



Arms Trade Treaty Implementation Toolkit

Module 2 Overview of Obligations

Available on: www.un.org/disarmament/ATT

I. Introduction

Any country joining the Arms Trade Treaty (ATT), commits to putting in place effective measures to implement the Treaty.

States will decide which measures they need to carry out their obligations under the ATT. These measures may vary from country to country.

This second module, *Overview of Obligations*, will assist governments by providing an overview of the obligations under the ATT.

In particular, Module 2 will discuss what items are covered by the Treaty. And it will clarify the necessary national implementation actions. Also, this module will address opportunities for cooperation and how to foster transparency and accountability in the regulation of the international trade of conventional arms.

II. Understanding the Treaty's scope

Items covered by the ATT are identified in its Articles 2, 3 and 4.

The scope of the ATT is defined by Article 2. It lists eight categories of weapons that are covered by the ATT¹ as well as the activities of the international trade that are considered to constitute “transfers” under the Treaty.²

Consequently a State Party to the ATT will have to apply, at a minimum, the relevant provisions of the Treaty to the export, import, transit, trans-shipment and brokering transactions or activities involving the conventional arms listed in Article 2 (1).

Articles 3 and 4 of the ATT cover ammunition and parts and components for conventional arms.

International or cross-border movements of conventional arms by or on behalf of a State Party for its own use (e.g. for exercises outside of its borders or peacekeeping missions) are not considered to constitute transfers under the Treaty and, therefore, are not subject to the provisions of the ATT.³

1. National definitions

The ATT requires States Parties to develop a national control list containing national definitions of the eight categories of weapons listed in its Article 2.

- For all the categories listed in Article 2 (1), except for small arms and light weapons (SALW), national definitions shall not cover less than the description used in the UN Register of Conventional Arms (UN Register)⁴ at the time of entry into force of the ATT,⁵ 24 December 2014.

¹ Article 2 (1).

² Article 2 (2).

³ Article 2 (3).

⁴ Available at www.un.org/disarmament/convarms/Register/.

⁵ See Article 5 (3).

- For SALW (Article 2 (1) (h)), national definitions shall not cover less than the descriptions used in relevant UN instruments, namely the International Tracing Instrument (ITI)⁶ and the Firearms Protocol.⁷

1.1 Seven categories contained in UN Register of Conventional Arms

The UN Register's definitions for its seven categories of weapons constitute minimum definitions for the ATT's first seven categories of weapons - categories a) through g) - in Article 2 (1) [refer to the Annex to this module for definitions]:

- a. Battle tanks;
 - b. Armoured combat vehicles;
 - c. Large-calibre artillery systems;
 - d. Combat aircraft;
 - e. Attack helicopters;
 - f. Warships;
 - g. Missiles and missile launchers.
- All States Parties shall apply the provisions of the ATT to those categories of weapons.
 - Importantly, the ATT encourages States Parties to go beyond this requirement and include the broadest range of conventional arms in their national lists.

1.2 SALW

The Firearms Protocol and the ITI are the two UN instruments that contain definitions of small arms and/or light weapons.⁸

The mentioned Protocol defines "firearm" as follows:

"Firearm" shall mean any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899."

⁶ International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons. The definition contained in the ITI is largely based on the definition of firearms contained in the Firearms Protocol.

⁷ Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime. The Protocol defines firearms, a term that is often used interchangeably with small arms. Available at www.unodc.org/unodc/en/firearms-protocol/firearmsprotocol.html.

⁸ There are also several regional and subregional instruments dealing with SALW regulations and control, such as the ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials, the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States, the Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All its Aspects, the SADC Protocol on the Control of Firearms, Ammunition and other Related Materials.

The ITI provides a definition of SALW that is composed of two parts: the first part containing a general definition, which is largely derived from the above-mentioned Firearms Protocol's definition of firearms; the second part specifying what a "small arm" is and what a "light weapon" is, given the general definition. Both parts should be read together. Thus, for the purposes of the ITI, SALW are:

"...any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas. Antique small arms and light weapons and their replicas will be defined in accordance with domestic law. In no case will antique small arms and light weapons include those manufactured after 1899:

(a) 'Small arms' are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns;

(b) 'Light weapons' are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres."

1.3 Ammunition/Munitions

In addition to the eight categories of conventional arms covered in Article 2, ammunition/munitions are subject to the prohibitions and export assessment provisions that apply to the weapons described in Article 2. Consequently, States Parties are required to regulate the export of ammunition/munitions that can be fired, launched or delivered by any of the conventional arms as defined above under section 1.1 and 1.2.

The ATT does not provide a definition of ammunition. Also, there is no internationally agreed definition of ammunition/munitions for the conventional arms covered under the ATT, except for firearm ammunition. The Firearms Protocol in its Article 3 defines the [firearm] ammunition as follows:

"Ammunition" shall mean the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State Party;"

Furthermore, it indicates that the above definition is for the purposes of that instrument only. A State may adopt this definition or draw from it, when adopting relevant national laws and policies to implement the ATT.

