result in reporting fatigue among personnel responsible for answering to different transparency instruments.

In addition to the risk of overburdening the officials responsible for reporting with multiple information exchanges, States also tend to face additional challenges when it comes to national information exchange and inter-agency coordination. While the priority issue for small States may be to ensure that there is enough personnel to deal with transparency requirements, problems with inter-agency coordination are acute especially in large bureaucracies with multiple offices and Ministries dealing with for instance issues related

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55 See for example Cattaneo, Silvia – Sarah Parker 2008: *Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Analysis of the National Reports Submitted by States from 2002-2008*, Geneva: United Nations, p. 133-136; and Holtom, Paul – Mark Bromley 2011: *Implementing an Arms Trade Treaty: Lessons on Reporting and monitoring from Existing Mechanisms*, SIPRI Policy Paper 28, July 2011, pp. 20-25.

to arms transfers. In reporting instruments such as those potentially foreseen for an ATT, information will have to be gathered from several government departments and subsequently compiled by one central body (for example the Ministry of Foreign Affairs) into a national report. This is likely to pose challenges to many States, in terms of both the timing of the reporting and its format.

Whereas lack of capacity can be quite effectively addressed by consultations and meetings, lacks of capacity, coordination challenges and reporting fatigue require more from the information exchanges themselves: how to develop transparency mechanisms that are not too cumbersome to comply with, do not duplicate other exchanges, but still provide enough information to serve their purpose? In this regard it has been suggested that consolidation of reporting commitments with other international regimes should be considered. However, the means of how exactly this could be done have not been fully explored.

Mindful of the concrete risk of reporting fatigue, which has negatively affected the frequency and quality of reporting in several transparency systems, many States have also advocated the creation of a clear format for ATT reporting, which would possibly develop synergies with similar mechanisms without necessarily consolidating or merging the systems themselves.<sup>56</sup> Indeed, standardized reporting templates have been noted to greatly assist States with compiling and submitting reports.<sup>57</sup> From a practical point of view, such synergies would also appear logical, as institutions tasked with ATT reporting will most likely also be tasked with other types of information sharing (UNROCA, Programme of Action on small arms). In this, one could imagine a unique reporting model to be submitted within different transparency frameworks, but many have also underlined the potential problems of such an approach. Especially the links between UNRCA reporting and information exchange(s) under an ATT have received particular attention and raised valid concerns. While some have advanced some kind of merging of the two instruments, more compelling arguments have been made for keeping the two systems separate, when the ATT's reporting system enters into force, not least because of the different goals and purposes of the two instruments.<sup>58</sup>

The possibility of electronic reporting could perhaps already be examined in the development phase of an ATT information exchange system. In some other instruments, such as UNRCA, this avenue has been explored in recent years with quite encouraging results. However, it must be kept in mind that even electronic reporting cannot solve all problems related to compiling reports, especially in cases where the required information must be gathered by and from several government agencies and multiple individuals.

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56 See for example reports from the regional seminars organized as part of the EU-UNIDIR project on "Supporting the Arms Trade Treaty Negotiations through Regional Discussions and Expertise Sharing", available through [www.unidir.org/att](http://www.unidir.org/att).

57 Holtom, Paul – Mark Bromley 2011: *Implementing an Arms Trade Treaty: Lessons on Reporting and monitoring from Existing Mechanisms*, SIPRI Policy Paper 28, July 2011, p. 25.

58 Among reasons for keeping the two instruments separate, their different participation base (UNRCA as global and an ATT, at least in its inception, more limited) and scope (an ATT's scope in terms of weapons and equipment transfers is likely to be wider than that of UNRCA) have been mentioned. See Holtom, Paul – Mark Bromley 2011: *Implementing an Arms Trade Treaty: Lessons on Reporting and monitoring from Existing Mechanisms*, SIPRI Policy Paper 28, July 2011, p. 33.

