The Arms Trade Treaty and Diversion in Latin America: Taming the Devil Within

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This report was written for the "ATT Academy", a project of Control Arms funded by the United Nations Trust Facility for Supporting Cooperation on Arms Regulation (UNSCAR). The ATT Academy trains government and civil society personnel on the Arms Trade Treaty (ATT), and its 2018 sessions focused on officials and civil society from Latin America.

Few themes received more attention in 2018, among those discussed within the parameters of the Arms Trade Treaty (ATT) than 'diversion'. And rightfully so: the 'leakage' of arms and ammunition from the legal trade to a potential illegal use(r) is a universal concern among ATT participants. Whether a large exporter, solely an importer or a small state with virtually no participation in the trade, all countries are vulnerable to drastic effects if diversion occurs in their vicinity. In this report, we will highlight Latin America as an opportune setting through which we can review all things diversion.

As such, measures to prevent the diversion of arms and their ammunition were presented and debated in several fora and circumstances throughout the year. This brief seeks to present highlights from a few of them, but especially from the ATT Academy held in Mexico City in April and September 2018. Whether within the confines of the diplomatic discussions around the normative regime of the ATT in the outputs of civil society 'monitors', or in capacity-building efforts, diversion was at the center of all discussions. The question remains, however: are States now closer to achieving effective measures and practices to tame this "devil within"?

1. A brief history and recent diplomatic discussions

Diversion, as a concept, was not guaranteed to become part of the ATT. For many years during the foundational civil society and governmental discussions in the run-up to the ATT, the topic of diversion was often overlooked Eventually, as a late addition to the negotiations' draft treaty[1] – spearheaded by some in civil society and like-minded states, especially Mexico[2] – diversion made the cut. Though added later, the ATT's coverage of diversion, when well-implemented by governments, may well become one of the instrument's most meaningful tools to exact actual change in years to come.

As one of the treaty's objects ("Prevent and eradicate the illicit trade in conventional arms and prevent their diversion", Article 1), diversion appears several times in the ATT's text but figures most prominently in Article 11, which compels each country involved in an arms transfer to "take measures to prevent their diversion".[3] Nonetheless, much of the intended burden falls upon exporting states, which "shall seek to prevent the

[1] Clapham, Casey-Maslen, Giacca, Parker, Eds (2013). President's Non-Paper, "The Arms Trade Treaty: A Commentary". March 22, 2013, p. 347.
[2] Woolcott, P. (2014). "The Arms Trade Treaty". United Nations Audiovisual Library of International Law. http://legal.un.org/avl/pdf/ha/att/att_e.pdf, p. 4.;
Casey-Maslen, Stuart et al. "The Arms Trade Treaty: A Practical Guide to National Implementation". Switzerland: Small Arms Survey, 2016. http://www.smallarmssurvey.org/fileadmin/docs/Q-Handbooks/HB-04-ATT/HB4-ATT-implementation.pdf, p. 21 and "The Arms Trade Treaty: A Commentary", edited by Clapham, Casey-Maslen, Giacca, Parker, p. 345
[3] The Arms Trade Treaty. 2013. [Online] 2 April 2013, 24 December 2014. Available from: https://www.thearmstradetreaty.org/hyper-images/file/ATT_English/ATT_English.pdf

diversion of the transfer of conventional arms … by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes" (11.2).[4]

Since its inclusion in the Treaty's text as an obligation for State Parties, the exact nature and methods of how to prevent diversion have garnered significant attention. Among the proposed solutions, tackling the lack of transparency in the international arms trade has often been at the forefront. In fact, "most of the 'measures to prevent' diversion that States Parties 'shall take' under Article 11 refer to information sharing and transparency activities".[5] Indeed, if "the diversion of arms thrives in, and depends on, secrecy", shining a light on the arms trade is essential to preclude its systemic recurrence.[6]

> *"Secrecy can be lethal when it allows arms diversion....Ultimately, the most transparent systems are the most effective systems in tackling diversion … The ATT provides a crucial platform for states to build and share experience of arms diversion and effective action to address it. Helping to internationally harmonize practice will be essential. Lower levels of transparency in one jurisdiction make it a magnet for diversion, a first step in transitioning weapons from the legal market to providing tools of violence to organized crime, terrorists and armed groups not only in that territory but also across borders"*[1]

In the Treaty's early years, efforts by several governments and civil society to push the issue of sharing information on diversion were sporadic and not well-received. Since then, however, the diversion issue has gained momentum within the ATT's diplomatic discussions, culminating with its inclusion as a thematic focus, as suggested by Japan, for the CSP 2018. Earlier, preparatory meetings in the Working Group in Effective Treaty Implementation (WGETI) during 2017 set the stage for more detailed deliberations.[7]

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[4] "This is a crucial obligation and one which gives States Parties considerable scope for cooperative action and information sharing and which could be extremely important in terms of supporting effective implementation of the ATT":
Saferworld, "Key issues for ATT implementation: Information exchange under the ATT" November 2014, p.4: http://www.saferworld.org.uk/downloads/pubdocs/egai-briefing-no.1-for-website.pdf.

[5] For example, Article 11.3, 11.5 and 11.6: "3. Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).
5. In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2 (1), States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.
6. States Parties are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1)." :
Control Arms Secretariat (2017). 'ATT Monitor 2017'. 11 September 2017. https://attmonitor.org/en/wp-content/uploads/2017/09/EN-ATT_Monitor-Report-2017_ONLINE-1.pdf p. 19.

[6] Ibid, p. 24.

[7] "Draft Annotated Programme Of Work" *Working Group on Effective Treaty Implementation*. 27 January 2017:https://thearmstradetreaty.org/hyper-images/file/WGETI_-_Draft_Annotated_Programme_of_Work_for_meeting_on_6-7_February_2017/WGETI_-_Draft_Annotated_Programme_of_Work_for_meeting_on_6-7_February_2017.pdf;
"Draft Agenda" *Ad Hoc ATT Working Group on Effective Treaty Implementation.* 17 May 2017: https://thearmstradetreaty.org/hyper-images/file/WGETI_-Agenda_-_Second_Meeting_-_17_May_2017/WGETI_-Agenda_-_Second_Meeting_-_17_May_2017.pdf

In March 2018, the WGETI sub-group on Article 11, facilitated by Australia, agreed that while one of the longest provisions of the ATT, the diversion article was not very descriptive, bereft of much information on what States should do, examples of mitigation measures, or even a clear definition of diversion.[8] At the time, a "food-for-thought" paper from Switzerland suggested five dimensions of diversion[9] and recommended the following as potentially useful mitigation efforts: "1. Requirement of End-Use(r)-Certification (EUC) for each export to state entities; 2. Verification of EUC through diplomatic channels or the importing country's national authority by using the declared Point of Contact (ATT Article 5); 3. Delivery notification by the End-User or the transit countries, if appropriate; 4. On-site visits (i.e. Post-shipment Verification) as a means to build confidence."[10]

Concurrently, another 'non-paper' was submitted by Argentina, Belgium, Colombia, Finland, France, Germany, Netherlands, Mexico, Republic of Korea, and Sweden, titled "Preventing and fighting the diversion of legally transferred weapons".[11] This document consisted of a series of "concrete and practical proposals" to "stimulate exchanges" within the group, such as including diversion on the WGETI's agenda, fostering thematic exchanges and the participation of national points of contact and government experts, drawing on the expertise of the private sector and civil society, and seeking complementarity with existing initiatives.[12] As discussed below, these efforts bore important fruit later.

