

Looking Ahead: Making the ATT Work



February 2016

When the ATT entered into force on 24 December 2014 there was widespread hope that the world had taken a significant step towards putting human security at the centre of arms transfer decisions. For the first time a global, legally binding agreement obliges States Parties not to authorise arms transfers where there is a substantial risk they would contribute to violations of international human rights and humanitarian law, or be used for organised crime, terrorism, or in gender-based violence.

After just over a year of being international law, these aspirations for the ATT remain unfulfilled. In particular, ongoing conflicts throughout the world continue to be sustained by irresponsible and reckless arms transfers, some of which are supplied or facilitated by ATT States Parties and Signatories. Countless thousands of civilians have been killed and have suffered as a result and many millions have been forced to flee their homes.

With such dire circumstances unfolding daily, there is an urgent need for governments to uphold the object and purpose of the ATT. Control Arms urges all States to re-evaluate their policies and actions and to take concrete steps that will ensure rigorous application of ATT provisions in their arms transfer decision-making. Arms transfers that are in violation of the Treaty must be suspended immediately.

As preparations begin for the second Conference of States Parties action will be required on a number of fronts including universalisation, transparency and institution-building if the ATT is to deliver lasting, positive change in the conduct and operation of the international arms trade. With many of the key procedural issues now resolved, this conference will provide more opportunity for States Parties and Observers to engage in matters of substance than CSP 2015.

This paper is intended to stimulate thinking and preparation in advance of CSP 2016 across four key areas: universalization, implementation, institutional framework and reporting.

1. Expanding the Treaty: universalization

Since the first CSP, eight countries (as of 22 February 2016) have become States Parties and there have been announcements from some other states intending to accede or ratify soon. However, some countries face challenges or concerns about implementation that hamper their ability to join the ATT. For example, more than 30 of the 49 States that have signed but not yet ratified the Treaty are countries from the global south that face significant capacity challenges and will require assistance in order to implement the Treaty. This may include:

- developing or amending relevant legislation
- adopting a control list
- designating a competent authority and a point of contact
- developing a control system incorporating an arms export risk assessment framework, provisions for import, transit and brokering regulation, licences and documentation such as end-user certificates
- developing systems for record-keeping and reporting
- building an enforcement capacity

Beyond this, in some states there can be a lack of appreciation or understanding in some parts of government regarding both the objectives of the ATT and what its implementation will mean in practice. This can be particularly the case where responsibility for the ATT has been transferred to a Ministry that was not centrally involved in the negotiation of the Treaty. Control Arms experience has shown that for the ATT to be ratified smoothly an approach that involves all key government stakeholders and civil society works best. This approach must be based upon a shared appreciation of how, domestically, the ATT has the potential to enhance government legitimacy through increased transparency and accountability in arms transfers and how, internationally, the Treaty can build confidence and security among States.

Control Arms calls on States:

- To take measures to assist others to overcome challenges to joining, including through outreach, capacity-building, information-sharing, technical and/or financial of information or resources
- To ratify or accede by 20 May 2016 in order to be a States Party during CSP 2016.

2. Making the ATT work and establishing the norm: implementation

The CSP is the ideal space for States Parties to provide updates on the tangible steps they have taken since last year to implement the Treaty, whether at a policy, legislative or practical level as well as nationally or regionally.

There has been positive progress in many aspects of implementation. New countries have acceded or completed their ratification processes, including many that are directly affected by armed conflict or armed violence and in doing so, introduced legislation that incorporates the ATT into national law. There have been multiple trainings and workshops on this subject, especially at national and regional levels. A range of written and online resources to assist States Parties understand their obligations is also developing, in multiple languages and targeting different sectors of government.

However, it's been very disappointing to see a lot of 'business as usual' decision-making. For example, several States Parties appear to be in direct violation of legally binding Treaty obligations by continuing to supply arms to Saudi Arabia in the context of the conflict in Yemen despite a growing body of evidence alleging serious violations of international humanitarian and human rights law (IHL and IHRL) including the conduct of hostilities by coalition forces.

States Parties must adhere to their legal obligations if the ATT is to have achieve its objective of establishing the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms. The systems and procedures exist, but are being used in the service of decisions that contradict the aims and objectives of the ATT.

