

After the First Annual Reports to the Arms Trade Treaty: How to Overcome Gaps and Reporting Deficits?

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RECOMMENDATIONS

\ Transparency as a precondition for an effective ATT

The ATT (Arms Trade Treaty) as such does not automatically end irresponsible arms exports. Governments and civil society organizations must challenge arms transfer practices that they consider in violation of the ATT. Transparent reporting on arms transfers is the basis for this, but the first round of annual reports shows that much work needs to be done to make the ATT reporting system work effectively.

\ Standardize templates

The central parameters of the reporting template—actual/authorized transfers, number/value of transfers, reporting period, central definitions of weapon categories—must be standardized so that the information contained in the reports can be compared. The use of these templates must be mandatory.

\ Make public reporting mandatory

Public reporting—also on the transfer of small arms and light weapons—should also be mandatory. If governments want to withhold information on particular transfers, they should at least be explicit about this and provide an explanation.

\ Provide assistance and incentives to fulfil reporting requirements

States that are willing to fulfill their reporting requirements but lack the capacities to do so should be offered international assistance. Likewise, meeting the reporting commitments should play a role when assessing potential cooperation partners on the international arms market.

\ Voluntary information needed to continuously raise reporting standards

Several states provide voluntary information beyond the minimum standards. To contribute to the much-needed improvement of the reporting system and to strengthen the norms and rules of the ATT, more States Parties—particularly EU Member States—should offer additional information in their next annual reports.

After the First Annual Reports to the Arms Trade Treaty

The irresponsible proliferation of conventional weapons accelerates and prolongs violent conflicts worldwide, leads to regional instability, hinders socio-economic developments and is detrimental to the prevention of human rights abuses. The international Arms Trade Treaty (ATT), which entered into force on 24 December 2014, tries to regulate the trade in conventional weapons by setting global norms and standards. 134 states have signed the Treaty, 87 have ratified it and implemented its criteria into national law.

The second Conference of States Parties (CSP2), held from 22 to 26 August 2016 in Geneva, which was attended by 109 governments and non-governmental organizations, documented the continued transfer of conventional weapons to states where conflicts and civil wars are ongoing, such as South Sudan, Yemen, Libya, Iraq, Ukraine and Syria. These weapons, exported mostly by States Parties to or Signatories of the ATT are also used to violate human rights. For example, 19 States Parties and three Signatories, among them many EU Member States, supplied arms and authorized transfers to Saudi Arabia, despite its repeated breaches of international humanitarian and human rights law in Yemen. Against this background, some critics of the ATT consider this emerging international regime regulating the international arms trade to be a toothless tiger. These critics are right inasmuch as the rules of the ATT are still too vague, and hence, the leeway for governments to make export decisions on the basis of national interest rather than on the basis of international norms, is much too wide.

But they are wrong to conclude that the whole ATT endeavour is a failure despite the fact that the ATT as such has not automatically led to the cessation of irresponsible arms exports. It rather tells us that there is still much work to do to make the ATT regime work effectively. One central task is to establish a reporting system that increases the transparency of the international arms trade and that provides the basis for the much-needed debate about the application of the ATT criteria to legitimate arms transfers. Governments and civil society organizations must challenge arms transfer practices of states that they

deem to be in violation of the ATT. While this does not guarantee a strict application of the criteria, it puts pressure upon those governments that care about the legitimacy of their actions and their record as reliable cooperation partners. Transparent reporting on arms transfers can serve as a rudimentary system for verifying whether States Parties comply with the rules of the ATT or not. It allows a government to demonstrate its adherence to ATT obligations. This has an intergovernmental confidence-building effect, and information about a rapid and imbalanced accumulation of weapons can even act as an early warning signal for potentially violent conflicts.

The central instruments of the ATT to increase transparency of international arms transfers are the annual reports on arms imports and exports that States Parties are required to submit once a year (ATT, Article 13). For 2015, the deadline for submission was 31 May 2016. All States Parties to the ATT are required to report on the import and export of heavy weapons systems that are equivalent to the seven categories of the UN Register of Conventional Arms (UNROCA): Battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers. Reporting on small arms and light weapons (SALW) is voluntary.