From Control Arms' perspective, as noted in an intervention on 6 March 2018, the ATT's provisions "are equally applicable to preventing diversion while the transfer is still in process, before, at the point of, or after delivery" and urged "States Parties to interpret the provisions of Article 11 in their entirety as mandating the exchange of information on ways to prevent diversion at every point in the transfer chain – from pre-authorization of arms shipments through to delivery, end-use and unauthorized re-export or reassignment".[13]

In the second set of meetings, in May 2018, the sub-working group on Article 11 discussed 'where and how diversion is occurring', 'the points in the life cycle/transfer chain where diversion can occur' and the 'measures

[8] Control Arms Secretariat "Notes on ATT Working Group on Effective Treaty Implementation". March 2018.
[9] "1. Diversion by the producer/exporter out of the country of origin (e.g. through forged documentation); 2. Diversion in a declared country of transit (either intended or unintended by the producer/exporter or other actors; i.e. transit country or broker); 3. Diversion on international waters or in undeclared transit countries (either intended or unintended by the producer/exporter or other actors; i.e. transit country or broker); 4. Diversion to an unauthorized end-user or for an unauthorized end-use in the country of destination. 5. Diversion to an unauthorized end-user or for an unauthorized end-use in a third country":
"Food for thought paper on the topic of the prevention of diversion (Article 11)" *Arms Trade Treaty Working Group on Effective Treaty Implementation* Geneva, 6 – 7 March 2017. ATT/CSP4.WGETI/2018/CHE/256/M1.CHE.Art11. Submitted by Switzerland. 02 March 2018. https://www.thearmstradetreaty.org/hyper-images/file/ATT_WGETI_CSP4_Food_for_thought_on_the_topic_of_the_prevention_of_diversion_Article_11CHE/ATT_WGETI_CSP4_Food_for_thought_on_the_topic_of_the_prevention_of_diversion_Article_11CHE.pdf
[10] Ibid.
[11] "Preventing and fighting the diversion of legally transferred weapons" *Arms Trade Treaty Working Group on Effective Treaty Implementation.* ATT/CSP4.WGETI/2018/GROUP/257/M1.GROUP.Div. Submitted by: Argentina, Belgium, Colombia, Finland, France, Germany, Netherlands, Mexico, Republic of Korea, Sweden. 06 March 2018. https://www.thearmstradetreaty.org/hyper-images/file/ATT_WGETI_CSP4_WP_Diversion_France_et_al/ATT_WGETI_CSP4_WP_Diversion_France_et_al.pdf
[12] Ibid.
[13] Control Arms Secretariat. "Working Group on Effective Treaty Implementation On Article 11" Diversion March 6, 2018. https://www.dropbox.com/s/1wqnvrc8zmcepnq/WGETI%20A11%20March2018.pdf

to prevent and address diversion', and 'mechanisms for exchanging information'.[14] Draft papers supporting these efforts were introduced, including a "draft initial list of documents already available that provide guidance on preventing and addressing diversion"[15] and input from Japan, which used the UN Office of Disarmament Affairs' (UNODA) 'ATT Implementation Toolkit Module 10 – Preventing Diversion' as a springboard for further recommendations, particularly regarding information sharing on the ATT Secretariat's website.[16]

Perhaps most impactful was the inclusion in the group's work plan of 'Annex A - Measures to Prevent and Address Diversion',[17] which would in a later rendition be formally incorporated to the CSP 2018 final report – or "welcomed" as Annex D to the Chair's report "as living documents of a voluntary nature to be reviewed and update regularly by the Working Group, as appropriate".[18] At this point there was also a clear agreement that, "although it is not made explicit in the Treaty text, States Parties should consider the issue of preventing and addressing both in-transfer diversion, as well as post-delivery diversion".[19]

In response to these developments, during the WGETI meeting on 29 May 2018 in Geneva, Control Arms noted that it was "not sufficient to simply have all of these elements of a national control system in place. Those involved in diversion typically understand how to exploit vulnerabilities in each national control system, as well as weak links during international transfers".[20] Therefore, it argued, it is a priority "for all actors to exchange information on good practices and measures taken that have proved effective in addressing diversion, in line with Articles 11.6 and 13.2. This includes working-level exchanges on requirements for effective assessment of risks of diversion and for preventing diversion during transportation, as well as for co-operation with recipient states to reduce risks of diversion, for example due to inadequate stockpile security".[21] That same week, the

[14] Control Arms Secretariat. "Summary Analysis of CSP 2018 Working Group Meetings" 29 May - 1 June 2018. https://www.dropbox.com/s/abmv8ds7v6tjdk2/Working%20Group%20Reports.pdf ;
"Sub-working Group On Article 11 (Diversion) – Work Plan" *Arms Trade Treaty Working Group on Effective Treaty Implementation.* ATT/CSP4.WGETI/2018/CHAIR/303/M2.WorkPlanArt11. 15 May 2018. https://www.thearmstradetreaty.org/hyper-images/file/ATT_WGETI_CSP4_Sub-Working_Group_Art_11/ATT_WGETI_CSP4_Sub-Working_Group_Art_11.pdf
[15] Ibid.
[16] "Addressing Diversion of Conventional Arms" A*rms Trade Treaty Working Group on Effective Treaty Implementation.* Geneva, 29-30 May 2017. ATT/CSP4.WGETI/2018/JPN/312/M2.JAPArt11. Submitted by Japan. 25 May 2018. https://www.thearmstradetreaty.org/hyper-images/file/Working_Paper_-_Japan_-_Addressing_Diversion_in_Conventional_Arms_25_May_2018/Working_Paper_-_Japan_-_Addressing_Diversion_in_Conventional_Arms_25_May_2018.pdf
See also: "Arms Trade Treaty Implementation Toolkit: Module 10 Preventing Diversion" *United Nations Office for Disarmament Affairs*. August 2015. https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2015/08/2015-08-21-Toolkit-Module-10.pdf
[17] "Sub-working Group On Article 11 (Diversion) – Work Plan" *Arms Trade Treaty Working Group on Effective Treaty Implementation.* ATT/CSP4.WGETI/2018/CHAIR/303/M2.WorkPlanArt11. 15 May 2018. https://www.thearmstradetreaty.org/hyper-images/file/ATT_WGETI_CSP4_Sub-Working_Group_Art_11/ATT_WGETI_CSP4_Sub-Working_Group_Art_11.pdf
[18] ATT Secretariat. "Arms Trade Treaty Fourth Conference of States Parties FINAL REPORT" Tokyo, 20 – 24 August 2018. ATT/CSP4/2018/SEC/369/Conf.FinRep.Rev1. 24 August 2018. https://thearmstradetreaty.org/hyper-images/file/CSP4%20Final%20Report-%20August%202018%20(ATT_CSP4_2018_SEC_369_Conf.FinRep.Rev1)/CSP4%20Final%20Report-%20August%202018%20(ATT_CSP4_2018_SEC_369_Conf.FinRep.Rev1).pdf
[19] "There was general acknowledgement among participants that diversion can take place at any stage in the life cycle of a weapon, and that the sub-working group should consider the issue of preventing diversion that takes place during transfer (i.e. in-transfer diversion) as well as diversion of items after they have been delivered (i.e. post-delivery diversion).":
Control Arms Secretariat (2018). 'ATT Monitor 2018'. 20 August 2018. https://attmonitor.org/en/wp-content/uploads/2018/08/EN_ATT_Monitor_Report_2018_ONLINE.pdf, pg.102.
[20] Macdonald, Anna "Sub-Group on Article 11 Diversion" A*rms Trade Treaty Working Group on Effective Treaty Implementation.* (Intervention, Geneva, Switzerland, 29 May, 2018)
https://www.dropbox.com/s/8ha0pi8m3sza27w/WGETI%20DiversionMay2018FINAL.pdf
[21] Ibid.

Working Group on Transparency and Reporting (WGTR) also deliberated upon the proposed reporting template on diversion, which some countries favored while others cautioned it could add to reporting burdens as well as be deemed too sensitive.