Further, as noted in the section on statistical information exchanges, it is likely that not all ATT States Parties will transfer weapons falling under an ATT every year or other period falling within its reporting cycle. To address the burden of those States which have nothing to report but at the same time ensuring that the ATT fulfils its transparency goals, it is recommended that “nil reporting” be made possible in cases where States have no arms transfer to report on for the reporting period in question. This practise has been used with good results in other instruments and could easily be incorporated also in the ATT to help States to report.

Nil reporting should be allowed as a way to fulfil one’s Treaty obligations in cases where no activities falling under the remedies of the Treaty have taken place.

Also some kind of guidance documentation, such as a “User’s Guide” (used for example by the EU in its reporting system), could be developed and its voluntary utilization encouraged. The development of such documents would most naturally fall in the hands of an ATT’s States Parties, and while they would not have to be formally approved with consensus or other procedure, it would seem logical that these guides be subjected to discussion at the periodic meetings of States, where they could also be updated when necessary. The distribution of such documents and any possible follow-up dissemination or awareness-raising could be foreseen as a task for the ISU.

It seems advisable that the future ISU, should an ATT establish one, would also be tasked to provide assistance to States in improving their compliance with the Treaty’s transparency regime. As noted, this could take the form of awareness-raising workshops, but also inter alia:

- National consultations
- Permanent Help Desk for reporting enquiries
- Reminder / information letters
- Technical workshops for national contact points on report-writing and submission

### **Other possible forms of information exchange**

Building upon arguments made in the section above, the exchange of information about assistance capabilities and needs will undoubtedly be an important element of the transparency mechanism for an ATT. These assistance requests and offers are most often communicated by States through the national reporting mechanisms of different instruments, or undertaken bilaterally without the involvement of the instrument’s general secretariat, implementation body or regular meetings. National reporting in other instruments such as the PoA has shown that while some States use this forum actively to inform others about their assistance needs or resources available to support capacity-building in other States, reporting under “matching needs and resources” leaves much to be desired. For example in the PoA, States are currently encouraged to report on a biannual basis, in conjunction with the Biannual Meetings of States (BMS). Reporting normally covers information from the previous calendar year. Assistance needs in States can emerge quite quickly compared to this reporting cycle, and developments, for example in terms of granted technical or financial assistance, often occur in between reporting

periods. Hence it seems that information provided in the national reports often tends to be either very general or outdated by the time of circulation (and the receipt and reaction of partner States). To overcome this challenge, the UN is developing an electronic Implementation Support System (ISS), where representatives of States, international and regional organizations and civil society can highlight assistance resources and needs in real-time. Through its network of contact points the system also allows for interested parties to make immediate contact and take assistance programmes forward. The system is still at its early phases of functioning, but the results so far are quite promising. It might make sense to explore similar avenues (even through an extended ISS system for an ATT?) under an Arms Trade Treaty.

Instead of attempting to match needs with resources through national reporting, States could be encouraged to indicate their needs or willingness to lend support online, or with the facilitation of the Implementation Support Unit functioning as a clearinghouse. Depending on the tasks to be assigned to a possible ISU, it could also proactively remind States of the system of “needs and resources” –information exchange and build the capacity of Parties to join and use the database.

Another issue not to be forgotten in relation to information exchanges and national reporting is the possibility of developing the transparency regime of an ATT over time: if time or current differing views about a desirable and implementable reporting mechanism do not allow for the establishment of a detailed, standardized obligatory regime, future development of measures should be left possible, for example through discussions at the Meetings of States Parties. Again, examples of developing transparency regimes over time can be found in regional and international spheres. For example the UNRCA, when it was first established, was designed to be implemented in two stages: in 1992-1993 governments were to report on their arms exports and imports only. In the second stage beginning in 1994, a possible expansion of the Register was to be considered to satisfy those countries that had argued for more comprehensive coverage from the start, including reporting on domestic arms production and holdings. Issues such as technology transfers and WMD reporting were also due to be considered for inclusion during the second stage of the Register’s implementation. Though these expansions still await actual inclusion, this example shows that an evolutionary approach to information exchanges can and has found application.

