



Taming the Devil Within: **How to use the Arms Trade Treaty to** **Address Diversion in Latin America**

This report was written for Control Arms “ATT Academy in Latin America”, a technical training which seeks to provide a new approach to learning about the ATT and its implementation to carefully selected participants, all of whom engage directly with the ATT in their work as government, or as part of civil society. It builds on earlier explorations of diversion in Latin America including the 2018 ATT Monitor Annual Report, as well as information gathered from qualitative surveys with participants at the ATT Academy in Latin America.

This report offers specific advice to policymakers and advocates seeking to use the framework of the ATT to assess and mitigate the risks of diversion, particularly in Latin America. The report demonstrates the need for transparency, information sharing and international cooperation, and encourages the rigorous implementation of the ATT, in line with other relevant international and regional instruments

The Latin America and Caribbean (LAC) region, though accounting for only 9 percent of the world’s population,¹ has the highest homicide rate in the world. More than a third of global homicides (36 percent) take place in LAC countries and 66 percent of these are committed with firearms. This is a stark contrast to the percentage of homicides committed with firearms in Asia and Europe, which is only 28 percent and 13 percent respectively.² 42 of the 50 most dangerous cities in the world, outside of conflict zones, are located in LAC countries.³ The proliferation of arms and ammunition therefore present the most significant threat to human security in the region.

Where do these arms come from? How do they end up in the hands of those who perpetrate crimes and armed violence? What type of measures can states take to prevent the diversion of arms in Latin America? Lack of transparency in the international arms trade and the thriving illicit trade make it difficult to estimate the exact quantity of arms and ammunition imported by countries in this region. According to Small Arms Survey, the value of small arms delivered into the region in 2014 is estimated at USD\$295 million.⁴ Most legal weapons in Latin America are imported from the United States, Europe and the emerging regional industry. The United States alone has shipped more than USD\$1.5 billion worth of small arms and light weapons and ammunition between 2000 and 2014 primarily to Brazil, Chile, Colombia, Mexico, Panama and Paraguay.⁵ While these arms are transferred to Latin America legally, ineffective national stockpile management, theft, corruption and other undetermined losses from national stockpiles enable many of these weapons to end up on the black market. The United States is also a major source of illicit arms and ammunition for this region, with 40-60 percent of illicit weapons seized in Central America and the Caribbean being traced back to the US.⁶

What is certain is that both the legal trade and the illicit trafficking in arms and ammunition have maintained the region’s criminal organizations, gangs, private security firms and others with a steady supply of firearms.

¹ United Nations Department of Economic and Social Affairs (2015). “World Population Prospects” 2015, p. 1-20. https://population.un.org/wpp/Publications/Files/WPP2015_DataBooklet.pdf

² United Nations Office on Drugs and Crime (2013). “Global Study on Homicide 2013” March 2014, p. 1-163. http://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf

³ Seguridad, Justicia Y Paz, “Metodología del ranking (2017) de las 50 ciudades más violentas del mundo” 6 March 2018, p. 3-7. <https://www.oas.org/ext/en/security/crime-prevention-network/Resources/Digital-Library/ranking-2017-de-las-50-ciudades-mas-violentas-del-mundo>

⁴ Holtom, Paul, and Irene Pavesi (2017). “Trade Update 2017 Out of the Shadows” September 2017, p. 1-90. <http://www.smallarmssurvey.org/fileadmin/docs/S-Trade-Update/SAS-Trade-Update-2017.pdf>

⁵ Muggah, Robert (2016). “Latin America’s Fatal Gun Addiction” 26 May 2016. <https://igarape.org.br/latin-americas-fatal-gun-addiction/>

⁶ Ibid.

Smuggling between and within countries, diversion of arms from domestic stockpiles, and corruption have contributed to the growing number of arms on the illicit market and private ownership in Latin America. That is why the 'leakage' of arms and ammunition from the legal trade to a potential illegal use(r) is a universal concern among states, particularly in Latin America. Whether a large exporter, solely an importer, or a small state with virtually no participation in the trade, all countries are vulnerable to its catastrophic effects if diversion occurs in their vicinity.

Measures to prevent the diversion of arms and their ammunition were presented and debated in several fora in 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. Nevertheless, the question remains: What type of measures can states in Latin America take to prevent the diversion of arms and tame this "devil within"?