Delegates arriving for at CSP 2018 in Tokyo, Japan were met by campaigners holding "Missing" posters, illustrating real-life cases of weapons that have been diverted into the illicit trade. Photo credit: Akram Al-Wahabi/Control Arms

Whether in plenaries, informal discussions, or side events, diversion held the spotlight during the week of CSP 2018. During general debate, many countries, like Finland[22] and Malaysia,[23] made thoughtful interventions on the topic, while a stand-alone thematic discussion on diversion allowed for more detailed statements.[24]

In addition to presentations from civil society groups such as Conflict Armament Research (CAR) and Small Arms Survey,[25] several states shared perspectives on the matter. The European Union (EU), for example, recalled that the "risk of diversion is explicitly included as one of the eight criteria in the EU Common Position. EU Member States take diversion very seriously as illustrated by the fact that it is the most frequently invoked criterion for denying an export licence application. In 2017, it was invoked 157 times as the reason for a denial".[26] Australia offered recommendations of how governments can work with industry to mitigate diversion risks, including through route security plans (GPS tracking), delivery verification, post-shipment verification, and awareness-raising.[27]

During this session, the Control Arms statement, delivered by Brazilian NGO Sou da Paz, called for

> "detailed information-sharing on real-world risk-assessments and experiences of diversion, and on lessons learned for prevention or mitigation measures. These exchanges need to be systematic; examining the distinctive diversion risks and experiences relating to each stage of the life cycle of transferred arms, and the roles and responsibilities of relevant actors including export, transit and import control authorities and agencies, private sector actors, and others. "[28]

[22] "Diversion is an issue that concerns all Parties – north and south, exporting, importing and transit countries alike – since diversion can take place at any stage of the life cycle of a weapon. The sharing of information and best practices is an important first step in addressing diversion. Exchanges can take place in many forms and fora, and we should remain open to exploring all options for facilitating them.":
Statement by Finland, *Arms Trade Treaty Fourth Conference of States Parties General Debate*. Tokyo, 20 – 24 August 2018. https://thearmstradetreaty.org/hyper-images/file/CSP4%20General%20Debate%20-%20Finland/CSP4%20General%20Debate%20-%20Finland.pdf

[23] "The risks of diversion are indeed major concerns at every stage of the lifecycle of all arms and ammunition. It goes without saying that all national control systems have vulnerabilities for diversion even when they are well developed and resourced. It is no doubt that addressing diversion requires a comprehensive approach to be taken in tackling all aspects of the problem throughout the transfer chain in addition to a shared sense of responsibility and cooperation among the ATT States Parties.":
Statement by Malaysia, *Arms Trade Treaty Fourth Conference of States Parties General Debate*. Tokyo, 20 – 24 August 2018. https://thearmstradetreaty.org/hyper-images/file/CSP4%20General%20Debate%20-%20Malaysia%20(E)/CSP4%20General%20Debate%20-%20Malaysia%20(E).pdf

[24] Control Arms Secretariat. "Daily Summary: Day Two - 21 August 2018". *Fourth Conference of States Parties to the ATT*. Tokyo, Japan 20 - 24 August 2018. https://controlarms.org/wp-content/uploads/2018/08/CSP-2018-Day-2-Summary-.pdf

[25] Small Arms Survey. "Possible Measures to Prevent and Address Diversion: Supporting Effective Implementation of the Arms Trade Treaty"
http://www.smallarmssurvey.org/fileadmin/docs/Regulations_and_Controls/Levels_of_action/International/Diversion%20infographics.pdf

[26] Statement by the European Union, *Arms Trade Treaty Fourth Conference of States Parties Thematic Discussion on Diversion*. Tokyo, 20 – 24 August 2018. https://thearmstradetreaty.org/hyper-images/file/CSP4%20Thematic%20discussion%20-%20EU%20(final)/CSP4%20Thematic%20discussion%20-%20EU%20(final).pdf

[27] Control Arms Secretariat. "Final Report on the Fourth Conference of States Parties to the Arms Trade Treaty" Tokyo, Japan, 20 - 24 August 2018. https://controlarms.org/wp-content/uploads/2018/09/CSP2018-Final-summary.pdf, p.4.

[28] Marques, Ivan "Implementation: Diversion" *Fourth Conference of States Parties to the Arms Trade Treaty.* Tokyo, 20 – 24 August. (Intervention, Geneva, Switzerland, 21 August, 2018) https://controlarms.org/wp-content/uploads/2018/08/ControlArms-Diversion-CSP2018-1.pdf

The CSP 2018 final report endorsed a three-tier approach to information sharing on diversion, "1) policy-level exchanges on diversion in the sub-working group on Article 11 of the Working Group on Effective Treaty Implementation; 2) intersessional exchange of policy-related and relevant operational information via the information exchange portal that is under development; and 3) an informal meeting among interested States Parties (and possibly signatory States) to discuss concrete cases of detected or suspected diversion that they are dealing or have dealt with."[29]

Perhaps most importantly, the uptake of two documents from the preparatory working groups on Article 11 - Annex C, 'List of possible reference documents to be considered by States Parties to prevent and address diversion' and Annex D, 'Possible Measures to Prevent and Address Diversion' - provided significant substance.[30] While the former document is quite helpful as a reference, listing documents from UNODA, EU, International Small Arms Control Standards (ISACS), Organization for Security and Co-operation in Europe (OSCE), Regional Centre on Small Arms (RECSA) and the Wassenaar Arrangement as possible sources to be considered by States, the later document deserves further discussion. Though all the usual caveats apply, including language such as "welcomed", "voluntary", "as appropriate", and "where relevant, useful and feasible within the available resources of each State", seldom does a document that survives a UN arms control

[29] ATT Secretariat. "Arms Trade Treaty Fourth Conference of States Parties FINAL REPORT" Tokyo, 20 – 24 August 2018. ATT/CSP4/2018/SEC/369/Conf.FinRep.Rev1. 24 August 2018. https://thearmstradetreaty.org/hyper-images/file/CSP4%20Final%20Report-%20August%202018%20(ATT_CSP4_2018_SEC_369_Conf.FinRep.Rev1)/CSP4%20Final%20Report-%20August%202018%20(ATT_CSP4_2018_SEC_369_Conf.FinRep.Rev1).pdf, p. 6.

[30] "Chair's Draft Report to CSP4" *Arms Trade Treaty Working Group on Effective Treaty Implementation.* ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep. Fourth Conference of States Parties. Tokyo, 20 – 24 August 2018. https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP4_WGETI_Draft_Report_EN/ATT_CSP4_WGETI_Draft_Report_EN.pdf

conference consist of such concrete and positive recommendations. This is a testament to the efforts of many in the previous months and years.[31]

Later in 2018, during UNGA First Committee meetings in New York, diversion continued to play a prominent role within ATT debates.[32] At a side event on 17 October 2018, Mexico's representative suggested the need for a global report on diversion, with a clear indication of diversion patterns, to allow states to adjust strategy and coordinate jointly. During the same event, France recalled its initial proposal[33] in WGETI to stimulate exchanges on the diversion issue by involving experts, NGOs and industry, and by conducting discussions on an annual basis to review the priorities identified by States Parties. . In terms of reporting and information sharing, France noted that it was considering annexing a narrative on implementation of Article 11 along with its annual report, though this was "not easy to do, as some information is sensitive".[34]

Entering into 2019, the question is whether diversion as a priority of ATT diplomatic discussions was an outlier – or, as it should, becomes an essential institutionalized theme to be discussed and worked on annually. At least according to official documents it would appear to be the latter:

> "the strong support for continued consideration of diversion suggests that Article 11 should remain a key focus of the WGETI following [CSP 2018]. Issues that appeared to attract particular interest in the diversion sub-working group, which the WGETI might consider addressing after CSP4 included: risk assessments for diversion; end use/r certification; the role of transit States in combating diversion; the role of the private sector in mitigating diversion risk; and diversion through re-transfer post-delivery."[35]

2. Civil society and the monitoring of diversion

In parallel to the ATT's diplomatic debates, diversion continues to exact tragic costs in the real world, on a daily basis. A recent report from CAR, for instance, has documented the patterns of diversion that resulted in the arming of warring parties in South Sudan, showing "that some of those weapons ultimately derive – not