Even meetings themselves can be considered a transparency measure in a particular process.<sup>59</sup> However, though recognizing that consecutive, frequent meetings and conferences alone can also advance transparency by establishing a channel for exchanges of information, clauses on one-off, or more commonly annual or otherwise continuous information exchanges, are customary means to ensure compliance in international cooperation.

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59 See Robert Jervis, who in his article discusses mechanisms for controlling exploitation in international processes, and refers to the frequent meetings under the Concert of Europe as a function of increasing transparency. Jervis, Robert 1986: *From Balance to Concert: A Study of International Security Co-operation*, in Oye, Kenneth A. (ed.) 1986: *Co-operation under Anarchy*, Princeton New Jersey: Princeton University Press, pp. 58-79.

## **Network of contacts**

In addition to, or most often as part of suggestions concerning the desirable way of national reporting, most States seem to be in favour of an ATT establishing a network of individuals/departments working on conventional arms transfer controls across different countries. Following the example of many disarmament and arms control agreements, an ATT could establish a network (list/database) of National Contact Points (NCPs) for the provision and receipt of information and requests pursuant to issues relevant to the Treaty's implementation. These NCPs should be individuals or preferably institutional bodies that will implement an ATT both internally – through domestic coordination of policy implementation – and in the context of international cooperation and information exchange – at both bilateral and multilateral levels. Information about NCPs (for example telephone, fax and email, postal address and contact personnel) could be submitted either separately or as part of a possible national reporting system to the ISU. This would compile the information and maintain and distribute the contacts of responsible bodies of States Parties either amongst Treaty members or – more usefully – publicly via the Internet. The network of NCPs should be regularly updated in order to stay functional, and hence States parties should be required to notify the ISU as soon as possible about any changes in their NCP. While not as rigid/explicit as a requirement to submit this information on a biennial or even quarterly basis, this method would save paperwork and unnecessary double-checking of data by both States parties and the ISU. To make sure that updates are not forgotten, the ISU could be tasked to periodically remind States about their information exchange requirements, and States could also be encouraged to notify the ISU if they encounter any difficulties in getting in touch with an NCP.

## **Consultation mechanism**

As a means to increase transparency and dialogue in an ATT's implementation, it has also been suggested that the Treaty could establish a consultation mechanism between importing and exporting States. This would be a practical system that would help the parties to an ATT make better-informed transfer decisions by linking all relevant actors under the common umbrella of an ATT and encouraging networking with colleagues, both domestically and abroad. It has been noted that through a consultation mechanism, potential politically unpleasant cases of transfer denials may be avoided as a pre-licensing dialogue would create more transparent and mutually supported communication structures. States that mainly import weapons have in particular called for a more thorough and regular information exchange as part of transfer talks which, as a norm-setting document, an ATT could support and strengthen. It has also been pointed out that a pre-authorisation/delivery dialogue would be more efficient and politically sustainable than a formal platform of post-transfer consultations or dispute settlement.

While the Treaty's main elements such as transfer criteria will already have to be defined at an early stage in the negotiations, a follow-on system of consultations and dialogue could help develop its norms de facto by creating supporting guidelines and through establishing good and acceptable practise. Generally, all States seem to support the encouragement of bilateral consultations among trade partners throughout the transfer process, and whatever an ATT could do to facilitate such relations would probably be most welcomed by all. This model is already followed by the Ottawa Convention for example, according to which, under "Facilitation and clarification of compliance", States

Parties “agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention, and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.”