A more general definition of ammunition and munition is provided by the International Ammunition Technical Guidelines (IATG):⁹

"[Ammunition] is a complete device, (e.g. missile, shell, mine, demolition store etc.) charged with explosives, propellants, pyrotechnics or initiating composition for use in

⁹ For the International Ammunition Technical Guidelines (IATG), see www.un.org/disarmament/convarms/ammunition.

connection with offence, or defence, or training, or non-operational purposes, including those parts of weapons systems containing explosives. (c.f. munition).

"[Munition] is a complete device charged with explosives, propellants, pyrotechnics, initiating composition, or nuclear, biological or chemical material for use in military operations, including demolitions."

The definition contained in the IATG reaches beyond the ammunition/munitions contemplated in the ATT, as (i) it may also apply to weapons of mass destruction (e.g., nuclear, biological and chemical) and (ii) it includes weapons, such as mines, which are not covered in the scope of the ATT.

1.4 Parts and components

Under Article 4 of the ATT, States Parties must regulate the export of parts and components that can provide the capability to assemble the conventional arms included in the scope of the ATT.

The ATT does not provide a definition of parts and components. However, Article 3 of the Firearms Protocol does:

"Parts and components' shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm."

2. ATT compared to other relevant global instruments¹⁰

The following global instruments – adopted under the auspices of the UN – address the trade in conventional arms:

- a. UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects¹¹ (PoA);
- b. ITI;
- c. Firearms Protocol;
- d. UN Register.¹²

Some ATT States Parties have adopted regional, sub-regional and other governmental instruments that regulate arms exports. These States are encouraged to consult these instruments and to identify areas where their ATT commitments would overlap with their commitments under other relevant non-UN instruments in order to find synergies for an effective implementation of the ATT.

¹⁰ There are also regional, sub-regional and other inter-governmental instruments (e.g. the Nairobi Protocol, the ECOWAS Convention, the Wassenaar Arrangement) that deal with arms export regulations.

¹¹ The PoA was adopted by Member States of the UN by consensus in 2001 and all States are politically committed to implementing the measures recommended in it. Available at www.poa-iss.org/poa/poahtml.aspx.

¹² www.un.org/disarmament/convarms/Register/.

Figure 1 and 2 provide an overview of possible overlaps between the ATT and these other international instruments.

Figure 1 – Export of conventional arms and related items

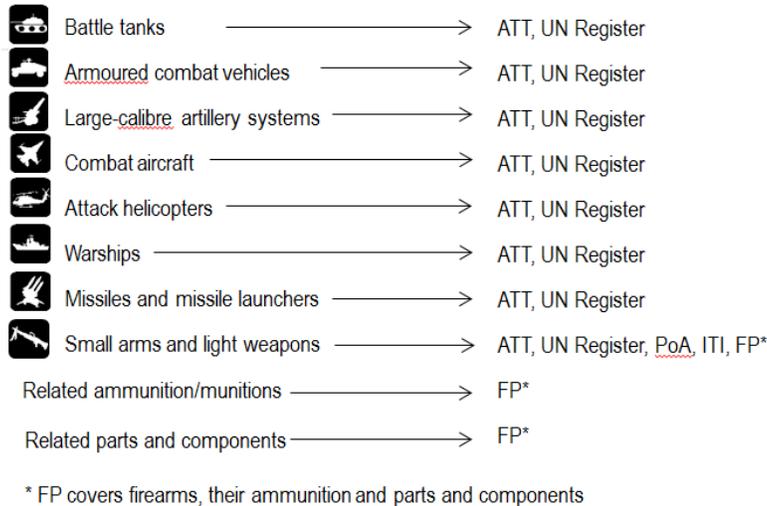


Figure 2 – Import, transit and transshipment, and brokering of conventional arms and related items



III. National implementation of ATT requirements

1. Requirements related to arms exports

1.1 Establish and maintain a national export control system

The ATT requires States Parties to establish and maintain a national export control system that ensures effective compliance with the export provisions of the ATT, including application of the export assessment provisions of the ATT and enforcement of relevant export prohibitions and national laws and policies.¹³

- States Parties must have in place laws, regulations and administrative procedures to control and regulate the export of conventional arms under the scope of the ATT, as well as related ammunition,¹⁴ parts and components.¹⁵
- These laws, regulations and procedures shall enable the State Party to exercise effective control over conventional arms, ammunition and parts and components leaving a State's jurisdiction.

The national legislation should clearly state:

- a) Which weapons and items are subject to export control (national control list);
- b) Which government ministries, departments and agencies are responsible for controlling conventional arms exports (national authorities);
- c) The criteria for granting or refusing export authorizations (regulatory procedures);
- d) The legal and/or administrative actions that must be applied in case of export offences (enforcement measures and mechanisms, prosecution and punishment).

1.1.1. National control list

Article 5 (2) of the ATT requires States Parties to establish and maintain a national control list.

- This list shall contain definitions of the conventional arms, ammunition and munitions, and parts and components the transfer of which are to be regulated.
- The national control list may be a single list covering all items subject to export control, or a collection of lists each covering different categories/types of items subject to export control.
- States Parties, pursuant to their national laws, must provide their national control lists to the ATT Secretariat, which shall make them available to other States Parties.