1. A brief history of diversion

The prevention of diversion was not guaranteed to become part of the Arms Trade Treaty (ATT), despite a core aim of the treaty being the prevention of the illicit trade in arms. For many years during the discussions in the run-up to the ATT, the topic of diversion was often overlooked. Relatively late in the Treaty's negotiations⁷ – spearheaded by some in civil society and like-minded states, particularly Mexico⁸ – diversion was included in a specific article. The ATT's provisions on diversion, when well implemented by governments, may become one of the instrument's most powerful tools to effect actual change in years to come.

As one of the Treaty's main objects outlined in Article 1 - "Prevent and eradicate the illicit trade in conventional arms and prevent their diversion" - diversion appears several times in the ATT's text and figures most prominently in Article 11, which compels each country involved in an arms transfer to "take measures to prevent their diversion".⁹ Much of the intended responsibility falls upon exporting states, which "shall seek to prevent the 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." (ATT Art. 11.2)¹⁰

Since its inclusion in the Treaty's text as an obligation for States Parties, the exact nature and method on how to prevent diversion has garnered significant attention. Among the proposed solutions, tackling the lack of transparency in the international arms trade has often been at the forefront. Most of the 'measures to prevent' diversion that States Parties 'shall take' under Article 11 refer to information sharing and

⁷ Clapham, Casey-Maslen, Giacca, Parker, Eds (2013). President's Non-Paper, "The Arms Trade Treaty: A Commentary". 22 March 2013, p. 347.

⁸ Woolcott, Peter (2014). "The Arms Trade Treaty", United Nations Audiovisual Library of International Law. 2014, p. 4. http://legal.un.org/avl/pdf/ha/att/att_e.pdf.

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.

⁹ United Nations (2014). "The Arms Trade Treaty" 2 April 2013, 24 December 2014, p. 1-12. https://www.thearmstradetreaty.org/hyper-images/file/ATT_English/ATT_English.pdf

¹⁰ "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 (2014). "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>.

transparency activities”.¹¹ 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.¹²

*“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”.*¹³

Diversion also has gained momentum within the ATT’s diplomatic discussions, culminating with its inclusion as a thematic focus by Japan for the Fourth Conference of States Parties (CSP 2018). 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 (WGETI); 2) inter-sessional 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”.¹⁴

Perhaps most importantly, the uptake by the CSP 2018 of two documents on Article 11 developed by WGETI - 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 a significant and substantial steps towards tackling diversion.¹⁵ While the former document is quite helpful as a reference, listing documents from UNODA, the 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 latter document consists of a comprehensive list of concrete measures that states can take to prevent diversion at all the stages of the transfer chain. Annex D benefits from case studies, input and recommendations from Latin American states¹⁶ and offers concrete and practical measures to prevent diversion, including end-use(r)

¹¹ 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 Report 2017” 11 September 2017, p. 19. https://attmonitor.org/en/wp-content/uploads/2017/09/EN-ATT_Monitor-Report-2017_ONLINE-1.pdf

¹² Ibid, p. 24.

¹³ Control Arms Secretariat (2018). “ATT Monitor Report 2018” 2018, pg. 101 https://attmonitor.org/en/wp-content/uploads/2018/08/EN_ATT_Monitor_Report_2018_ONLINE.pdf

¹⁴ ATT Secretariat (2018). “Arms Trade Treaty Fourth Conference of States Parties FINAL REPORT” 24 August 2018, p. 6. [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](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)

¹⁵ ATT Secretariat (2018). “ATT Working Groups on Effective Treaty Implementation: Chair’s Draft Report to CSP4” 20 July 2018, p. 1-30. https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP4_WGETI_Draft_Report_EN/ATT_CSP4_WGETI_Draft_Report_EN.pdf

¹⁶ Control Arms Secretariat (2018). “Summary Analysis of CSP 2018 Working Group Meetings” 29 May- 1 June 2018, p. 2-4. <https://controlarms.org/wp-content/uploads/2019/02/Working-Group-Reports-1.pdf>

certificates (EUCs), delivery verification certificates, monitoring and protecting arms shipments, post-delivery checks and physical security and stockpile management (PSSM).¹⁷ The Small Arms Survey’s “Possible Measures to Prevent and Address Diversion: Supporting Effective Implementation of the Arms Trade Treaty” 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.¹⁸

2. Diversion of Arms and Ammunition in Latin America



ATT Academy participants engage in a diversion exercise during the first in-person training held in Mexico City in April 2018. Photo credit: Control Arms/Zoya Craig

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 [in this region], arms trafficking and diversion are comparatively under-examined and under-reported”.¹⁹