### **Peer review mechanism**

It has also been suggested that the transparency mechanisms of an ATT could be supported by a peer review mechanism, following the example of the Human Rights Council. In a peer review system, all ATT States Parties would in turn be subjected to a review by other States, which could pose questions and request clarification regarding the national implementation efforts of the reviewed State. This peer review could also be combined with national reporting. In this system, the submitted information would be made subject to enquiries and requests for clarification in a peer review meeting. A softer version of such a review could be the utilization of biannual meetings of States parties as the forum for discussion on national reports and statistical data submitted by States. The Ottawa Convention for instance uses this kind of information exchange and questioning, even though questions are submitted to the Meetings of States Parties only as a secondary measure. In the first place, “if one or more States Parties wish to clarify and seek to resolve questions relating to compliance --, it may submit, through the Secretary-General of the United Nations, a Request for Clarification”, which then has to be replied to, through the UN SG, within 28 days. Similarly, a State Party that receives a Request for Clarification shall provide, through the Secretary- General of the United Nations, within 28 days to the requesting State Party all information that could assist in clarifying this matter. It is only in cases where this reply is not provided within the deadline that a State can submit the matter to the regular Meeting of States, or a Special Meeting of the States Parties, where it will be open to all and the State to whom the request has been submitted has the right to respond.

### **Dispute settlement**

Finally, it has also been suggested that in order to be effective, an ATT should have some kind of formal mechanism whereby contested issues and problematic cases could be taken up. According to this view, a mere informal system of dialogue, consultations and questioning might not be enough to ensure that States Parties will act in the spirit of the Treaty and that transfer decisions are made objectively and solidly. It seems that a sort of dispute settlement, should it be included in an ATT, would be the last resort in cases where informal consultations and bilateral talks lead to no conclusion. It could provide a platform where concerns or dissatisfaction beyond single transfers could be raised in a public forum. While this type of mechanism has also raised some vocal criticism, it would not be the first of its kind in disarmament or arms control instruments. Again, the Ottawa Convention gives a possibility for dispute settlement in its Article 10, where disputed cases can be brought forward at the Meeting of the States Parties, through “whatever means it deems appropriate, including offering its good offices, calling upon the States parties to a dispute to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure”.

The sovereign right of every state to decide whether it will grant or refuse licenses can hardly be contested, and will not be changed by an ATT. This is also one of the primary

reasons put forward against having a formalized forum to contest denied transfer licenses or other problematic cases.

## Record-keeping

An important element of an ATT's implementation related to transparency will be national-level record-keeping. In order to be able to report on their transfer licenses, respond to questions from other States and ensure well-informed and logical transfer control policies, States Parties under an ATT should maintain records of their arms authorizations, transfers and denials, no matter whether the arms have been exported, imported or transited via their territory. While the exact system and format of the records can be decided upon by States themselves, common elements to be included in the system could include, *inter alia*, information on the type of arms or equipment transferred, their quantity, value, recipient, transit State(s), end users, and other significant details, wherever relevant. In order for the records to remain useful and reliable, they should be kept in an electronic, centralized database, and maintained as long as possible, though at least 10-15 years. Again, examples of wording for the establishment of similar national systems can be found in other, related instruments. For example, within the OSCE's SALW regime, "participating States will ensure that comprehensive and accurate records of their own holdings of small arms, as well as those held by manufacturers, exporters and importers of small arms within their territory, are maintained and held as long as possible with a view to improving the traceability of small arms."<sup>60</sup>

## Summary / conclusions

The possible transparency mechanisms that could be included in an ATT are amongst the most discussed issues when States discuss the Treaty's future implementation. Several views have been expressed as to what information exchanges would be necessary for the Treaty, as well as what information should *not* be required to be publicized. While the format and types of information exchange to be included in an ATT will largely depend on the future Treaty's scope, parameters and other elements, simultaneous considerations on the transparency functions of an ATT are of crucial importance. The balance between ensuring that States' national security concerns are met and that an ATT will be effectively implemented and monitored, is undoubtedly one of the key issues to be further elaborated before the July 2012 negotiations.

This paper discussed the issue of transparency both from a general perspective and especially as it related to the future ATT. Different kinds of transparency measures are used in current international policy processes to promote participants' compliance with a treaty or an agreement, promote confidence, increase mutual understanding and enhance implementation of jointly undertaken initiatives. Following other, related policy processes, States have called for a range of transparency measures to be included also in an ATT. Several options for practical transparency measures were have been put forward, including national reporting, consultations, networks of contacts and assistance.