An analysis of the first round of annual reports reveals considerable gaps and reporting deficits; in particular with regard to the number of reports delivered on time, the concealment of information, missing transfers, the comparability and the level of detail in the reports. These deficits are in part due to states' unwillingness to disclose information on their arms transfers, but there are also several problems that are inherent to the existing reporting system. Unfortunately, States Parties did not make much progress in overcoming these problems at the CSP2. Those governments interested in increased transparency and an ATT that has concrete effects upon a state's arms transfer decisions have several policy options: Setting concrete incentives for good reporting practices, leading by example and improving the existing reporting template.

Delivered reports: Only 34 of 64

In all, 64 States Parties were due to submit reports about their national arms transfers by 31 May 2016. Only 34 countries, slightly more than one-half of these have done so. Since then, the total has grown to 47 States Parties that have submitted their annual reports. More than 80 percent of all States Parties that have not submitted their country reports are in Africa, Latin America and the Caribbean. However, Malta and Estonia belong to this group, too, and other EU Member States (Austria, Belgium, Ireland, Luxembourg, Denmark, Croatia and Poland) submitted their reports weeks or months after the deadline.

Furthermore, the cut-off date for collected statistics is not standardized. 40 countries used the end of 2015. The Dominican Republic, Finland and Romania, however, chose 31 May 2016, Germany 14 April 2016 and Poland 10 August 2016. In consequence, the temporal scope of the reports on national arms transfers varies, making a comparison harder.

While the failure to meet the deadline for the annual reports in 2016 might be excused due to the short time, the ratio of states reporting on time must improve in 2017 and the following years. A double-track policy by those states that are interested in increased transparency could be helpful in achieving this goal. The first element of such a double-track policy would be an offer of assistance to states having problems to fulfil their reporting requirements due to a lack of capacities or expertise. EU Member States, which are experienced in reporting on arms transfers in the framework of the EU Common Position on Arms Exports agreed upon in 2008, are well-positioned to share their professional expertise.

At CSP2, states agreed to establish a Voluntary Trust Fund to support national export and import control systems. Some States Parties committed themselves to providing financial resources to implement the Trust Fund, including the Netherlands, Sweden, Switzerland and Germany, who pledged they would donate €500,000 upon its establishment. These funds could

be used to assist States Parties that are willing to fulfil their reporting requirements but lack the capacities to do so.

The second element of a double-track policy to improve reporting morale is that States Parties that do not live up to their reporting commitments—in spite of (offered) international assistance—have to face consequences with regard to their reputation as partners on the international arms market. The timely delivery of annual reports should play a role in a state's assessment of potential cooperation partners on the international arms market. Ultimately, other States Parties to the Treaty could refuse to grant export licenses to states that continuously do not meet reporting requirements under the ATT. Of course, such a policy should be matched by similar considerations with regard to ATT membership as such. Otherwise, this would be a disincentive to join the ATT in the first place.

Public reporting is needed as a precondition for transparency

Assessing whether or not states conform to their reporting commitments—and to the rules of the ATT in general—is not only a matter for governments. Civil society organizations and researchers can play an important role by providing analyses of states' reporting practices and their adherence to the criteria of the Treaty. Therefore, it is crucial that the reports be made public. It is counterproductive that Slovakia and Moldova made their reports confidential. At the CSP2, Moldova explained that it had mistakenly made its annual report confidential and that it would change it. Slovakia did not comment on this issue. Other states declared parts of their report to be confidential and hence inaccessible to the public. The annual import reports by Uruguay and Bosnia and Herzegovina are not publicly available, only for States Parties to the ATT.

In addition, commercially sensitive and national security-related data can be excluded in accordance with Article 13(3) of the Treaty. From the 45 States

Parties that submitted publicly available reports, nine states (Bosnia and Herzegovina, Bulgaria, Dominican Republic, Germany, Liberia, Macedonia, Senegal, Croatia and Sweden) used the tick-box to show that they withheld details of some arms transfers. This option of withholding information on certain transfers increases the opacity of the international arms trade. What is even worse, providing information about the concealment of important security-related information is voluntary. Eight States Parties, including seven EU Member States (Austria, Poland, France, Slovenia, Spain, Luxembourg and the United Kingdom) did not provide any information on whether their submitted annual reports withheld data on arms transfers or not.