Control Arms ATT Academy in Latin America, held in Mexico City in April and September 2018, sought to provide a forum for government officials and civil society representatives to explore challenges and identify practical solutions to diversion through the effective implementation of the ATT.²⁰ Participants from six countries – Mexico, Honduras, Uruguay, Paraguay, Peru and Chile – held direct responsibilities in their country’s implementation of the ATT, such as customs officials, arms procurement military authorities,

¹⁷ ATT Secretariat (2018). “ATT Working Groups on Effective Treaty Implementation: Chair’s Draft Report to CSP4” 20 July 2018, p. 1-30. https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP4_WGETI_Draft_Report_EN/ATT_CSP4_WGETI_Draft_Report_EN.pdf

¹⁸ 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

¹⁹ Control Arms Secretariat (2018). “ATT Monitor Report 2018” 2018, pg. 101 https://attmonitor.org/en/wp-content/uploads/2018/08/EN_ATT_Monitor_Report_2018_ONLINE.pdf

²⁰ Ibid.

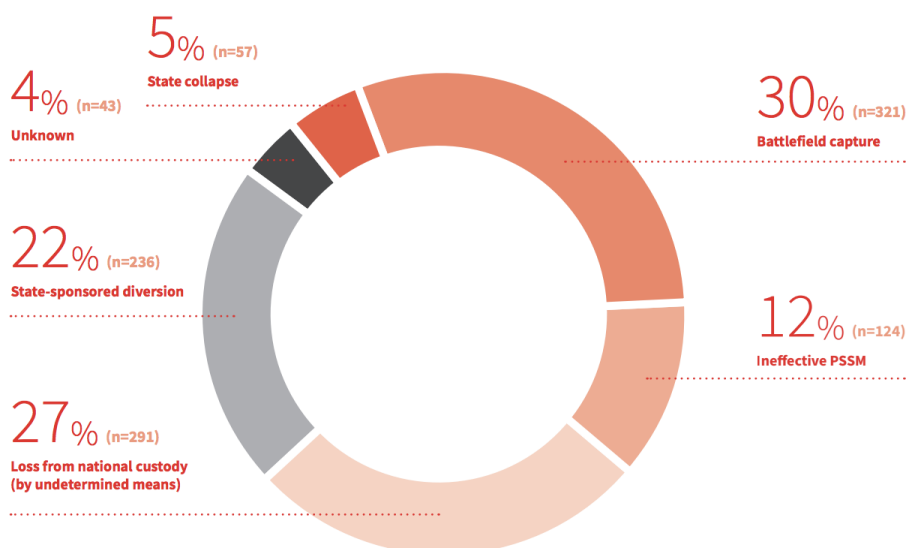
export/import control bureaucrats, and national arms registry chiefs. Many of them witnessed cases of diversion in their professional or personal lives, bringing concrete examples and useful perspectives to the ATT Academy's discussions.²¹

Diversion risks and occurrences share universal characteristics around the world. Discussions at the ATT Academy revealed that lack of information sharing, corruption, the prevalence of organized crime, and the existence of a large and under-regulated private security sector²² are among the key factors that drive diversion in Latin America. However, some aspects of this phenomenon are of greater prevalence and impact in Latin America and will be further explored in this report.

2.1 Diversion trends in Latin America

Over years of evidentiary efforts and tracing requests from governments through the iTrace platform, Conflict Armament Research (CAR) has developed a helpful, though geographically limited, typology of diversion. According to this analysis, the most common cases of diversion are battlefield capture, leakage due to ineffective physical security and stockpile management (PSSM), loss from national custody by undetermined means, state-sponsored diversion, loss following state collapse, and unclear causes.²³ While data is currently not available - no organization conducts evidentiary documentation of diversion and systematic tracing in the region - a comparison to CAR's typology of diversion would result in a very different manifestation of diversion 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 be close to zero, or in the single digits, in Latin America – particularly in the absence of 'armed conflict' in the classical sense.

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



Credit: Conflict Armament Research, *Diversion Digest Issue 01, 2018*

²¹Control Arms Secretariat (2018). "2018 ATT Academy in Latin America" <https://controlarms.org/attacademy/en/la/>.

²² Control Arms Secretariat (2018). "ATT Monitor Report 2018" 2018, pg. 101 https://attmonitor.org/en/wp-content/uploads/2018/08/EN_ATT_Monitor_Report_2018_ONLINE.pdf

²³ Conflict Armament Research (2018). "Diversion Digest: Typology of Diversion" 1 August 2018, p. 1-16. <http://www.conflictarm.com/wp-content/uploads/2018/08/diversion-digest-01.pdf>

Conversely, discussions with ATT Academy participants point to the assumption that in the case of Latin America, “ineffective PSSM” or other undetermined loss from national stockpiles would constitute the majority of diversion cases. This is also reinforced by the widely held notion that “diversion from official stockpiles is known to be considerable and is likely to be one of the key sources of weaponry sustaining criminal organizations, drug trafficking gangs, private security firms, militia and other armed groups in the region”.²⁴ While ineffective stockpile management may be deemed a serious crisis in the developing world,²⁵ the situation is particularly dire in some Latin American countries.