The most commonly mentioned and the most obvious means to increase transparency under an ATT is the establishment of a regular national reporting system. It has proven

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60 OSCE SALW Document, Section 2D, p. 5.

useful in many other instruments and should undoubtedly be part of an ATT as well. Based on previous experience and the nature of international trade in conventional arms, it is concluded that the reporting should include two types of exchanges: reporting on national implementation measures, and statistical reporting on transfers. It is recommended that national reporting on granted and/or denied licenses be done annually, whereas reports on national implementation efforts could be submitted as one-off and subsequently updated when relevant. Both these information exchanges should also be made public and available on the internet.

It is foreseen that the first type, national implementation reporting, could include information on *inter alia* national laws, regulations and administrative processes; the overall national system and procedures for authorizing and licensing; penalties; as well as sample documents and national control lists of items subject to the Treaty. In order to be effective, an ATT should also require/recommend States to report on the actual activities undertaken as part of the Treaty, i.e. transfers undertaken and/or licenses granted.

Ideally, an ATT should include reporting on both granted and/or denied licenses and actual transfers. However, at a minimum, States should exchange data on licenses granted, indicating *what transactions* have been authorized, for the transfer of *which weapons*, in *what quantity*, to which *recipients* and for what *end use*. Ideally, this should be combined with reporting on actual deliveries, where similar details would be provided. Reporting on transfer license denials could be included as a voluntary measure at first, with the possibility of developing it into a mandatory element at a later stage.

To balance between transparency needs and national security concerns, reporting on certain items, such as ammunition, technology transfers and parts and components, could be more limited/aggregated than information exchanges on other types of weapons and activities. To ensure that the exchanged information is also utilized, an ISU (if established) could be tasked with reviewing or assessing both national implementation reports and the statistical data submitted by States.

Mindful of the concrete risk of reporting fatigue, which has negatively affected the frequency and quality of reporting in several transparency systems, a clear format should be developed for both types reporting. In this, synergies with other, already existing information exchanges should be sought. Also, as in many other instruments, “nil reporting” should be allowed as a way to fulfil Treaty obligations in cases where no activities falling under the remedies of the Treaty have taken place during the reporting period. Further measures to address reporting fatigue and inadequate capacities of some future States parties include continued awareness-raising and capacity-building activities, development of user guides or other voluntary guidelines, and also exploration of possibilities for regional reporting.

In addition to national reporting as a means to increase transparency, an ATT should establish a network of individuals/departments that work on conventional arms transfer controls and are responsible for the implementation of the Treaty. These could either be individuals or preferably institutional bodies, whose contact information would be submitted to the ISU and distributed among all States Parties.

It has also been suggested that the Treaty could establish a consultation mechanism between importing and exporting States to avoid potential politically unpleasant cases of

transfer denials as a pre-licensing dialogue would create more transparent and mutually supported communication structures. Further, as discussed in this paper, the transparency mechanisms of an ATT could be supported by a peer review mechanism, where all ATT States Parties would in turn be subjected to a review by other States regarding the national implementation efforts. This type of transparency mechanism, as well as any formal mechanism that would allow for the processing of contested and problematic cases, are however unlikely to gain the necessary consensus to be included in the Treaty.

A final important element of an ATT's implementation related to transparency as presented in this paper, will be national-level record-keeping. States Parties under an ATT should maintain records of their arms authorizations, transfers and denials, in order to be able to report on their transfer licenses, and demonstrate their implementation efforts. This will be crucial, as in the end, the responsibility to implement an ATT will lie with its States Parties, who will also be the primary judges of the Treaty's success. Once an ATT will come into force, it will be in the interests of all States Parties to demonstrate responsible arms transfer practices under it.

While the ultimate destiny of an ATT is in the hands of States, international mechanisms, such as transparency and information exchanges – through national reporting, consultations and networking – will be crucial to support the national-level implementation and to further strengthen the effectiveness of the Treaty.



# 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.