[31] Ibid. p. 18 - 24.
[32] "UN General Assembly First Committee on Disarmament and International Security." Control Arms. October 2018. https://controlarms.org/ungafc/ungafc2018/.
See for example: Statement by Mr. Viktor DVOŘÁK, Delegation of the European Union to the UN. *UN General Assembly 73rd Session First Committee Thematic Discussion on Conventional Weapons*. New York, October 2018. https://eeas.europa.eu/delegations/un-new-york/52612/eu-statement-%E2%80%93-united-nations-1st-committee-thematic-discussion-other-weapons-mass-destruction_en; Statement on behalf of the Delegation of the Republic of Latvia. *UN General Assembly 73rd Session First Committee Thematic Discussion on Conventional Weapons*. New York, October 2018. http://statements.unmeetings.org/media2/20304702/latvia-conventional-weapons.pdf
[33] "Preventing and fighting the diversion of legally transferred weapons" *Arms Trade Treaty Working Group on Effective Treaty Implementation.* ATT/CSP4.WGETI/2018/GROUP/257/M1.GROUP.Div. Submitted by: Argentina, Belgium, Colombia, Finland, France, Germany, Netherlands, Mexico, Republic of Korea, Sweden. 06 March 2018. https://www.thearmstradetreaty.org/hyper-images/file/ATT_WGETI_CSP4_WP_Diversion_France_et_al/ATT_WGETI_CSP4_WP_Diversion_France_et_al.pdf
[34] Control Arms Secretariat "notes on side event" October 17, 2018;
"UN General Assembly First Committee on Disarmament and International Security." Control Arms Secretariat October 2018. https://controlarms.org/ungafc/ungafc2018/.
[35] "Chair's Draft Report to CSP4" *Arms Trade Treaty Working Group on Effective Treaty Implementation.* ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep. Fourth Conference of States Parties. Tokyo, 20 – 24 August 2018. https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP4_WGETI_Draft_Report_EN/ATT_CSP4_WGETI_Draft_Report_EN.pdf, p. 6.

from autocratic or rogue states – but from the European Union … (as) the South Sudanese government arranged for its regional ally, Uganda, to provide end-user certificates for arms shipped by air from within the EU".[36] As one of the most direct channels between the legal trade in weapons and ammunition and the human security implications of their abuse and misuse, diversion continues therefore to be a high priority for civil society groups monitoring the arms trade.[37]

In so doing, one approach comes from organizations such as CAR, which goes to the field in search of evidence: "When something goes wrong, and guns and bullets are diverted, the paper trail enables us to determine where the diversion occurred – and by extension who did it – so that weaknesses in the supply chain can be repaired and future risk removed."[38] Over years of evidentiary efforts and responses to its tracing requests from governments through its iTrace platform, CAR has developed a helpful, though geographically limited, typology of diversion, divided into battlefield capture, leakage due to ineffective PSSM, loss from national custody by undetermined means, state-sponsored diversion, loss following state collapse, and unclear causes.[39]

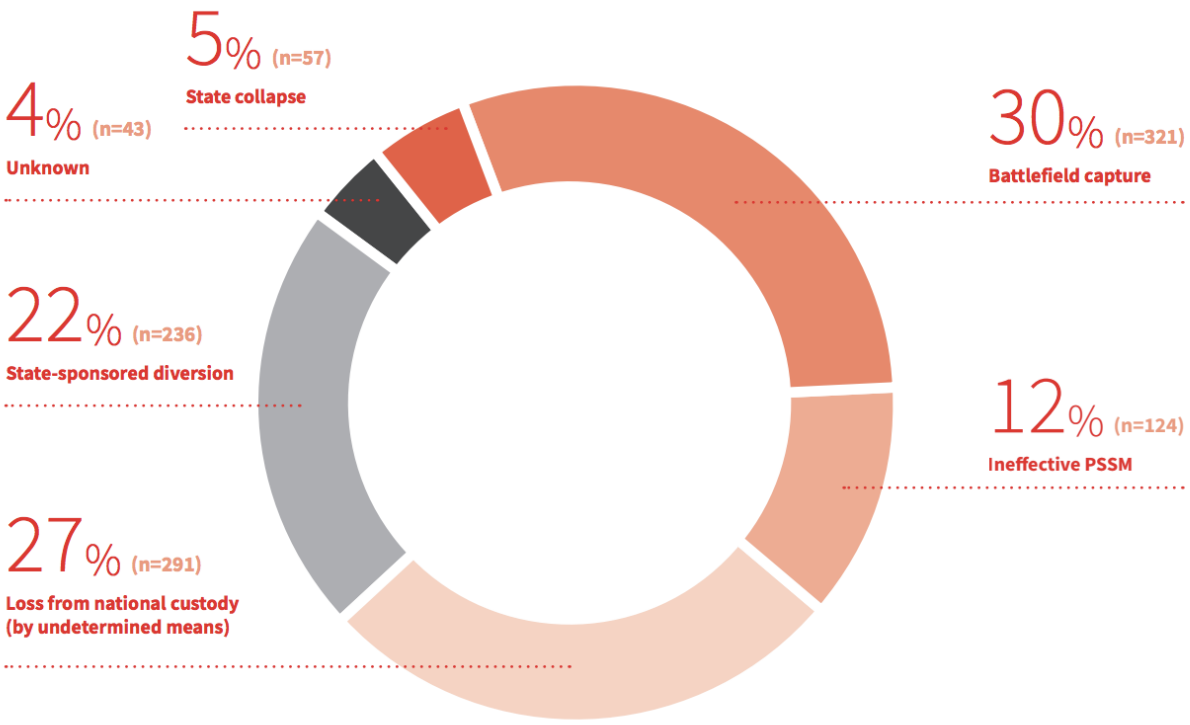
[36] Bevan, James. "Guns for Sale: Now Transparency Shines a Light on EU Supply Chains." The Telegraph. November 29, 2018. https://www.telegraph.co.uk/news/2018/11/29/guns-sale-now-transparency-shines-light-eu-supply-chains/. For the full report, please see: http://www.conflictarm.com/reports/weapon-supplies-into-south-sudans-civil-war/

[37] While not in the purview of this briefing paper, the essential role of several UN agencies and offices on the issue of diversion should also be commended, whether efforts referenced herein from UNODA and UNLIREC, for example, or UNIDIR's series of the 'Tackling Diversion' project, which over three phases has conducted several conferences and publications, particularly on End Use/r control systems/ See:
Shiotani, Himayu, and Hardy Giezendanner. *Tackling Diversion (Phase II): Promoting Regional Dialogue to Enhance Common Understanding and Cooperation to Strengthen End Use/r Control Systems*. Report. UNIDIR. January 2015 to February 2017 http://www.unidir.org/programmes/conventional-weapons/tackling-diversion-phase-ii-promoting-regional-dialogue-to-enhance-common-understanding-and-cooperation-to-strengthen-end-use-r-control-systems and;
Shiotani, Himayu, Franziska Seethaler, Nivedita Mathukumar, and Sebastian Wilkin. *Tackling Diversion (Phase III): Examining Options and Approaches for Strengthening Cooperation with Non-Governmental Entities in Conventional Arms Transfers*. Report. UNIDIR. http://www.unidir.org/programmes/conventional-weapons/tackling-diversion-phase-iii-examining-options-and-approaches-for-strengthening-cooperation-with-non-governmental-entities-in-conventional-arms-transfers

[38] Bevan, James. "Guns for Sale: Now Transparency Shines a Light on EU Supply Chains."