The ATT, if effectively implemented, can provide a framework that can be used by Latin American governments to tackle diversion. The Treaty requires States Parties to “take measures to prevent” diversion of arms to unauthorized users or uses (Article 11), providing a framework on which States can build strong norms, systems and institutions that will enable them to tackle diversion. Articles 11.2 and 11.3 call on States Parties “to prevent the diversion of the transfer of conventional arms” and “to mitigate the risk of diversion of the transfer of conventional arms”.²⁶ While the two provisions appear to address diversion only during transit and transshipment, they can also be applied to address the risk of diversion post-delivery by requiring states not to authorize the export or “to cooperate and exchange information” if a risk assessment indicates that diversion might occur after the goods reach their intended destination. A wider consideration of diversion is provided in Articles 11.4 and 11.5, which outline measures that should be taken when the “diversion of transferred conventional arms” is discovered, including “alerting potentially affected States Parties and examining shipments”.²⁷ Furthermore, in 2018 the WGETI has agreed that States Parties 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)”.²⁸

“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”.²⁹

The ATT references stockpile management in Article 16, in the context of international assistance to implement the Treaty, indicating that the Treaty’s effective implementation begins with establishing a comprehensive national system. Among the measures that the WGETI recommends States Parties take to

²⁴ Control Arms Secretariat (2018). “ATT Monitor Report 2018” 2018, p. 101.

²⁵ 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”:

Bevan, James (2008). “Arsenals Adrift: Arms and Ammunition Diversion” 2008, p. 1-34.

<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 (2016). “Armed and Insecure: An Overview of Arms Transfers and Armed Violence in the Horn of Africa (2010-2015)” September 2016, p. 165. <https://www.paxforpeace.nl/media/files/pax-report-horn-of-africa-armed-and-insecure.pdf>

²⁶ United Nations (2014). “The Arms Trade Treaty” 2 April 2013, 24 December 2014, p. 1-12.

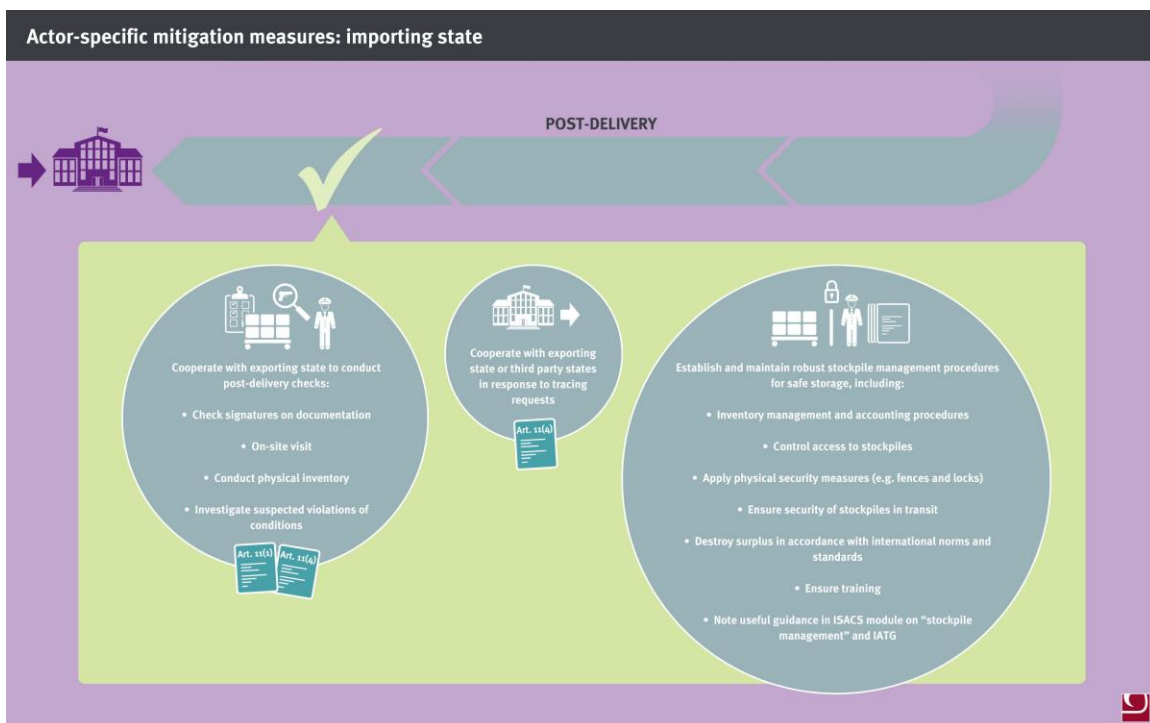
https://www.thearmstradetreaty.org/hyper-images/file/ATT_English/ATT_English.pdf