¹³ Article 5 (2).

¹⁴ Article 3.

¹⁵ Article 4.

- States Parties are also encouraged to make their control lists publicly available.

1.1.2. National authorities

States Parties have to designate competent national authorities to ensure the effective and transparent national control and regulation over the export of items covered under the ATT.¹⁶

- The designated authority could be a new entity established for this purpose or an already established entity.
- The designated authority shall administer the regulatory regime and implement controls through an arms export authorization process.¹⁷

Box 1 – Designating national authorities

Although specific approaches differ from country to country, most governments designate one state agency as the main entity responsible for examining export authorization applications and granting (or refusing) the related authorizations.¹⁸ It is common for such an agency to consult with other government ministries or departments before a decision is taken on an authorization application. In some cases, the authorization authority is subject to an oversight mechanism (e.g. by the legislative body or parliament).

Tasks to be undertaken by the authorization agency may include:

- a. Receive and review export applications;
- b. Issue export authorizations;
- c. Ensure that all documentation and approvals for the export of items are detailed and issued prior to the export;¹⁹
- d. Keep records of export authorizations for a minimum of ten years;²⁰
- e. Make available appropriate information about an authorization to the importing State and transit or transshipment State, if applicable and subject to its national laws, policies and practices;²¹
- f. Coordinate with other ministries and department involved in the export authorization process;
- g. Report to the oversight body, where applicable and in accordance with national laws.

In many countries national laws require that the export of certain weapons of strategic importance be approved at a level higher than national authority, such as high-level officials, the cabinet or Council of Ministers or, in some cases, the legislative body.

¹⁶ Article 5 (5).

¹⁷ C.f. Article 5 (5).

¹⁸ For the purposes of these guidelines, an export authorization will be often referred to as an “export licence”. However, some countries use other terminology, e.g. “export permit”.

¹⁹ Article 7 (5).

²⁰ Article 12 (1).

²¹ Article 7 (6).

1.1.3. Regulatory procedures on conventional arms exports

The export of conventional arms, related ammunition/munition, parts and components (or “covered items”) shall be subject, on a case-by-case basis, to prior written authorization (“export authorization”) by the competent authorities of the exporting State.

a. Transfer prohibition²²

Export authorizations of items shall not be granted if the export would contravene any of the criteria outlined in Article 6 of the ATT.

Box 2 – Prohibitions of transfers (Article 6)

A transfer of items should be denied if:

- a) It would violate the State Party’s obligations under measures adopted by the UN Security Council acting under Chapter VII of the Charter, in particular arms embargoes;
- b) It would violate a State Party’s relevant international obligations under international agreements;
- c) A State Party has knowledge at the time of authorization that the arms or items would be used in the commission of:
 - Genocide;
 - Crime against humanity;
 - Grave breaches of the Geneva Conventions of 1949;
 - Attacks directed against civilian objects or civilians protected as such;
 - Other war crimes as defined by international agreements to which it is a Party.

b. Export assessment²³

States Parties are required to conduct an assessment of risks associated with the export of items covered under the ATT.

- The assessment by the exporting State Party should be done in a coherent, objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State. The criteria for the export assessment are outlined in Article 7 of the ATT.
- If an export is not prohibited under Article 6 of the ATT, the national authorities of the exporting State Party shall assess the potential that an export of covered items:
 - Would contribute to or undermine peace and security;²⁴

In making this assessment, the national authorities may identify positive and negative factors affecting decisions regarding export of covered items. If those authorities determine that an export is likely to contribute to peace and security (a positive outcome), then they should add this finding to the list of factors favouring the authorisation of the exports. On the other hand, if the national authorities find that an export is likely to undermine peace and security (a negative

²² Article 6.

²³ Article 7.

²⁴ Article 7.

outcome), then they should assess this risk and add it to the list of factors justifying the adoption/negotiation of mitigating measures or a denial of such export.

- Could be used to commit or facilitate a serious violation of international humanitarian or international human rights law;
 - Could be used to commit offenses under international conventions or protocols relating to terrorism or international organized crime to which the exporting State is a party.²⁵
- The exporting State has to take into account the risk of the items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.²⁶

Box 3 – Criteria for export assessment

Article 7 (1): If the export is not prohibited under Article 6, each exporting State Party, prior to authorisation of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items:

- a) would contribute to or undermine peace and security;
- b) could be used to:
 - (i) commit or facilitate a serious violation of international humanitarian law;
 - (ii) commit or facilitate a serious violation of international human rights law;
 - (iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party;
 - (iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.

Article 7 (4): The exporting State Party, in making this assessment, shall take into account the risk of the covered items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

c. Mitigation measures²⁷

If there is a risk of the weapons and items being used to undermine peace and security or to commit or facilitate a serious violation of international humanitarian or human rights law or offenses under international conventions or protocols relating to terrorism or international organized crime, exporting States Parties shall consider whether there are mitigation measures that could be undertaken such as:

- Confidence-building measures;
- Jointly developed and agreed programmes by the exporting and importing States.

²⁵ Article 7 (1).

²⁶ Article 7.4.