Control Arms calls on States Parties:

- To immediately cease arms transfers that are fuelling conflict, poverty and human rights abuse, and constitute a violation of the ATT
- Rigorously adhere to all legal obligations under the Treaty

3. Building blocks: the Treaty's institutional framework

The first CSP necessarily had a heavy focus on establishing many of the elements that will serve as the building blocks of the Treaty's institutional framework. This includes its Rules of Procedure, the location and Provisional Head of its Secretariat and aspects of financial oversight, such as through the establishment of a Management Committee. Those items left unresolved include the budget for both for the ATT Secretariat and CSP 2016 as well as administrative arrangements for the Secretariat – both of which are now the focal points for this Extraordinary Meeting.

At this Extraordinary Meeting and in the run up to CSP 2016, States Parties must assess what progress has been on these decisions - particularly the establishment of the ATT Secretariat. Here, movement has been too slow. The Treaty's Secretariat has an important role to play in assisting States Parties with implementation, in analyzing reports, arranging for Treaty meetings and attracting new countries to join the ATT. By now this body was meant to have been established and its Provisional Head active in the post.

Even if these matters are resolved at the Extraordinary Meeting or soon afterwards, a significant amount of time will have been lost for setting up the systems, processes and mechanisms such as for dealing with reporting, information sharing and identifying ATT implementation needs and sources of appropriate assistance. There is a need to urgently put into place a recruitment plan for the additional Secretariat staff in order to quickly address these tasks, as well as to prepare for CSP 2016.

Control Arms calls on States Parties to:

- Adopt a budget at the Extraordinary Meeting and agree administrative arrangements for the ATT Secretariat that allow for its rapid establishment.
- Agree a mandate for the ATT Secretariat that is broad enough to support robust implementation of the ATT, and include a recruitment process that is merit-based.

4. Unfinished business – reporting templates

Reporting was the weakest outcome of the first CSP and not enough has happened subsequently to advance work on reporting templates. The deadline for the first round of annual transfer reports is just around the corner.

To date 41 States Parties have submitted their initial reports on steps taken nationally to implement the provisions of the Treaty. Of these, all but one have been made public, which signals a welcome commitment to transparency. We encourage those States Parties that have not yet reported to follow this example, and for the one states that has currently kept its report secret to make this publicly available.

At the same time, it is disappointing that 20 States Parties obliged to submit initial reports by 24 December have not yet done so. It may be that the failure to adopt reporting templates at CSP 2015 is a factor in this, however many States whose initial reports are now overdue have already completed a Baseline Assessment Project (BAP) questionnaire. These States could therefore submit their BAP response as their initial report without delay or additional workload.

Beyond this, the priority must now be to establish a new, open working group to quickly finalise the annual reporting template as early as possible in advance of the 31 May annual-reporting deadline. Further delay in agreeing an annual reporting template risks extending the current low level of reporting under Article 13.1 into that of Article 13.3 and/or an unhelpful variety in the nature and formats of the annual reports that are submitted. A key task for the Extraordinary Meeting will thus be to ensure that the work on the reporting templates, in particular for annual reports, is concluded as soon as possible so as to enable all States Parties to submit their returns in a timely, transparent and consistent way.

Control Arms calls on States Parties to:

- Agree the terms of reference for a reporting working group at the Extraordinary Meeting, open to civil society and with deadlines for referring templates back to States Parties and a process for States Parties adopting the templates before the annual reporting deadline (31 May).
- Strengthen transparency and continue to build confidence by ensuring both their first annual transfer report, or initial report if not yet submitted, are publicly available.

CONCLUSION

The next several months are an opportunity to make advancements in any of the areas outlined above, some of which are urgent. We encourage governments to make meaningful use of CSP 2016 to address matters of substance and concern. Its agenda should allow substantive exchanges between States Parties on their experiences in applying Articles 6, 7 and 11; and for information sharing on implementation challenges and assistance requirements. It will also be important that this CSP establish open subsidiary bodies to address issues such as reporting and sharing of best practices.

The ATT is a treaty that can be used help prevent human rights violations, the diversion of arms to terrorists and ultimately reduce conflict and armed violence but this will only happen with robust implementation and rigorous adherence to its legal obligations. The time to begin that is right now.