²⁷ Ibid.

²⁸ ATT Secretariat (2018). “ATT Working Groups on Effective Treaty Implementation: Chair’s Draft Report to CSP4” 20 July 2018, p. 1-30. https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP4_WGETI_Draft_Report_EN/ATT_CSP4_WGETI_Draft_Report_EN.pdf

²⁹ Mack, Daniel and Frank Slijper (2016). “Armed and Insecure: An Overview of Arms Transfers and Armed Violence in the Horn of Africa (2010-2015)” September 2016, p. 165. <https://www.paxforpeace.nl/media/files/pax-report-horn-of-africa-armed-and-insecure.pdf>

prevent diversion of arms and ammunition from official stockpiles include applying physical security measures (such as fencing and locking systems), conducting inventory management and accounting procedures, controlling access to stockpiles, destroying surplus arms and ammunition, and ensuring staff training in safe and secure stockpile management procedures.³⁰ In implementing other international and regional instruments and frameworks, including the UN Program of Action on Small Arms and Light Weapons (UNPOA), the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (Firearms Protocol), Inter-American Convention Against the Illicit Manufacturing of And Trafficking in Firearms, Ammunition, Explosives and Other related Materials (CIFTA), states in the region have already taken additional measures to limit diversion. These include marking of firearms, both government and civilian owned, registration and tracing measures to track internal movement of weapons, destruction of surplus weapons and ammunition, and improvements to the security and management of stockpiles. Other best practices and standards on PSSM include 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), the International Small Arms Control Standards (ISACS), the International Ammunition Technical Guidelines (IATGs), and others. As such, the implementation of the ATT should be harmonized and coordinated with these relevant instruments, in order to strengthen their effectiveness and limit duplication.



Credit: Small Arms Survey. "Possible Measures to Prevent and Address Diversion: Supporting Effective Implementation of the Arms Trade Treaty", 2018

However, as a significant amount of SALW and ammunition involved in criminal activities in the LAC region came from state sources, much more needs to be done to limit the diversion of guns and ammunition to unauthorized users and uses. Furthermore, anti-diversion measures should not only be directed at halting the illicit flow of weapons to organized crime – they must also ensure that government security forces do

³⁰ Ibid.

not use the weapons they receive in ways that create insecurity, violate human rights, perpetuate corruption or contribute to gender-based violence.

Emphasis must also be given to 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".³¹

"Diverted weapons that were originally purchased lawfully in the U.S. are a major challenge for many countries across LAC. ... 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".³²

The most commonly reported examples of diversion during transfers involve weapons that are purchased by individuals in the U.S. and are then trafficked, in small numbers, to cartels and other criminal organizations in LAC countries. According to the 2018 ATT Monitor Annual Report, "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".³³ On this topic, one ATT Academy participant noted 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".³⁴

Discussions at the ATT Academy also revealed that tracing requests for illicit arms and ammunition seized by national security forces often indicate a European origin. These claims are confirmed by a 2016 report published by the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) which indicates that about 70 percent of firearms seized in Mexico and traced via the ATF Tracing Electronic System (eTrace), from 2009 to 2014 originated in the United States" and of these about 17 percent were traced to a country other than the US and 13 percent were of indeterminate origin. According to ATF data, of the 17 percent of firearms traced to destinations, "the top five countries of origin of firearms seized in Mexico were traced back to Spain (3,786), China (3,027), Italy (2,186), Germany (1,522), and Romania (1,287)".³⁵

To enable Latin American states to effectively tackle diversion, ATT States Parties from other regions, particularly major exporters, should consider the proposed end-use(r) in the U.S. and carefully weigh the possibility of diversion when conducting their risk assessments. One ATT Academy participant noted that precluding some of these transfers through more robust risk assessments would be "a concrete application of the ATT". Exporters of small arms, ammunition and parts and components have a responsibly in

³¹ Control Arms Secretariat (2018). "ATT Monitor Report 2018" 2018 https://attmonitor.org/en/wp-content/uploads/2018/08/EN_ATT_Monitor_Report_2018_ONLINE.pdf

³² Ibid, p.106

³³ Ibid, p.106.