²⁷ Article 7 (2).

d. Export denials

- If the exporting State – after having conducted the export assessment as well as considered mitigation measures – determines that there is an overriding risk of any of the negative consequences in Article 7 (1), the export shall not be authorised.
- Consequently, the national authorities involved in the export authorisation process must consider if the probable negative consequences of arms exports would outweigh the positive aspects of the exports (provided the export is not the one that is already prohibited under Article 6).

e. Assessing the risk of diversion²⁸

During the export assessment, the exporting States Parties shall also assess:

- The risk that some or all of the weapons could be diverted before reaching the authorized end-user;
- The risk that some or all of the weapons could be diverted after reaching the authorised end-user, including through:
 - A subsequent transfer by the authorized end-user in a way that would violate the provisions of the ATT, contravene the exporting State's national export policies or would otherwise constitute a diversion;
 - Leakages due to pilfering and other occurrences generally associated with inadequate and insecure stockpile management or corruption;
 - Stockpiles captured by armed non-state actors.

f. Reassessment of authorizations²⁹

- The exporting State Party is encouraged to reassess an authorization of a specific transfer of conventional arms or items that has already been granted, should new relevant information comes to light.
- If possible and appropriate, such a reassessment should be undertaken after consultations with the importing State.

1.1.4. Enforcement measures

- Mechanisms to ensure compliance with laws, regulations and administrative procedures related to conventional arms exports shall be in place at national level.³⁰
- Each State Party will decide on the extent of its national enforcement measures as the ATT does not provide any guidance.

²⁸ Article 11 (2).

²⁹ Article 7 (7).

³⁰ Article 14.

1.2 *Maintain national records of export authorizations and actual exports*

- The exporting State Party shall keep records of all export authorizations issued or of the actual exports of conventional arms under Article 2 (1).³¹
- It is up to the State Party to decide its preference: records of authorizations or of actual exports or both. The records should be kept by the competent national authorities.
- The ATT does not require States Parties to keep records of authorizations or actual exports of ammunition or parts and components, but States Parties can keep such records if they so choose.
- Records shall be maintained for a minimum of ten years.³²

Box 4 – Record-keeping of exports

States are encouraged to include in their records:³³

1. Quantity; 2. Value; 3. Model/type/serial number; 4. Authorized conventional arms to be transferred; 5. Conventional arms actually transferred; 6. Details of importing State(s), transit and trans-shipment State(s); 7. End-users.

1.3 *Role of importing State in export authorization process*

The importing State shall ensure that appropriate and relevant information is provided, upon request, to assist the exporting State in conducting its national export assessment.³⁴ Such documents may include:

- a. End-use or end-user documentation;³⁵
- b. Import authorization;
- c. Documents that indicate that the importing State has an adequate system and the capacity to control the imported weapons.

1.4 *Export-related requirements under the ATT compared with those under other relevant UN instruments*

In addition to the ATT, there are other international instruments that have provisions or recommend measures regarding the control of export, import and transit/trans-shipment of conventional weapons, such as the PoA and the Firearms Protocol. Some States may have already taken implementation

³¹ Article 12 (1).

³² Article 12 (4)

³³ Article 12 (3).

³⁴ Article 8 (1).

³⁵ *ibidem*

measures under these instruments. In order to avoid duplication of efforts, the following table lists the different requirements related to export of conventional weapons contained in the three instruments.

Table 1 – Overview of export-related requirements of UN instruments

ATT	Firearms Protocol	PoA
Export controls		
<ul style="list-style-type: none"> -Establish and maintain a national control system, including a national control list. See Art. 5 (2). -Establish and maintain national control systems to regulate export of ammunition / munitions and parts and components. See Art. 3 and 4. 	<ul style="list-style-type: none"> -Each State Party shall establish or maintain an effective system of export licensing or authorization. See Art. 10 (1). 	<ul style="list-style-type: none"> -Put in place adequate laws, regulations, and administrative procedures to exercise effective control over export. See Para. II.2 and II.12. -Establish an effective system of export licensing or authorization. See Para. II.11.
Export prohibitions		
<ul style="list-style-type: none"> -Exports shall be prohibited if they violate Security Council and UN Charter obligations, violate obligations under international agreements the exporting State is party to; or be used in the commission of genocide, crime against humanity, grave breaches of the Geneva Conventions, attacks directed against civilians, or other war crimes. See Art. 6. 	<ul style="list-style-type: none"> - <i>No provisions that explicitly prohibit the export of firearms -</i> 	<ul style="list-style-type: none"> - States must take appropriate measures including all legal or administrative means, against any activity that violates a Security Council arms embargo in accordance with the UN Charter. See Para. II.15.
Export assessment		
<ul style="list-style-type: none"> -Assess the potential that weapons would contribute to or undermine peace and security; could be used to violate international humanitarian and human rights law, international conventions, or protocols relating to terrorism or transnational organized crime. See Art. 7 (1). 	<ul style="list-style-type: none"> - <i>No provisions that require States Parties to undertake an export assessment -</i> 	<ul style="list-style-type: none"> -Assess export applications according to strict national regulations and procedures that are consistent with international law and that take into account the risk of diversion. See Para. II.11.
Documentation		
<ul style="list-style-type: none"> - Ensure all authorizations for export are detailed and issued prior to export. See Art. 7 (5). 	<ul style="list-style-type: none"> -Verify that importing States have issued import licences and authorizations; and written notice that transit States do not object. See Art. 10 (2). - Documentation must include: place and date of issuance, date of expiration, country of export, country of import, final recipient, description and quantity of the items, and transit countries (if relevant). See Art. 10 (3). - Ensure (with available means) that the authenticity of documents can be verified or validated. See Art. 10 (5). 	<ul style="list-style-type: none"> - Ensure the use of authenticated end-user certificates and effective legal and enforcement measures. See Para. II.12.