The need for transparency was voiced at this year’s CSP General Debate by more than 20 speakers of countries all over the world. France, Germany, Switzerland, Romania, Austria, Ireland and the Netherlands each made explicit calls for public reporting. New Zealand said that should the Conference decide to keep the tick box that allows States Parties to make their reports private, then States that do so ought to provide an explanation for this. However, states at the CSP2 were not willing to agree on mandatory public reporting, falling short of pre-Conference expectations. As long as governments have complete discretion over the exclusion of any kind of information, the reporting system is not truly transparent. Those states that spoke out in favour of public reporting should join forces in the preparation for the third

Conference of States Parties that will be held in Geneva from 11 to 15 September 2017 and try again to make public reporting mandatory. At least, the Working Group on Transparency and Reporting that was set up to continue the work on the reporting templates, should discuss the proposal for States Parties to provide an explanation for withholding information.

Missing transfers and deviations in data

States Parties also have the option to submit so-called NIL reports. These reports serve to confirm that no exports or imports of conventional weapons listed in Article 2(1) of the Arms Trade Treaty haven taken place during the reporting period from or to the territory of the respective state. 11 States Parties (Bosnia and Herzegovina, Costa Rica, Dominican Republic, Latvia, Liberia, Luxembourg, Macedonia, Mexico, Samoa, Senegal and Uruguay) submitted NIL reports for conventional arms exports. Four States Parties did so for their national imports (Bosnia and Herzegovina, Ireland, Samoa and Croatia). An analysis of submitted annual reports reveals, however, that some of these states did in fact import weapons. Ireland, for example, imported missile launchers (type RBS-70) from Sweden, according to the Swedish report. The government of Bosnia and Herzegovina submitted NIL reports on the national export and import of conventional weapons in 2015, but the annual report of Serbia lists the import of 540 large calibre artillery systems from Bosnia and Herzegovina.

France and Sweden described all national arms imports of the seven heavy weapons categories with NIL but did not use the provided template. Yet, detailed information from other country reports indicates that both states heavily imported conventional weapons systems in 2015. Deviations between the stated values of arms exports and imports as well as uncharted transfers can be documented in almost every report. To give two more examples, the Czech Republic did not report the import of 156 large calibre artillery systems (mortar 82mm) that are listed within the annual

Table 1
First round of annual reporting 2016

	States Parties
<i>Due to submit annual reports</i>	64
<i>Annual reports delivered on time</i>	34
<i>Annual reports delivered by 30 September:</i>	47
<i>Not publicly available</i>	2
<i>Import report confidential</i>	2
<i>No import report:</i>	4
<i>Data withheld in accordance with Art. 13 (3)</i>	9
<i>No information about data withheld</i>	8

export report of Albania. Switzerland exported seven armoured combat vehicles to Romania that do not show up in the Romanian report.

Similar disparities can be found with regard to small arms and light weapons (SALW). Slovenia, for example, only reported the export of revolvers and self-loading pistols to Korea, Zambia, Singapore and the United States and classified its national import with NIL. However, information from other country reports show Slovenian exports to Bosnia and Herzegovina, the Czech Republic, Finland, Hungary and Macedonia, as well as Slovenian imports of SALW from Bosnia and Herzegovina, Sweden, the Czech Republic, Switzerland, Finland and the United Kingdom.

Substantial gaps are also reflected in the annual reports of Australia, Austria, Spain and the United Kingdom that do not contain any information on imports of weapons. This illustrates significant deficits with regard to compliance with formal reporting requirements. Yet, there was not one single critical statement from governments at the CSP2 regarding current reporting practices. Instead, they focused on administrative and procedural subjects such as establishing working groups and the Voluntary Trust Fund, the appointment of a Permanent Head of the Secretariat and several decisions concerning the next CSP in Geneva 2017.