³⁴ Parsons, Chelsea, and Eugenio Weigend Vargas (2018). "Beyond Our Borders." 2 February 2018. <https://www.americanprogress.org/issues/guns-crime/reports/2018/02/02/445659/beyond-our-borders/> See also: Muggah, Robert, and Topher McDougal (2019). "Why a 'Great Wall' Won't Stop the Cross-Border Gun Trade." 2019. <https://www.americasquarterly.org/content/why-great-wall-wont-stop-cross-border-gun-trade>.

³⁵ United States Government Accountability Office (2016). "Firearms Trafficking: US Efforts to Combat Firearms Trafficking to have Mexico improved, but some Collaborations Challenges Remain" January 2016, p.1-40. <https://www.gao.gov/assets/680/674570.pdf>

preventing their diversion within the U.S. civilian market and consequent illegal trafficking into Mexico and Central America.

Under Article 11, all ATT States Parties commit to take “mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States”³⁶ to prevent the diversion of arms to unauthorized uses or users. 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” – while this was the case for only six of the sixteen respondents from the Americas.³⁷

2.2 Common types of weapons diverted in Latin America

Heavy weapons like tanks and combat aircraft are difficult to divert. In the absence of conflicts or armed insurgency, firearms are mainly of interest for criminal organizations. Conversely, diversion of SALW is much more pervasive, particularly given their concealability and portability, and “their wide distribution throughout security force stockpiles”.³⁸ 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”.³⁹ This has certainly proven to be the case in Latin America, as diversion, particularly from police forces and military stockpiles, is common.

The trade in small arms is relevant to more countries than that of heavy weapons. For example, of the ATT annual reports submitted by States Parties in 2016 on their arms exports and imports that took place in 2015 included 13 ‘nil’ reports for exports and imports of heavy weapons, but only two ‘nil’ reports for exports and imports of SALW.⁴⁰ In Latin America, while several countries may not actively participate in the trade of heavy weapons, many are actors in the small arms market. For example, in 2016 Paraguay did not report any imports of major weapons, but it reported the import of 8,020 semi-automatic pistols and 89 revolvers, as well as of 3,926 rifles and carbines. For the same year, El Salvador reported the import of two large-caliber artillery systems and of 25,268 SALW items.⁴¹

Transparency regarding the international transfer of small arms is on average lower than for larger conventional systems. For example, in its 2016 ATT annual report, Argentina provided descriptions of major conventional weapons it imported in 2016 but did not provide any descriptions for its exports or its imports of SALW.⁴² 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.

³⁶ United Nations (2014). “The Arms Trade Treaty” 2 April 2013, 24 December 2014, p. 1-12.

https://www.thearmstradetreaty.org/hyper-images/file/ATT_English/ATT_English.pdf

³⁷ Stohl, Rachel, and Paul Holtom (2015). “The ATT Baseline Assessment Project: International Cooperation and Assistance: Capacity, Experience, and Practices” August 2015, p. 1-32.

<http://www.stimson.org/sites/default/files/file-attachments/ATT-BAP-Cooperation-WEB2.pdf>

³⁸ Bevan, James (2008). “Arsenals Adrift: Arms and Ammunition Diversion.” 2008, p. 47.

³⁹ Ibid.

⁴⁰ Stohl, Rachel, and Paul Holtom (2016). “Reviewing 2016 ATT Annual Reports on Arms Exports and Imports: Analysis and Good Practice” 2015, p. 27. http://www.armstrade.info/wp-content/uploads/2016/10/ATT-BAP_Reviewing-2016-ATT-Annual-Reports-on-Arms-Exports-and-Imports.pdf

⁴¹ Control Arms Secretariat (2018). “ATT Monitor Report 2018” 2018, pg. 1-116. https://attmonitor.org/en/wp-content/uploads/2018/08/EN_ATT_Monitor_Report_2018_ONLINE.pdf

⁴² Ibid, p. 38.