2 Requirements related to arms import

2.1 Regulate imports

- In general, States Parties must put in place laws, regulations and administrative procedures to regulate the import of conventional arms under the scope of the ATT. This is consistent with Article 8 (2) and with Article 5 (4), by which States Parties are expected to have in order to have an effective and transparent national control system regulating the transfer of conventional of covered items.
- The national legislation, regulations or administrative procedures should clearly state:
 - Which items are subject to import control (national control list);
 - Which government ministries or departments are responsible for regulating conventional arms imports (national authorities);
 - The criteria for granting or refusing import authorizations (regulatory procedures), if applicable;
 - The legal and/or administrative actions that would be applied in case of import offences (enforcement measures and mechanisms, prosecution and punishment).

2.1.1. National control list

The national control list is an essential tool for regulating imports of conventional arms. States Parties are free to establish a single national control list for both export and import control.

2.1.2. National authorities

- States Parties have to designate competent national authorities to ensure the effective and transparent national regulation over the import of conventional weapons covered under the ATT.³⁶
- In case the State Party opts for an import control system – meaning that every import of conventional weapons listed in the national control list is subject to an import authorization – the designated authorities shall administer the regulatory regime and implement controls through an arms import authorization process.

2.1.3. Regulatory procedures

- The regulatory procedures to control imports of conventional arms establish the criteria for granting or refusing the import of conventional weapons included in the national control list.

³⁶ Article 5 (5).

- In case the importing State Party regulates the imports through a licensing system, the regulatory procedures should detail how and under what circumstances import authorizations can be obtained.

2.1.4. Enforcement measures

- States Parties must put in place measures and mechanisms to ensure compliance with laws, regulations and administrative procedures related to transit and trans-shipment of conventional arms.³⁷
- Each State Party will decide on the specific enforcement measures to be adopted, as the ATT does not provide further details on this matter.

2.2 Maintain records of imports

The importing State is encouraged to maintain records of conventional arms covered by the ATT that are transferred to its territory as the final destination.³⁸

Box 5 – Record-keeping of imports

The records should include:³⁹

1. Quantity;
2. Value;
3. Model/type/serial number;
4. Authorized international transfers of conventional arms covered under the scope of the ATT;
5. Conventional arms actually transferred;
6. Details of exporting State(s), transit and trans-shipment State(s);
7. End-users.

2.3 Import-related requirements under the ATT compared with those under other UN instruments

There are other international instruments that have requirements or recommend measures related to import control of conventional weapons, such as the PoA as well as the Firearms Protocol. While they are different in scope, it is important to be aware of the possible overlaps, complementarity or synergies between these three instruments.

³⁷ Article 14.

³⁸ Article 12 (2).

³⁹ Article 12 (3).

Table 2 – Overview of import-related requirements of UN instruments

ATT	Firearms Protocol	PoA
Import controls		
-The importing State shall take measures to regulate, where necessary, imports under its jurisdiction, such as through import systems. See Art. 8 (2).	-Each State Party shall establish or maintain an effective system of import licensing or authorization. See Art. 10 (1).	-Put in place adequate laws, regulations, and administrative procedures to exercise effective control over import. See Para. II.2. -Establish an effective system of import licensing or authorization. See Para. II.11.
Documentation		
-The importing State shall ensure that relevant information – such as end-use or end-user documentation – is provided, upon request, pursuant to its national law, to assist the exporting State Party. See Art. 8 (1). -The importing State may request information from the exporting State regarding export authorizations. See Art. 8 (3).	-The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment. See Art. 10 (4).	- <i>The PoA only refers to the fact that import licensing or authorization is required. See Para II.11).</i>

3 Requirements related to transit/trans-shipment States

3.1 Regulate transit or trans-shipment

Both transit and trans-shipment constitute a “transfer” under Article 2 (2) of the ATT. Therefore, States Parties are required to comply with all the prohibitions on transfers of items under Article 6 as well as to take appropriate measures to enforce the implementation of the Treaty.

In addition, States Parties shall take measures to regulate transit or trans-shipment under their jurisdiction, where necessary and feasible.⁴⁰

- In order to regulate transit and trans-shipment of conventional arms, States Parties will have to put in place laws, regulations and administrative procedures in a manner that is consistent with international law.
- The national legislation should state:
 - What constitutes transit or trans-shipment (national definition);

⁴⁰ Article 9.