While these findings raise doubts about the willingness of states to truly increase transparency of the international arms trade, they do illustrate the value and the potential of the ATT reporting mechanism: Through a comparison with reports of other states, incongruences come to light. When arms transactions are in the public domain, governments that authorized irresponsible transfers face a higher risk of exposure and criticism.

Divergence complicates the monitoring of reported data

Because States Parties failed to agree on reporting templates during the first CSP, only a provisional, non-obligatory reporting template for annual reports

was adopted at CSP1. 41 countries used the provisional version. Only Australia, France, Senegal and the United Kingdom used own templates, which are characterized by a lack of information and a confusing layout. This makes it extremely difficult to compare a country's list of conventional weapons with that of another. Senegal, for example, did not categorize its import of major weapon systems and SALW according to the UN Register of Conventional Arms (UNROCA) and provided no information on the exporting country. Even States Parties that used the provisional reporting template had problems to fulfil the minimum level of reporting requirements. Macedonia, Bosnia and Herzegovina, Montenegro and Jamaica added up the number and financial value of the national transfer of controlled items in 2015, and they listed the importing and exporting states all together in the same column. Norway and Liberia frequently used "various" to characterize their arms suppliers and recipients. Denmark noted "multiple importing/exporting states" in its report about transferred SALW. In sum, the lack of a mandatory, standardized reporting template allowed states to use different measurement categories for the provided data, which significantly compromises the comparability of the reports.

At least—with the exception of Senegal—all states that have submitted a report so far stick to the seven UNROCA categories for heavy weapons. To compare SALW transfers is more difficult. Almost every submitted annual report—apart from Uruguay and South Africa—contains information about the import and export of SALW. However, six countries (Australia, Austria, Belgium, Japan, Senegal and Sweden) did not report in accordance with the UN definition of SALW sub-categories. Reporting on the transfers of SALW is voluntary but significant for the future success of preventing the irresponsible and the illicit trade in weapons. Consequently, it should be a central goal for CSP3 to make reporting on SALW mandatory—based on the UN definition of SALW and their sub-categories. Of course, this should not prevent states from providing additional information on their SALW transfers, as Germany and New Zealand did in their reports.

A major challenge to the comparability of the reports is the fact that States Parties can choose whether to report on either authorized or actual im- and exports of conventional weapons. The choice can be made for the report as a whole or category by category. Concerning the export of major weapons systems, five reports inform about authorized exports while 21 countries reported actual exports. South Africa reported both, but summarized authorized and actual imports in one table. Italy reported on authorized exports but actual imports. France and the United Kingdom, two major arms exporters, did not even specify whether the data reported was about authorized or actual transfers.

This divergence complicates the monitoring of reported data. Italy, for example—reporting on actual imports of major weapons systems—, documented only the import of combat aircraft and missiles from the United States. The United Kingdom in turn reported

the export of two combat aircraft, 15 attack helicopters and ten missile launchers to Italy in 2015—but its annual report includes no information as to whether the report is about authorized or actual transfers. Thus, we cannot know for sure—at least not from the data provided by the two ATT reports of Italy and the United Kingdom—whether the transfer of the combat aircraft, attack helicopters, and missile launchers has not yet occurred, or whether Italy has not reported it.

Similar disparities exist concerning the export of SALW. Of the 42 states that did report on their SALW transfers, 26 States Parties reported actual arms exports, eleven reported authorizations. While three annual reports (Bosnia and Herzegovina, United Kingdom and France) provided no information, Austria reported actual and authorized SALW exports. It is obvious that the comparability of information suffers when the categories differ between the reporting states. Governments at the CSP3 should agree on a mandatory standardized reporting template so that the data of all annual reports can be compared. In the best case, states would report on the authorized and on the actual transfers. But at minimum, they should agree to report consistently.

