

Statement at the Working Group on Effective Treaty Implementation On National Control Lists

The ATT is not explicit in what that control list must contain, other than to set out certain *minimum* range of items (from Articles 2 to 4) while at the same time encouraging States Parties to “apply the provisions of this Treaty to the *broadest* range of conventional arms” (Article 5(3)). However, States Parties *are* obliged to control the import, transit or brokering of ammunition/munitions and parts and components for transfers that fall foul of Article 6 on prohibitions.

A key issue for States Parties in developing a national control list is to consider how best to manage the gap between the minimum requirements and the “broadest range of conventional arms”. A strict adherence to including only those items specified in Articles 2 to 4 would result in a control list which is considerably narrower and less detailed than that which is generally applied by States that already have well-developed systems for conventional arms transfer control.

Examples of some key gaps include:

- A range of military air platforms, vehicles and vessels that do not have certain ‘offensive’ capabilities or fall under a particular size or capability threshold. Examples include military trainer or transport aircraft, amphibious landing vessels.
- Force-multiplier equipment, i.e. equipment that enables more effective use of personnel or weapons or weapons platforms. Examples include refuelling aircraft, fire-control equipment, radar, night-vision items.
- Hand grenades.

There is no history of responsible States deciding in their national contexts that these categories of items should not be subject to transfer control. We therefore encourage States to follow existing good practice and control the “broadest range” of conventional arms as opposed to limiting themselves to the minimum possible.

Thus, States Parties should ensure that their national lists make no distinction between items that fall under Article 2(1) and under Articles 3 and 4. Such a comprehensive approach also has a number of benefits, not least simplicity, clarity and ease of use for those responsible for administering the system and those who are involved in navigating the system as ‘customers’ (including from manufacturers to transportation agents).

States that do not manufacture conventional arms or that rarely trade in these items may be tempted to adopt a narrowly-defined list based on the minimum that is required by the ATT. However such an approach is fraught with complications, not least for those involved in enforcement who may find it difficult to distinguish between items that fall within the scope of a narrow national control list and those that fall outside.

Although a one-size-fits-all approach is generally inappropriate for several aspects of ATT implementation, the adoption of a pre-existing list that is already widely used internationally can be useful in this issue area. It avoids the need to develop a list from scratch, which can be a

complicated, technical and resource-intensive undertaking; and facilitates international co-operation and information exchange. Using a comprehensive list such as the WA Munitions List as a basis for a national control list would be, in our view, a sensible course of action. The Munitions List has been refined over time, drawing on extensive experience from many different States; it is comprehensive, precise and non-ambiguous from a technical perspective, and is already maintained and regularly updated by acknowledged experts in the field.

We appreciate that this List may appear intimidating at first to a State without much experience in strategic trade control. At first glance, it might seem over-elaborate and overly complex, containing certain categories and particular items that might seem highly unlikely to cross the State's border and difficult to identify or recognise were that ever to be the case. However several states in that position have nevertheless adopted the WA lists and their experience indicates that it is not unduly burdensome in practice.

For example, the List does not need to be used by Customs officers as a checklist against which all exports and imports are physically compared. But it is available to commercial entities so that they can check whether the products they are moving are controlled; it enables States to communicate with each other when they become aware of a problem, with the necessary legal means available for interception, inspection and/or confiscation as required. If unsure whether particular items are in fact controlled, the possibility exists to seek advice from counterparts in other States that use the same lists - which has the secondary benefit of building contacts and knowledge across different jurisdictions.

Using such comprehensive and widely used lists enable States Parties to rest secure in the knowledge that if it becomes aware that certain listed items are in prospect of entering, leaving or transiting its territory (for example if informed by another ATT State Party), it has the legal basis for interceding if necessary.