[39] "Typology of Diversion". Vol. 1. Diversion Digest. London: Conflict Armament Research, 2018. http://www.conflictarm.com/wp-content/uploads/2018/08/diversion-digest-01.pdf

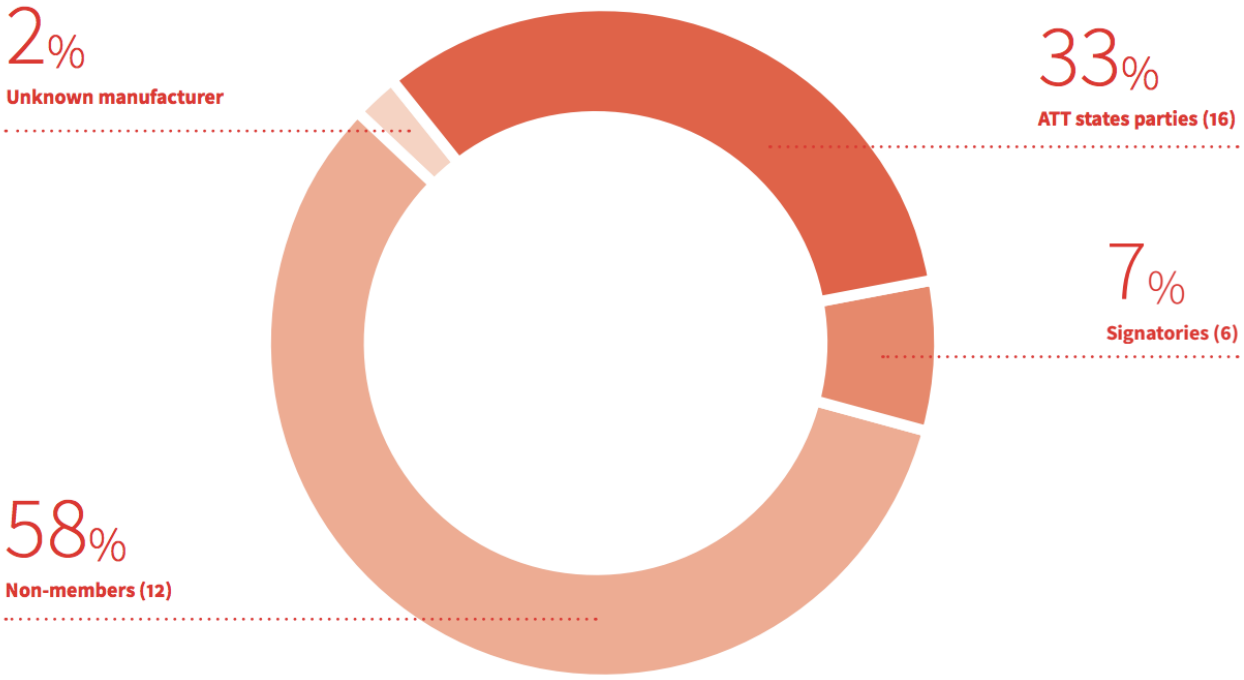
FIGURE 5: **CASES OF DIVERSION, BY TYPE (N=1,072)**



CAR's typology is based on 1072 diversion cases, almost all of which are from Africa and the Middle East, documented as to exact the point of diversion. This typology offers interesting lessons from the perspective of ATT norms. Importantly, according to CAR, both potential end-users and end-uses of arms and ammunition must be considered, as "when assessing the risk of diversion in accordance with ATT obligations, it is possible to miss consideration of many incidents of diversion if attention is only paid to the end-user".[40]

[40] Young, Katherine. "Side Event Report: Diversion and The Arms Trade Treaty." In *First Committee Monitor*, edited by Allison Pytlak, 17. Vol. 3. October: Reaching Critical Will, 2018. http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/FCM18/FCM-2018-No3.pdf#page=17

FIGURE 3: **CASES OF DIVERSION, BY ATT STATUS OF MANUFACTURING STATES (N=1,072)**



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Another approach to shed a light on diversion patterns comes from a more formal, policy perspective, such as the publication of the Control Arms' ATT Monitor Annual Report, which serves as the civil society watchdog for the treaty regime.[41] In addition to analyzing States Parties' reporting and policies, the ATT Monitor's Annual Report 2018 included a chapter that seeks to better understand the causes and consequences of diversion in Latin America and the Caribbean (LAC). Noting that the ATT "has the potential to be a key mechanism for preventing diversion and reducing human suffering from gun violence in the region", the ATT Monitor recalls that the LAC region "is an opportune setting in which to consider the potential of the ATT to restrain diversion and look at what countries are trying to do to address it. Given the gravity of the problem, arms trafficking and diversion are comparatively under-examined and under-reported".[42]

In terms of factors driving diversion in LAC, several essential factors are discussed, including lack of information sharing, corruption levels, the prevalence of organized crime, and large and under-regulated private security sector.[43] Emphasis is given particularly to diversion from official stockpiles – arguably the

[41] "ATT Monitor" Control Arms. 2018. https://attmonitor.org/en/.
[42] Control Arms Secretariat (2018). 'ATT Monitor 2018', p. 101.
[43] Ibid, p. 103.

region's greatest challenge in this arena – as well as diversion during transfers (including 'straw-man purchasing' and the so-called 'ant-trade'), and 'leakage' from private actors, given the "limited oversight of the firearms holdings of private security companies in LAC".[44]

***Table 4.3: Diversion from official stockpiles**

Method	Examples
Diversion from law enforcement institutions	Honduras: a network of 30 policemen were found to have provided firearms to criminal groups in Colombia since 2003.[46]
Diversion from armed forces	Brazil: arms have systematically vanished due to apparent irregularities in the processing of documents, authorizations and transfers.[47] Brazilian military/police have diverted weapons to domestic criminal gangs.[48]
	From Paraguay to Brazil: more than 40,000 rounds of firearms and ammunition stored in boxes bearing official Paraguay markings were recently seized by Rio de Janeiro Civil Police.[49]
Diversion facilitated by the government	Argentina to Ecuador in 1991-95 (embargoed during an armed conflict). 6,500 tons of weapons and ammunition were transferred by President Menem. Menem was subsequently sentenced for arms trafficking.[50]

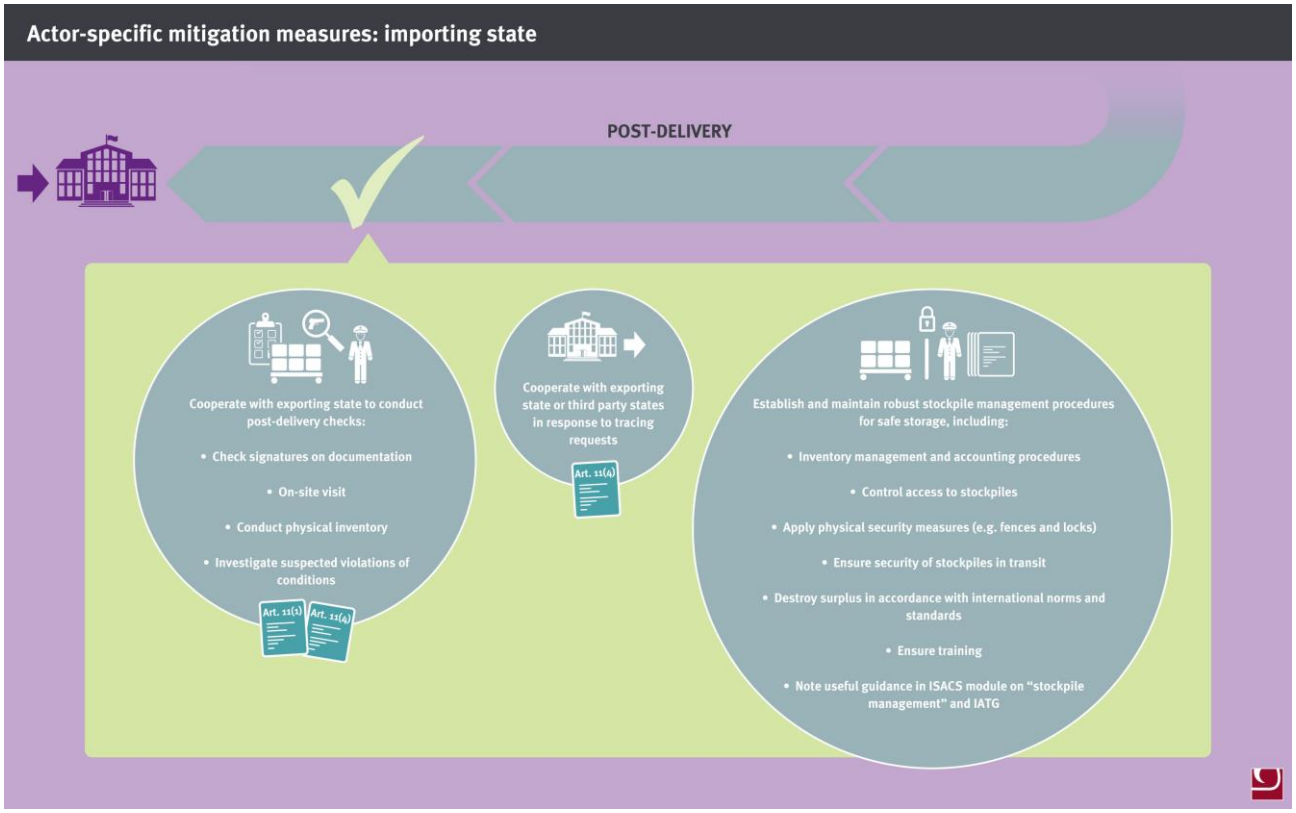
The chapter recommends practices and known interventions to prevent diversion in the region, including, marking/tracing/record-keeping, stockpile management, collection and destruction of surplus arms and ammunition, border controls, national controls over manufacture, end-use (possibly including post-delivery controls) and transfers (including import and brokering controls, risk assessments and enforcement mechanisms).[45]