Another issue is the question of whether states indicate the size of exports and imports either as quantity, i.e. as number, of transferred weapons, or as their financial value. Currently, all 27 States Parties that reported transfers of heavy weapons provided the numbers. Only three reports (Austria, Portugal and Slovenia) included information on both, the value and number of heavy weapons exported. Austria, Bosnia and Herzegovina, Japan, Luxembourg, Montenegro, Portugal and Slovenia voluntarily reported on the number and value of exported small arms and light weapons. Belgium and Sweden reported just the financial value, while 33 other States Parties reported just on the number of SALW exported. States should agree to report on the number of transferred weapons, as these are more meaningful in terms of fighting power than the financial value of certain arms transfers, because prices might strongly diverge.

Table 2
Divergence of reporting

Reporting	Major weapons systems	SALW
<i>Number of states that reported on transfers</i>	30*	4 2
<i>Authorized transfers</i>	5	1 1
<i>Actual transfers</i>	21	2 6
<i>Both</i>	2**	2
<i>No information</i>	2	3
<i>Number of items</i>	27	3 3
<i>Financial value</i>	0	2
<i>Number and value</i>	3	7
<i>NIL export report</i>	11	-
<i>NIL import report</i>	4	-

* Of the 45 States Parties that submitted public annual reports, only 30 transferred major weapons systems.

** Italy is listed under both because it reported authorized exports and actual imports.

A Working Group on Reporting had been set up with the task of preparing a final reporting template for consideration at the CSP2. At the CSP2, governments only discussed the status, rather than the content, of reporting templates. States Parties agreed to ‘endorse’ both the initial and annual reporting templates, ‘recommend’ their use and keep the option open to amend the templates in future. But in the new reporting template, adopted by consensus, only some wordings were changed. The outlined content problems were not resolved. A standardized and useable format for annual reports is the precondition for an effective comparison of country data. In particular, the central parameters of the information on arms transfers—actual/authorized, number/value, report period, central definitions of weapon categories—must be standardized in a mandatory reporting template. Paving the way for States Parties to agree on such a reporting template at CSP3 should be a major task of the Working Group on Transparency and Reporting. If the current reporting confusion continues, the potential of the ATT reporting mechanism to increase transparency of the international arms trade cannot be realized. It is especially disappointing that even the EU Member States did not succeed to come up with a consistent reporting scheme. As major arms exporters, in particular, France, Germany and the United Kingdom should lead this process.

Leading by example: Additional information on a voluntary basis

Unfortunately, no annual report contains voluntary references to denials of arms export licenses, the transfer of production licenses, arms manufacturing equipment, involved arms producing companies or on transit countries and routes. However, as a closer look into the reports shows, several states voluntarily provided additional information. 29 reports included detailed descriptions of weapon types. 22 countries commented on the end-user and the condition of weapons. Germany, for example, stated that the listed SALW to Iraq were for the Kurdistan Regional

Government and noted when weapons were transferred to UN-Missions. New Zealand commented on involved brokering firms.¹⁷ European countries (such as Poland, the Netherlands, Romania and Germany) provided a detailed description of transferred items. The Dominican Republic submitted voluntary information about the total value of transferred munitions, attachments, parts and components. Norway provided data on the value of exported ammunition.

More than ten States Parties (among them New Zealand, Argentina, Costa Rica, Jamaica and Mexico) reported details on shotguns, hunting rifles and other SALW. Senegal, one of the few African ATT States Parties, informed about the number and model of imported ammunition and attachments. Sweden provided a plurality of additional information concerning its exports: In 25 categories, it listed, *inter alia*, ammunition, attachments, other weapons systems like bombs and torpedoes, equipment, software and technology.

This is a positive development, and it underlines experience from UNROCA that has shown that states use the optional segment of the reporting template to voluntarily go beyond the minimum standards. More States Parties—particularly EU Member States—should offer additional information in their next annual reports in order to continuously raise reporting standards. Such a policy of leading by example, in combination with a constant improvement of the reporting template and the setting of incentives for good reporting practices by major arms producing countries, can contribute to the much-needed improvement of the reporting system. This would increase the transparency of the international arms trade and could help to strengthen the norms and rules of the ATT so that they will have a visible impact on states’ arms transfer policies.

FURTHER READING

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