- Which government ministries or departments are responsible for regulating transit and transshipment of conventional arms (national authorities);
- The criteria for granting or refusing transit/trans-shipment authorizations (regulatory procedures), if applicable;

The criteria shall include the prohibitions under Article 6 of the ATT.

- The legal and/or administrative actions that would be applied in case of offences (enforcement measures and mechanisms, prosecution and punishment).

3.1.1. National authorities

- Where necessary and feasible, States Parties will have to designate national authorities regulating conventional arms transit and trans-shipment.⁴¹
- It is up to each State Party to decide on how to establish its national authorities.

3.1.2. Regulatory procedures

- Each State Party has discretion to regulate transit and trans-shipment of items beyond its obligation under Article 6. The State Party can establish how it wishes to regulate those activities. There are three main approaches to regulate transit/trans-shipment:
 - Licensing system: Under this system, an exporter needs to apply and obtain a transit/trans-shipment authorization from the national authority in the transit/trans-shipment State prior to the transit of weapons through territory under the jurisdiction of this State.
 - Prior notification: Notification procedures that require the national authority in the transit/trans-shipment State to be provided in advance with information and documentation on the movement of weapons transiting/trans-shipping through territory under its jurisdiction.
 - Transit/trans-shipment control only by customs authorities: This requires a notification to customs authorities about arms shipments at the point of entry, upon which technical and documentary checks could be conducted.

3.1.3. Enforcement measures

- States Parties must put in place measures and mechanisms to ensure compliance with laws, regulations and administrative procedures related to transit and trans-shipment of conventional arms.⁴²

⁴¹ Article 5 (5).

⁴² Article 14.

- Each State Party will decide which specific enforcement measures to adopt, as the ATT does not provide guidance on this matter.

3.2 Maintain records

- Transit or trans-shipment States Parties are encouraged to maintain accurate records of conventional arms that are authorised to transit or be trans-shipped in territory under their jurisdiction.
- These records should be kept for a minimum of ten years.⁴³

Box 6 – Record-keeping of transits and trans-shipments

The records should include:⁴⁴

- a. Quantity;
- b. Value;
- c. Model / type / serial number;
- d. Authorized international transfers of conventional arms covered under the scope of the ATT;
- e. Conventional arms actually transferred;
- f. Details of exporting State(s), importing State(s), and other transit and trans-shipment State(s) if applicable;
- g. End-user.

3.3 Transit/trans-shipment-related requirements under the ATT compared with those under other UN instruments

There are other international instruments that have requirements or recommend measures related to transit/trans-shipment of conventional weapons, such as the PoA as well as the Firearms Protocol. While they are different in scope, it is important to be aware of the possible overlaps, complementarity or synergies between these three instruments.

⁴³ Article 12 (4).

⁴⁴ Article 12 (3).

Table 6 – Overview of transit/trans-shipment-related requirements of UN instruments

ATT	Firearms Protocol	PoA
Transit / transshipment controls		
<ul style="list-style-type: none"> — Shall not authorise any transit /trans-shipment of covered items in violation of Article 6. — Take appropriate measures to enforce national measures taken to implement the ATT. See Art. 14. - Take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment through its territory. See Art. 9. 	<ul style="list-style-type: none"> - Establish or maintain effective measures on international transit of firearms, their parts and components and ammunition. See Art. 10 (1). 	<ul style="list-style-type: none"> — Put in place adequate laws, regulations, and administrative procedures to exercise effective control over transit of small arms and light weapons. See Para. II.2. — Establish or maintain measures on international transit of small arms and light weapons with a view to combating its illicit trade. See Para. II.11.
Documentation		
<ul style="list-style-type: none"> - No reference to documentation in the context of regulating the transit/ trans-shipment of conventional arms- 	<ul style="list-style-type: none"> - The information in the import licence must be provided to the transit States in advance. See Art. 10(3). 	<ul style="list-style-type: none"> — Put in place adequate laws, regulations, and administrative procedures to ensure effective control over transit of small arms and light weapons, including the use of authenticated end-user certificates and effective legal and enforcement measures. See Para. II.12.

4 Requirements related to brokering

4.1 Regulate brokering

States Parties shall take measures to regulate arms brokering taking place under their jurisdiction.⁴⁵ States have discretion to determine how to design such regulation provided that it complies with their obligation on prohibitions of transfers under Article 6 of the ATT.

⁴⁵ See Article 10.

➤ The national legislation, regulation or administrative procedures regarding brokering could include:

- What constitutes brokering (national definition);
- Which government ministries or departments are responsible for regulating conventional arms brokering (national authorities);
- The criteria for granting or refusing brokering authorizations (regulatory procedures), if applicable;

The criteria shall include the prohibitions under Article 6 of the ATT.

- The legal and/or administrative actions that would be applied in case of offences (enforcement measures and mechanisms, prosecution and punishment).

4.1.1. National definition

Since the ATT does not define the term brokering, and given the multitude of activities that could be associated with brokering, it is important that the national legislation delineates what constitutes brokering and what does not. According to the report of the UN Group of Governmental Experts on Brokering in SALW⁴⁶ (GGE report) and the International Small Arms Control Standards (ISACS), brokering means:⁴⁷

GGE report

"8. A broker in SALW can be described as a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of SALW in return for some form of benefit, whether financial or otherwise".