> *"Critically no state can inoculate itself from the consequences of diversion by acting alone. In order to effectively tackle diversion, in all its varied forms, it is important for ATT States Parties in LAC to collaborate; sharing information on diversion risks, and working together – as well as with international and local civil society expert actors – to reduce diversion risks and instances."*[1]

Another recent effort from the policy side is the Small Arms Survey's "Possible Measures to Prevent and Address Diversion: Supporting Effective Implementation of the Arms Trade Treaty".[46] This document helpfully maps out the full chain of arms transfers, visually presenting the four different stages (before transfer, during transfer, delivery and post-delivery), the vulnerabilities and risks of diversion in each, and effective manners to preclude them. The "risk scenarios" include, for example: false information in EUCs or a false flight plan before

[44] Ibid, p. 109.
[45] Ibid, p. 111 - 113.
[46] Small Arms Survey. "Possible Measures to Prevent and Address Diversion: Supporting Effective Implementation of the Arms Trade Treaty"
http://www.smallarmssurvey.org/fileadmin/docs/Regulations_and_Controls/Levels_of_action/International/Diversion%20infographics.pdf

the transfer; negligence or corruption during the transfer; and inaccurate record-keeping, negligence, corruption and inadequate security and monitoring for post-delivery.[47] Prevention, risk mitigation and response measures are then recommended for each actor potentially involved in a transfer marred by diversion (exporting, importing, transit/transshipment and brokering States), and for each stage of the transfer. For example, the following visualization is particularly illustrative of the discussion of diversion in Latin America:



3. A view from the ground – the ATT Academy in Latin America

Given the above, the prevalence of diversion in Latin America was unsurprisingly a major theme of an important capacity-building effort in 2018 carried out by Control Arms, with support from UNSCAR and the Ministry of Foreign Affairs of Mexico. During the two sessions of the ATT Academy in Latin America, conducted in Mexico City in April and September, diversion was a hot topic – indeed, one of two focus themes, together with gender-based violence (GBV) which is slated to receive the thematic spotlight in 2019.[48]

Here, participants – were mostly 'operators' with direct responsibilities towards their country's implementation of the ATT. Participants included: customs officials, arms procurement military authorities, export/import control bureaucrats, and national arms registry chiefs. Government officials and civil society representatives from six

[47] Ibid.
[48] "2018 ATT Academy in Latin American." Control Arms. 2018. https://controlarms.org/attacademy/enla/.

countries – Mexico, Honduras, Uruguay, Paraguay, Peru and Chile – received training on the ATT's provisions, through presentations, group work, hypothetical exercises and simulations.[49]

Diversion was by no means a novel topic, as all participants have witnessed cases in their professional or personal lives, and thus brought perspectives from these to the ATT Academy's discussions.[50] Indeed, in the words of one participant, for Latin America the "ATT would be incomplete without Article 11", and the Treaty's treatment of the issue "was the first in international law that provides the basis to define and combat diversion". Yet, while efforts to prevent diversion are fairly widespread, their prevalence in Latin America may be lower than elsewhere; in fact, two-thirds of all states responding to the ATT Baseline Assessment Project "indicated that they are involved in cooperative measures to prevent diversion" – thought this was the case for only six of the 16 respondents from the Americas.[51]

During ATT Academy discussions, it became clear that diversion risks and occurrences share some universal characteristics. However, some aspects of this phenomenon are of greater prevalence and impact in Latin America and therefore warrants further attention. For example, while data is currently not available - no organization conducts evidentiary documentation of diversion and systematic tracing in the region - a comparison to CAR's aforementioned typology would surely result in very different proportions in LAC. The combined 57 percent of cases of diversion due to battlefield capture, state collapse, and state-sponsored diversion in the context of African and Middle Eastern conflicts covered by CAR, would presumably be quite close to zero, or in the single digits, in Latin America – particularly in the absence of 'armed conflict' in the classic sense. Conversely, discussions with ATT Academy participants point to the assumption that "ineffective PSSM" or other undetermined loss from national stockpiles, in the case of Latin America, would constitute the absolute majority of diversion cases.

This, of course, confirms the widely held notion that "a significant proportion of the weapons held by armed groups in LAC were at some stage diverted from official stocks."[52] Indeed, stockpile management and prevalent 'leakage' from government holdings was a singular concern among ATT Academy participants. While faulty stockpile management, alas, may be deemed a serious crisis in the developing world globally,[53] the situation is particularly dire in some Latin American countries.

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[49] Ibid.

[50] As noted by Stockholm International Peace Research Institute (SIPRI), in Latin America "two of the most important issues that require urgent attention are leakages from poorly secured stockpiles and the so-called ant trade—the smuggling of small quantities of weapons or their parts and components between bordering states … National stockpiles of SALW in Latin America and the Caribbean are often poorly guarded or maintained and there have been numerous cases of weapons being illegally diverted to the black market. Leakages occur due to a combination of factors, but negligence, theft and corruption are prominent among them":
Bromley, Mark, and Alfredo Malaret. *ATT-related Activities in Latin America and the Caribbean: Identifying Gaps and Improving Coordination*. SIPRI Background Paper. Stockholm International Peace Research Institute, 2017.
https://www.sipri.org/sites/default/files/ATT-related-activities-Latin-America-and-Caribbean.pdf

[51] Stohl, Rachel, and Paul Holtom. *The ATT Baseline Assessment Project*: International Cooperation and Assistance: Capacity, Experience, and Practices. 2015.
http://www.stimson.org/sites/default/files/file-attachments/ATT-BAP-Cooperation-WEB2.pdf

[52] Control Arms Secretariat (2018). 'ATT Monitor 2018', p. 101.