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".⁴³

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. According to a United Nations Office on Drugs and Crime (UNDOC) report on Transnational Organized Crime in Central America and the Caribbean, "assault rifles are not a big feature of urban crime - handguns are more concealable, easier to use in close quarters, and just as effective for almost every criminal task".⁴⁴ This is evident in cases like Guatemala where between 2008 and 2011, up to 5,000 firearms were seized each year, of which up to 60 percent were pistols and only 4 percent were assault rifles, as well as in Honduras where in 2011, 41 percent of seized firearms were pistols, 30 percent revolvers, 8 percent shotguns and only 4 percent assault rifles.⁴⁵

In addition to small arms, the diversion of their ammunition is also prevalent and impactful in the region.⁴⁶ 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 serious, real-world concern for many stakeholders. Indeed, during ATT Working Group discussions held 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".⁴⁷ In this sense, an encouraging development should be noted: in many cases, including some countries in LAC, governments are applying ATT provisions in practice to ammunition just as with the weapons that propel them.⁴⁸

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".⁴⁹ 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

⁴³ Mack, Daniel and Frank Slijper (2016). "Armed and Insecure: An Overview of Arms Transfers and Armed Violence in the Horn of Africa (2010-2015)" September 2016, 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 (2017). "Transnational Crime and the Developing World" March, 2017, p. 1-166. http://www.gfintegrity.org/wp-content/uploads/2017/03/Transnational_Crime-final.pdf

⁴⁴United Nations Office on Drugs and Crime (2012). "Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment" 2012, p. 1-82. https://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf

⁴⁵ Ibid, p. 60.

⁴⁶ "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.": UNLIREC (2018). "Ammunition Control Practices in Latin America and the Caribbean" 2018. p. 1. http://www.unlirec.org/Documents/Amm_Control_Practices.pdf. 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. 3 December 2018. <https://www.proceso.com.mx/562237/denuncian-uso-de-municiones-importadas-por-la-sedena-en-disputa-del-crimen-por-la-sierra-de-querrero>.

⁴⁷ Control Arms Secretariat (2018). "Summary Analysis of CSP 2018 Working Group Meetings" 29 May- 1 June 2018, p. 1-16. <https://controlarms.org/wp-content/uploads/2019/02/Working-Group-Reports-1.pdf>

⁴⁸ "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.": UNLIREC (2018). "Ammunition Control Practices in Latin America and the Caribbean" 2018. p. 12. http://www.unlirec.org/Documents/Amm_Control_Practices.pdf

⁴⁹ Ibid, p. 3.

by unique identifying numbers assigned to each round”.⁵⁰ Difficulties notwithstanding, the diversion of ammunition is essential to understand and tackle, given its prevalence and scope. For example, in the 1072 diversion cases documented by CAR, 735 weapons were diverted. For ammunition, the total was 206,198 units.⁵¹

In addition to stockpile management, marking and tracing were also highlighted among the solutions identified during the ATT Academy. The region has already adopted some best practices, guidelines and established normative standards, including the Organization of American States Model Legislation for Marking and Tracing which provides detailed instructions on when, where and how ammunition must be marked. UNLIREC recommends that “Markings must be made both to the cartridge itself, and to all packaging that accompanies ammunition in transport, sale, and stockpiling. Markings must generally follow two principles: clarity (identifications should be easy to read) and uniformity (style and position of identifications should follow the same patterns)”.⁵²

2.3 Import controls to prevent diversion

While Latin American countries – such as Brazil – are relatively large exporters, most countries in the region are primarily importers of arms and ammunition. As such, the ATT’s import control obligations are of much greater relevance for the Latin American region than those focused on exporting regulations. In fact, some states in the region will seldom or never 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 on, for example, violations of international human rights or international humanitarian law.



⁵⁰ Conflict Armament Research (2018). “Diversion Digest: Typology of Diversion” 1 August, 2018, p. 11. <http://www.conflictarm.com/wp-content/uploads/2018/08/diversion-digest-01.pdf>

⁵¹ Ibid, p. 4.

⁵² UNLIREC (2018). “Ammunition Control Practices in Latin America and the Caribbean” 2018 p. 27, 32. http://www.unlirec.org/Documents/Amm_Control_Practices.pdf

In this sense, the importance of robust import controls – including the use of EUCs - was discussed at length 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, and that the ATT could serve as a tool to press for their updating or improvement. For example, some shared that their countries did not yet have a national control list as demanded by the ATT, nor an EUC system. Indeed, they indicated that efforts are currently underway in at least two of the countries that participated in the ATT Academy.