ISACS 01.20

Broker: "A person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction [...] in return for some form of benefit, whether financial or otherwise"

Brokering: "Activities carried out by a broker in the context of arranging or facilitating an international transfer of small arms or light weapons.

Note 1. Brokering activities include, but are not limited to:

- *serving as a finder of business opportunities to one or more parties;*
- *putting relevant parties in contact;*
- *assisting parties in proposing, arranging or facilitating agreements or possible contracts between them;*
- *assisting parties in obtaining the necessary documentation;*

⁴⁶ A/62/163 of 30 August 2007.

⁴⁷ Available at www.smallarmsstandards.org.

- assisting parties in arranging the necessary payments”.

Note 2. Some activities closely associated with brokering in small arms and light weapons, that do not necessarily in themselves constitute brokering activities, might be undertaken by brokers as part of the process of putting a deal together to gain benefit. These activities may include, for example, acting as dealers or agents in small arms and light weapons, providing technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services.

Note 3. Brokering activities can take place in the broker’s country of nationality, residence or registration; they can also take place in another country. The small arms and light weapons do not necessarily pass through the territory of the country where the brokering activity takes place, nor does the broker necessarily take ownership of the small arms and light weapons”.

4.1.2. National authorities

States Parties shall designate national authorities to regulate brokering in conventional arms.⁴⁸ Brokering constitutes a “transfer” under Article 2 (2) of the ATT.

- Ideally, the competent national authorities to regulate brokering of conventional arms should be clearly identified in the national legislation and should be part of the national import/export control systems.
- Although it is the prerogative of each State Party to decide which authorities should be entrusted with the responsibility of regulating brokering, it would be consistent with ATT implementation requirements and obligations, to consider placing that responsibility with the same authorities entrusted with the regulation of exports.

4.1.3. Regulatory procedures

- It is up to States Parties to decide how to regulate brokering in conventional arms taking place under its jurisdiction, provided that the State Party complies with its obligations under Article 6 of the ATT (prohibitions on transfers). Measures could include registration of brokers and issuing written authorizations before engaging in brokering transactions.

4.1.4. Enforcement measures

- Mechanisms that ensure compliance with laws, regulations and administrative procedures related to brokering of conventional arms shall be in place at the national level.⁴⁹
- States will which enforcement measures to adopt, as the ATT does not provide further details.

⁴⁸ Article 5 (5).

⁴⁹ Article 14.

4.2 Brokering-related requirements under the ATT compared with those under other UN instruments

There are other international instruments that have requirements related to brokering of conventional weapons, such as the PoA as well as the Firearms Protocol. While they are different in scope, it is important to be aware of the possible overlaps, complementarity or synergies among these three instruments.

Table 4 – Overview of brokering-related requirements of UN instruments

ATT	Firearms Protocol	PoA
Brokering controls		
-Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place within its jurisdiction, such as registration or brokering authorizations. See Art. 10.	-Consider regulating brokers by establishing a system that requires: registration of brokers operating within State Party's territory; licensing or authorization of brokering; and/or disclosure of names and locations of brokers on import and export licences and authorizations. See Art. 15.	-Develop adequate legislation and administrative procedures on regulating the activities of those who engage in brokering of small arms and light weapons, including: registration, licensing or authorization of brokering transactions, and appropriate penalties for illicit brokering activities performed within the State's jurisdiction and control. See Para. II.14.

5 Requirements related to the prevention of diversion of conventional arms

5.1 Legal basis

States Parties involved in the transfer of conventional arms shall take measures to prevent their diversion.⁵⁰

- The responsibility to take measures to prevent diversion needs to be shared among all those involved in transfers, including exporting, importing and transit/trans-shipment States.
- To that effect, States parties shall cooperate and exchange information in order to mitigate the risk of diversion of the transfer of conventional arms.⁵¹

⁵⁰ Article 11 (1).

- It is up to each State Party to define in its national legislation and/or procedures the modalities of such information exchange, including the scope and extent of information to be exchanged as well as the entity responsible for information exchange. Moreover, States Parties may consider adopting bilateral, multilateral or regional agreements to establish information exchange mechanisms to this end.
- Exporting, importing and transit/trans-shipment States should undertake measures to prevent diversion at their respective stages of a transfer.

5.2 Sharing of information

States Parties are encouraged to share relevant information with one another on effective measures to address diversion. This information could include:⁵²

- a. Illicit activities, including corruption;
- b. International trafficking routes;
- c. Illicit brokers;
- d. Sources of illicit supply;
- e. Methods of concealment;
- f. Common points of dispatch;
- g. Destinations used by organized groups engaged in diversion;
- h. Weapons marking practices.

5.3 Role of exporting States in preventing diversion

The exporting State shall seek to prevent the diversion of conventional arms through its national control system by:

- a. Assessing the risk of diversion of the export;
- b. Considering the establishment of mitigation measures or jointly developed or agreed programmes with the importing State.