[53] The Small Arms Survey has recalled that "numerous reports from South-East Asia suggest that many weapons and ammunition storage facilities are left unguarded and in an almost comical state of repair – one, for instance, was described as having a locked door, a roof, but only three walls":

While the ATT references stockpile management only in Article 16 (International Assistance), it was recalled at the ATT Academy that the theme "has since been recognized through the WGETI sub-working group on diversion that the States Parties should consider the issue of preventing and addressing diversion not only during transfers but also after delivery."[54] As such, participants discussed and took note of a plethora of international best practices and standards on PSSM, including normative and technical guidelines from the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS), The United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC), ISACS, the IATGs, and others. Importantly, the ATT Academy specifically discussed the aforementioned "Annex D" ('Possible Measures to Prevent and Address Diversion') as a helpful blueprint to follow, in particular its section 'Transfer chain stage 4: Post-delivery storage/National stockpiles'.[55]

> *"One important measure of a government's readiness to receive weapons is its ability to keep them safe from diversion and accidents. Stockpile security and management are basic but essential aspects of control over the instruments of violence; diversion to unauthorized groups or individuals (whether through corruption, malice, incompetence or omission) can be an indicator of how well a given state performs".*[1]

Small arms

Heavy weapons like tanks and combat aircraft are difficult to divert. Conversely, diversion of small arms and light weapons (SALW) is much more pervasive, particularly given their concealability and portability, and "their wide distribution throughout security force stockpiles".[56] According to Small Arms Survey, "while larger conventional arms, such as artillery and missile systems, are rarely deployed to smaller units of a country's security forces, small arms and light weapons feature in all levels of the national stockpile (which) results in a greater number of potential opportunities for diversion".[57] This has certainly proven to be the case in Latin America, as diversion, particularly from police forces and military stockpiles, is common.

Bevan, James. "Arsenals Adrift: Arms and Ammunition Diversion." In *Small Arms Survey 2008: Risk and Resilience*, 53. Geneva: Small Arms Survey, 2008. http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2008/en/Small-Arms-Survey-2008-Chapter-02-EN.pdf. For the Horn of Africa, a PAX report included among its recommendations to "prioritise and invest in an overhaul of structures and resources to prevent the diversion and trafficking of small arms, light weapons and their ammunition; make major efforts on stockpile management, stricter firearms and ammunition controls, and tackling corruption in security forces":
Mack, Daniel and Frank Slijper. *Armed and Insecure: An Overview of Arms Transfers and Armed Violence in the Horn of Africa (2010-2015).* PAX. Edited by Susan Clark and Daan Kayser. September 2016. https://www.paxforpeace.nl/media/files/pax-report-horn-of-africa-armed-and-insecure.pdf, p. 165.

[54] Control Arms Secretariat (2018). 'ATT Monitor 2018', p. 102.

[55] "Chair's Draft Report to CSP4" *Arms Trade Treaty Working Group on Effective Treaty Implementation.* ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep. Fourth Conference of States Parties. Tokyo, 20 – 24 August 2018. https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP4_WGETI_Draft_Report_EN/ATT_CSP4_WGETI_Draft_Report_EN.pdf, p. 22.

[56] Bevan, James. "Arsenals Adrift: Arms and Ammunition Diversion." Small Arms Survey 2008, p. 47.

[57] Ibid.

Moreover, the trade in small arms is relevant to more countries than that of heavy weapons For example, 2015 ATT annual reports included 13 'nil' reports for exports and imports of heavy weapons, but only two 'nil' reports for exports and imports of SALW.[58] In Latin America, while several countries may not actively participate in the trade of heavy weapons, many are actors in the small arms market. Yet, transparency regarding the international transfer of small arms, though more needed, is on average lower than for larger conventional systems,. While "easily dismissed as 'lesser' weapons in a trade in which units of major weapon systems can cost millions and include cutting-edge technology, a few relatively cheap guns can wreak major havoc. A few thousand dollars' worth of firearms or grenades can facilitate tragedies on the scale of the attacks on Kenya's Garissa University, the Westgate Mall in Nairobi and the World Cup strike in Kampala".[59] Even within the category of SALW, ATT Academy participants noted the primacy of small arms vis-à-vis light weapons in the context of diversion and human security impact in Latin America.

Another peculiar Latin American scenario, perhaps uncommon internationally, was also reiterated at the ATT Academy: diversion after an international transfer from one developed country to another. Several participants recalled that European firearms are constantly diverted from the United States into the LAC region. Some participants urged European exporters of small arms to be held responsible for their diversion within the U.S. civilian market and consequent illegal trafficking into Mexico and Central America. Suggesting that tracing requests quite often indicate a European origin, those exporting states need to consider the proposed end-use(r) in the U.S. and high possibility of diversion when conducting their risk assessments. Precluding some of these transfers through more robust risk assessments would be "a concrete application of the ATT", in one participant's opinion.

> *"Diverted weapons that were originally purchased lawfully in the U.S. are a major challenge for many countries across LAC. Between 2009 and 2014, 70 percent of all illegal weapons seized in Mexico by national authorities were determined to have originated in the U.S. – a total of 73,684 firearms. Also, between 2006 and 2009, 34 percent of illegal guns seized in crimes in Guatemala were traced from the U.S. Furthermore from 2014 to 2016, some 50,133 guns originating in the U.S. were recovered as part of criminal investigations in 15 countries stretching from North America to Central America and the Caribbean. Finally, according to a 2017 report by Brazil's Federal Police, of 10,000 firearms seized since 2014, roughly 1,500 were originally manufactured and sold in the U.S."*[1]

[58] Stohl, Rachel, and Paul Holtom. *REVIEWING 2016 ATT ANNUAL REPORTS ON ARMS EXPORTS AND IMPORTS: ANALYSIS AND GOOD PRACTICE*. ATT Baseline Assessment Project, 2015. http://www.armstrade.info/wp-content/uploads/2016/10/ATT-BAP_Reviewing-2016-ATT-Annual-Reports-on-Arms-Exports-and-Imports.pdf, p. 27.

[59] Mack, Daniel and Frank Slijper. *Armed and Insecure An Overview of Arms Transfers and Armed Violence in the Horn of Africa (2010-2015).* PAX. p. 162. Or in other words, "Small arms and light weapons may not pack the same punch as heavy weaponry, yet the sheer volume being trafficked, their durable nature, and their universal availability causes havoc on a much greater scale… Weapons are durable goods, providing longevity to the harm they can inflict; they typically circulate through a region, moving from conflict to conflict."; May, Channing. *Transnational Crime and the Developing World*. Report. March: Global Financial Integrity, 2017. http://www.gfintegrity.org/wp-content/uploads/2017/03/Transnational_Crime-final.pdf

On this topic, one participant offered as input several publications highlighting the problem, noting for example that from 2014 to 2016 "U.S.-sourced guns were used to commit crimes in nearby countries approximately once every 31 minutes" as "many of the same gaps and weaknesses in U.S. gun laws that contribute to illegal gun trafficking domestically likewise contribute to the illegal trafficking of guns from the United States to nearby nations".[60]

Ammunition

In addition to small arms, the issue of their ammunition's diversion also animated conversations during the ATT Academy, given its prevalence and impact in the region.[61] Though ammunition may not be explicitly covered by the ATT's diversion mandate, as Article 11 only lists the conventional weapons covered under Article 2.1 (Scope), it is nonetheless a high, real-world priority in terms of diversion and its impacts. Indeed, during working group discussions in May/June 2018, the ICRC "recommended that States Parties apply the same diversion prevention measures to ammunition as they do for the arms themselves".[62] In this sense, an encouraging development should be noted: in many cases, including some countries in LAC, governments in practice are applying ATT provisions to ammunition just as with the weapons that propel them.[63]

Of course, tackling the diversion of ammunition is not simple. The complexity stems from the fact that "bullets tend to be less well marked, registered, kept, monitored and regulated than firearms, making diversion and misuse easier to conduct and more difficult to trace."[64] Moreover, the "diversion of ammunition resulting from inadequate PSSM is extremely difficult to verify, primarily because states rarely maintain detailed inventories of ammunition. They tend to record ammunition in bulk, by production lot, rather than by unique identifying numbers assigned to each round."[65] Difficulties notwithstanding, the diversion of ammo is essential to grasp

[60] Parsons, Chelsea, and Eugenio Weigend Vargas. "Beyond Our Borders." Center for American Progress. February 2, 2018. https://www.americanprogress.org/issues/guns-crime/reports/2018/02/02/445659/beyond-our-borders/ See also: Muggah, Robert, and Topher Mcdougal. "Why a 'Great Wall' Won't Stop the Cross-Border Gun Trade." Americas Quarterly. https://www.americasquarterly.org/content/why-great-wall-wont-stop-cross-border-gun-trade.