Among efforts to prevent diversion in the region, the use of EUCs is one of the key measures states employ. As has been correctly noted, “in many ways, an 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 an EUC cannot be relied upon as the sole instrument in diversion prevention efforts, particularly where diversion risks are significant, as some governments renege on commitments made in EUCs”.⁵³ Other relevant measures include recordkeeping and marking at the time of import/re-export, border controls and law enforcement cooperation, strict national legislation that sets out key offences and enforcement, and a comprehensive national control authority.⁵⁴ Best practices, EUC models, and trainings in the designing and application of EUCs have been developed by the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC) to assist Latin American countries in strengthening the implementation of the ATT.⁵⁵ Other practical guidance, guidelines and best practices including the ISACS Module 03.21 (‘National controls over the end-user and end-use of internationally transferred small arms and light weapons’)⁵⁶ as well as post-delivery verification and the use of no re-export clauses were deemed particularly valuable by ATT Academy participants.

3. 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. Transparency, information sharing, knowledge production and capacity-building, like the efforts highlighted in this briefing paper, are essential to shine a light on diversion and illicit trafficking. Indeed, the more transparency that comes with universalization and implementation of the ATT, 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 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”.⁵⁷

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

⁵³ Control Arms Secretariat (2018). “ATT Monitor Report 2018” 2018, p. 105 https://attmonitor.org/en/wp-content/uploads/2018/08/EN_ATT_Monitor_Report_2018_ONLINE.pdf

⁵⁴ Ibid, pg. 111-113

⁵⁵ Miralles, Manuel Martínez (2018). “Control de Importación” April 2018, p. 1-40. <https://www.dropbox.com/s/q35mvc7u2ifwzm1/TCA.Controles%20Importación.ppt>

⁵⁶ United Nations Coordinating Action on Small Arms (2014). “National Controls over the End-user and End-use of Internationally Transferred Small Arms and Light Weapons” 6 June 2017, p.1-24. <http://www.smallarmsstandards.org/isacs/0321-en.pdf>

⁵⁷ Saferworld (2015). “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>

diversion in Latin America. In particular, the increased attention to diversion within the ATT process offers a window of opportunity for governments in this region to implement practical measures to stop diversion.



Likewise, it was noted that different actors have different responsibilities and capacities. While 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 regard, 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 to long-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. Similarly, transit and transshipment states can also play a crucial role by contributing to information exchanges, verifying shipment documentation and maintaining accurate records of goods that were in transit through their territory. Other stakeholders in the arms trade, including arms manufacturers, brokers, and transport companies can share information that can assist states in their risk assessment process. Diversion patterns, prevalence and impact in Latin America demand action from all stakeholders.

3.1 Key recommendations outlined in this report:

- Rigorously implement the ATT and harmonize it with other relevant international and regional instruments and agreements.
- Support international, regional and national cooperation and assistance to mitigate the risks of diversion.
- Support and conduct evidentiary documentation of diversion and systematic tracing in the region in order to establish patterns of diversion and types of weapons being abused, identify gaps in national systems and legislation and develop adequate measures to tackle these risks.
 - Improve collection and analysis of disaggregated data used on the types, distribution, movement and use of weapons and ammunition that have been diverted to the illicit market.
 - Enable and conduct tracing of illicit weapons in order to establish their point of origin and diversion.

- Ensure the implementation of strong National Control Measures and the development of a comprehensive national control authority.
 - Compile a National Control List, in line with the ATT, that covers the widest possible range of conventional weapons, ammunition, parts and components.
 - Develop and implement robust import controls, including EUCs, recordkeeping and marking at the time of import/re-export, border controls and law enforcement cooperation, strict national legislation that sets out key offences and enforcement mechanisms.
 - Enact measures to prevent diversion of weapons, ammunition, parts and components to networks involved in criminal organizations, including customs regulations, marking and tracing, destroying surplus and improving management of stockpiles.
 - Governments should apply diversion prevention measures to ammunition and parts and components as they do to arms.
- Ensure transparency and information sharing by:
 - Providing transparent reporting on transfers by including descriptions and information disaggregated on small arms and light weapons.
 - Supporting local, national, regional and international civil society efforts to monitor the arms trade.
 - Contributing to the sharing of information and best practices, enabling international cooperation and assistance in mitigating the negative impact of arms proliferation.
- All stakeholders should contribute to preventing diversion.
 - Exporting states should consider the medium to long-term potential that the arms could be diverted, the prospect of instability, and the dynamics and patterns of international trafficking when conducting their risk assessments.
 - Transit and transshipment states should share information, verify shipment documentation and maintain accurate records of goods in transit through their territory.
 - Arms manufacturers, brokers, and transport companies can also contribute information that can assist states in their risk assessment process.

Written by Daniel Mack with contributions from Raluca Muresan for the Arms Trade Treaty Academy, a Control Arms project funded by UNSCAR.