The exporting State may also, when appropriate:

- a. Examine parties involved in the export;
- b. Require additional documentation, certificates, assurances;

⁵¹ Article 11 (3).

⁵² Article 11 (5).

- c. Not authorise the export (this should be used if it considers that mitigation measures are insufficient);
- d. Take other measures deemed appropriate by the exporting State Party.

5.4 Measures to be taken if diversion is detected

- If a diversion is detected, appropriate action shall be taken by the State Party to address such diversion.
- It is up to each State Party to determine which measures to take, provided that they are in accordance with international law.

The ATT provides some examples of possible measures, such as:⁵³

- a. Alerting potentially affected States Parties;
- b. Examining diverted shipments of conventional arms;
- c. Taking follow-up measures through investigation and law enforcement.

IV. Promote cooperation, transparency and accountability

1. Promote cooperation

The international conventional arms trade is a highly globalized activity. Implementing the ATT effectively requires close and extensive international cooperation. States Parties are encouraged to facilitate international cooperation, to consult on matters of mutual interest and to share information.⁵⁴

Such cooperation could take place in the areas of:

- a. Preventing and eradicating diversion of conventional arms, including information on illicit activities and actors;⁵⁵
- b. Investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to the ATT;⁵⁶
- c. Preventing that the transfer of conventional arms become subject to corrupt practices;
- d. Exchanging experience and information on lessons learnt.

⁵³ Article 11 (4).

⁵⁴ Article 15.

⁵⁵ Article 15 (4).

⁵⁶ Article 15 (5).

2. *Promote transparency and accountability*

- States Parties are required to submit two types of reports on the implementation of the ATT to the Secretariat.
- In addition, they are encouraged to provide information or reports on measures taken to prevent diversion.
- These reports shall be submitted to the Secretariat, which is in turn entrusted with making them available and with distributing them to States Parties.

Mandatory reports:

- a. **Initial report** on measures undertaken in order to implement the ATT. This report must be submitted by a State Party within a year of the entry-into-force for this State Party.⁵⁷ This initial report should contain a national control list.

Annual report for the preceding year on authorized or actual exports and imports must be submitted by 31 May every year.⁵⁸

⁵⁷ Article 13 (1).

⁵⁸ Article 13 (3).

Annex: Descriptions of the seven categories of the UN Register of Conventional Arms

Updated in 2013 as per recommendations contained in the final report of the 2013 Group of Governmental Experts on the continuing operation and further development of the UN Register of Conventional Arms (A/68/140), and endorsed by General Assembly resolution (A/RES/68/43).

Categories of equipment and their definitions⁵⁹

I. Battle tanks

Tracked or wheeled self-propelled armoured fighting vehicles with high cross-country mobility and a high-level of self-protection, weighing at least 16.5 metric tons unladen weight, with a high muzzle velocity direct fire main gun of at least 75 millimetres calibre.

II. Armoured combat vehicles

Tracked, semi-tracked or wheeled self-propelled vehicles, with armoured protection and cross-country capability, either: (a) designed and equipped to transport a squad of four or more infantrymen, or (b) armed with an integral or organic weapon of at least 12.5 millimetres calibre or a missile launcher.

III. Large-calibre artillery systems

Guns, howitzers, artillery pieces, combining the characteristics of a gun or a howitzer, mortars or multiple-launch rocket systems, capable of engaging surface targets by delivering primarily indirect fire, with a calibre of 75 millimetres and above.

IV. Combat aircraft

(a) Manned fixed-wing or variable-geometry wing aircraft, designed, equipped or modified to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons or other weapons of destruction, including versions of these aircraft which perform specialized electronic warfare, suppression of air defence or reconnaissance missions;

(b) Unmanned fixed-wing or variable-geometry wing aircraft, designed, equipped or modified to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons or other weapons of destruction.

⁵⁹ Available at www.un-register.org/Background/Index.aspx.

The term “combat aircraft” does not include primary trainer aircraft, unless designed, equipped or modified as described above.

V. Attack helicopters

(a) Manned rotary-wing aircraft, designed, equipped or modified to engage targets by employing guided or unguided anti-armour, air-to-surface, air-to-subsurface, or air-to-air weapons and equipped with an integrated fire control and aiming system for these weapons, including versions of these aircraft which perform specialized reconnaissance or electronic warfare missions;

(b) Unmanned rotary-wing aircraft, designed, equipped or modified to engage targets by employing guided or unguided anti-armour, air-to-surface, air-to-subsurface, or air-to-air weapons and equipped with an integrated fire control and aiming system for these weapons.

VI. Warships

Vessels or submarines armed and equipped for military use with a standard displacement of 500 metric tons or above, and those with a standard displacement of less than 500 metric tons, equipped for launching missiles with a range of at least 25 kilometres or torpedoes with similar range.

VII. Missiles and missile launchers

(a) Guided or unguided rockets, ballistic or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometres, and means designed or modified specifically for launching such missiles or rockets, if not covered by categories I through VI. For the purpose of the Register, this sub-category includes remotely piloted vehicles with the characteristics for missiles as defined above but does not include ground-to-air missiles.

(b) Man-Portable Air-Defence Systems (MANPADS).