[61] "In Latin America and the Caribbean, constant supply, availability and proliferation of ammunition to all potential actors of violence – either through use in criminal activity, misuse by State forces, interpersonal violence between civilians, or incidents with private security forces – are a *sine qua non* to producing the region's macabre armed violence records.":
Ammunition Control Practices in Latin America and the Caribbean. Report. Lima: United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean, 2018. http://www.unlirec.org/Documents/Amm_Contro_Practices.pdf, p. 1. For a recent example, see: Contreras, Ezequiel Flores. "Denuncian Uso De Municiones Importadas Por La Sedena En Disputa Del Crimen Por La Sierra De Guerrero." Proceso. December 03, 2018. https://www.proceso.com.mx/562237/denuncian-uso-de-municiones-importadas-por-la-sedena-en-disputa-del-crimen-por-la-sierra-de-guerrero.

[62] Control Arms Secretariat. "Summary Analysis of CSP 2018 Working Group Meetings" 29 May - 1 June 2018. https://www.dropbox.com/s/abmv8ds7v6tjdk2/Working%20Group%20Reports.pdf

[63] "Some deem coverage of ammunition in the ATT partial, as States are not explicitly obligated to consider ammunition under the articles covering Import, Transit/Transshipment, Brokering, Diversion, Record Keeping, and Reporting, all of which refer only to "conventional arms covered under Article 2(1)" – particularly unfortunate in terms of transparency. However, initial ATT implementation indicates that states in Latin America and the Caribbean have been willing to deem ammunition as included under all these categories, excluding Reporting.":
Ammunition Control Practices in Latin America and the Caribbean. Report. Lima: United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean, 2018. p. 12.

[64] Ibid, p. 3.

[65] "Typology of Diversion". Vol. 1. Diversion Digest. London: Conflict Armament Research, 2018. p. 11.

given its prevalence and scope. For example, in the 1072 diversion cases documented by CAR as aforementioned, 735 weapons were diverted. For ammunition, the total was 206,198 units.[66]

Among the solutions identified during the ATT Academy, in addition to stockpile management, marking and tracing – for which the region has best practices, guidelines and established normative standards – were highlighted:

> "Marking ammunition – in order to preclude theft, diversion, and illicit trafficking, or to understand how it happened after the fact in order to prevent future incidents – has long been recognized as absolutely essential, a corollary to the responsibility of producing or importing ammunition. Moreover, recoverable markings, combined with proper record keeping, can prove instrumental in helping solve firearm crimes, particularly homicides… detailed marking ("one lot, one client") allows for tracing of ammunition diverted, trafficked, or used in firearm-related violence."[67]

End User Certificates and import controls

Though some Latin American countries – such as Brazil – are much larger exporters than is commonly understood, most countries in the region are mostly importers of arms and ammunition. As such, the ATT's import control obligations gain a much greater importance than those focused on exporting countries. In fact, some states in the region seldom, or never, will be confronted with the need to conduct a risk assessment for exports, while imports may be commonplace. Therefore, for most Latin American countries, stopping a transfer due to potential diversion of arms may be more relevant than the denial of an export license based, for example, on violations of international human rights or international humanitarian law.

In this sense, the importance of robust import controls – including the use of EUCs - was thoroughly discussed at the ATT Academy. One participant noted that the ATT's Article 8 (Imports) "contained few obligations, but many opportunities", allowing for a platform or catalyst to create national measures of control and thus comply with the Treaty's object. Implementation of the ATT's import requirements should thus be a priority area for Latin America, inspiring the region to become more responsible arms importers. Several participants noted that national systems were often inexistent or archaic, but the ATT could serve as a tool to press for their updating or improvement. For example, some participants shared that their countries did not yet have a national control list along the lines demanded by ATT, nor a EUC system. Indeed, said efforts are currently underway in at least a couple of the countries participating in the ATT Academy.

Amongst efforts to prevent diversion in the region, the importance of EUCs was debated at great length. As has been correctly noted, "In many ways, a EUC is a first line of defense against diversion; however, it is critical that any documentation is thoroughly checked and authenticated by all parties to a transfer. Even then, in isolation a EUC cannot be relied upon as the sole instrument in diversion prevention efforts, particularly where

[66] Ibid, p. 4.
[67] *Ammunition Control Practices in Latin America and the Caribbean*. Report. Lima: United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean, 2018. p. 27 and 32.

diversion risks are significant, as some governments renege on commitments made in EUCs".[68] As such, best practices in the designing and application of EUCs were presented and debated at the ATT Academy, using as a basis the excellent materials provided by UNLIREC including EUC models, best practices and a detailed run-through of all its essential elements.[69]

References such as ISACS Module 03.21 ('National controls over the end-user and end-use of internationally transferred small arms and light weapons') were deemed particularly valuable.[70] Other elements recalled by participants were different modalities of post-delivery verification, as well as the possible use of no re-export clauses.

4. Final Thoughts

Diversion, the 'devil inside' of the arms trade, must be tamed if the tragic human impact of armed violence is to be minimized. As noted, if darkness fosters diversion, information sharing is the light that can help prevent it. Transparency, information sharing, knowledge production and capacity-building, like the efforts highlighted in this briefing paper, are essential. Indeed, the more light the ATT can produce, the better. As noted by Saferworld: "The lack of widespread, detailed and common understanding of the issue is therefore one of the key obstacles to concerted international action against the diversion of arms. It also places a clear onus on States to share information on all manifestations of the problem, thus aiding efforts to prevent and combat the

[68] Control Arms Secretariat (2018). 'ATT Monitor 2018', p. 105.
[69] Manuel Martínez Miralles "Control de Importación" UNLIREC, ATT Academy presentation 2018. https://www.dropbox.com/s/q35mvc7u2jfwzm1/TCA.Controles%20Importación.ppt
[70] *National Controls over the End-user and End-use of Internationally Transferred Small Arms and Light Weapons*. Report.1.0 ed. International Small Arms Control Standards (ISACS) Inter-Agency Support Unit. United Nations Coordinating Action on Small Arms (CASA), 2014. http://www.smallarmsstandards.org/isacs/0321-en.pdf

illicit and irresponsible trade in conventional arms. The ATT provides a crucial framework for sharing knowledge and experience of arms diversion and for effective action to address it".[71]

During the ATT Academy in Latin America, consensus emerged on information exchange and increased transparency – particularly within the parameters of ATT national reporting – as key efforts to tackle diversion in Latin America, and that the increased attention to diversion offers a window of opportunity to implement practical measures to stop diversion.

Likewise, it was noted that different actors have different responsibilities and capacities. While many Latin American nations must take action by fixing known vulnerabilities such as poor stockpile management, or lack of EUCs, countries in other continents can also help diminish the prevalence of diversion in the Americas. In this sense, for exporting countries, taking the ATT's diversion obligations seriously entails a more careful and forward-looking perspective during the risk assessment process. Rather than focusing solely on the immediate future of weapons exported, responsible governments need to consider the medium-term potential that the arms could be diverted. Particularly, they must take into consideration the remarkable longevity of small arms, the prospect of instability, and the dynamics and patterns of international trafficking, with firearms often travelling widely within a given sub-region. Diversion patterns, prevalence and impact in Latin America demand action from all stakeholders.

Written by Daniel Mack for the Arms Trade Treaty Academy, a project of Control Arms funded by UNSCAR.

[71] Saferworld, "Key issues for ATT Implementation: Preventing and combating diversion", February 2015, p. 2: http://www.saferworld.org.uk/downloads/pubdocs/key-issues-for-att-implementation---preventing-and-combating-diversion.pdf