

***Understanding and Evaluating the
Nascent Arms Transfer Control Regime:
Problems and Prospects***

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ABSTRACT

This paper considers the Arms Trade Treaty (2014), the Programme of Action on Small Arms and Light Weapons (2001), and the UN Register (1991), as potential components of a nascent arms transfer regime. It evaluates ways that elements of these three instruments can be used to strengthen each other.

This paper challenges the assumption that the Arms Trade Treaty supersedes the instruments that were in place before its negotiation and entry into force. The paper addresses core challenges related to conventional weapons and their transfer, and suggests areas of current and potential synergy among different approaches to controlling the international trade in conventional weapons.

The three instruments are designed to address problems with both the legal and the illicit trade in weapons, ranging from small arms and light weapons to major conventional weapons. Together, the constellation of instruments provides a significantly broader range of policy tools than will be available if States only choose to implement a single instrument such as the Arms Trade Treaty. This paper presents policy recommendations to aid implementation of each instrument and strengthen the nascent arms transfer control regime.

INTRODUCTION

This paper focuses on the Programme of Action on Small Arms and Light Weapons, the Arms Trade Treaty (ATT), and the UN Register of Conventional Arms.¹ It addresses core challenges related to conventional weapons and their transfer, and suggests areas of current and potential synergy among these instruments.² The relevant instruments are designed to address problems with both the legal and the illicit trade in weapons, ranging from small arms and light weapons (SALW) to major conventional weapons.

This paper considers each instrument as a component of a nascent arms transfer regime, and evaluates ways that the instruments can be used to strengthen each other. The instruments have common elements and goals, but also have important differences. The paper concludes that together, the constellation of instruments provides a significantly wider range of policy tools than will be available if States only choose to implement a single instrument.

The UN Register was established in 1991,³ while the Programme of Action was agreed in 2001.⁴ The entry into force of the Arms Trade Treaty on 24 December 2014 adds a critical component to the arms transfer regime. This regime includes legally binding as well as politically binding elements.

The costs of failing to control the arms trade are considerable. The Small Arms Survey estimates that more than 500,000 people are killed as the result of armed violence each year.⁵ This is equivalent to approximately one person each minute, or 1500 people each day dying from armed violence. The Small Arms Survey also estimates that less than 15 percent of these deaths are the direct result of conflict. As a result, efforts to reduce the number of deaths caused by small arms and light weapons will have to focus on armed violence, not only direct conflict deaths.

The next three sections compare the Programme of Action and the Arms Trade Treaty with respect to key elements such as the types of weapons they cover, how they deal with various types of transactions,

¹ This paper is based in large part on: Natalie J. Goldring, "The Programme of Action, the Arms Trade Treaty, and the UN Register of Conventional Arms: Seeking Synergy and Overcoming Challenges," International Action Network on Small Arms (IANSA) Briefing Paper, June 2016. Natalie Goldring and IANSA gratefully acknowledge the support of the UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR) for the earlier version of this paper. Natalie Goldring also is grateful for Yuyan Liu's drafting of Tables 1, 2, and 3; Brian Wood, David Atwood, and Owen Greene's helpful comments and suggestions on the earlier publication; and Brian Wood's comments on this paper.

² The same analysis could be extended to other instruments, such as the International Tracing Instrument, the International Firearms Protocol, and the Sustainable Development Goals. The Firearms Protocol, for example, covers firearms, their parts and components, and their ammunition, a useful precedent for other instruments. Brian Wood also points out that UN Member States also have legal obligations related to arms transfers through the UN Security Council and instruments such as the Cluster Munitions Convention, Landmines Convention, and various regional treaties, among others.

³ United Nations Office for Disarmament Affairs, "UN Register of Conventional Arms."

⁴ United Nations, *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*. In this paper, the instrument is referred to as the "Programme of Action" or PoA.

⁵ Small Arms Survey, "Armed Violence."

and their provisions for cooperation and assistance.⁶ The interpretive material presents examples of existing and potential areas of synergy between these instruments, and also considers interactions among the Programme of Action, the ATT, and the UN Register of Conventional Arms. The last section considers challenges to fully implementing the instruments and suggests ways to improve their implementation.

Table 1: Comparison of the Programme of Action and the Arms Trade Treaty: Basic Provisions

	PoA	ATT
Definition and Goals	The Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) was adopted by consensus at the UN General Assembly after negotiations at the 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.	The Arms Trade Treaty (ATT) was adopted by the UN General Assembly to regulate international trade in conventional arms by establishing the highest international standards and to prevent and eradicate illicit trade and diversion of conventional arms. The ATT entered into force on 24 December 2014.
	1. Prevent and eradicate the illicit trade in arms. 2. Reduce human suffering. 3. Recognize the security, social, economic and humanitarian consequences of the illicit and unregulated trade in arms, e.g. terrorism, armed conflicts, poverty. PoA [I.2, I.3, I.5, I.6, I.7], ATT [Preamble 2, 8, Article 1]	
Types of Weapons	Small arms and light weapons [I.1]	All conventional arms, including battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers and small arms & light weapons. [2.1, 5.3] Ammunition/munitions that are being exported. [3]
Activities covered	Manufacture, marking, recordkeeping, tracing, stockpile management, surplus identification and disposal, public awareness, DDR and children, international transfers of SALW. [II.5, II.6, II.7, II.8, II.9, II.10, II.16, II.17, II.18, II.19, II.20, II.21, II.22, II.27, II.29, II.30, II.34, II.41]	The activities of the international trade in conventional arms comprise export, import, transit, trans-shipment, and brokering. [2.2]
	1. International transfer including export, imports, transit and retransfer. 2. Brokering.	
Commitment and Implementation	Politically binding commitments. UN Member States have affirmed their 'will' to implement the PoA on a voluntary basis. Each State can implement the PoA as it wishes, usually guided by National Commissions in line with National Action Plans. [II.23, II.33]	Legally binding treaty obligations as well as other commitments. Parties undertake to implement a range of commitments in their national arms transfer legislation and procedures in order to have an effective and transparent national control system regulating the transfer of conventional arms. [5.3, 5.5]
	Establish and maintain a national control system including laws, regulations and administrative procedures. PoA [II.2,II.3,II.4], ATT [5.2, 5.5]	

Note: The material in separate columns in tables 1, 2, and 3 indicates differences between the two instruments, while the text that crosses columns covers elements they have in common.

⁶ Extensive reports on related topics are available from several research institutes. For example, see: Pacific Small Arms Action Group, *Arms and Ammunition In Oceania: A Guide for Pacific Governments* and Elli Kytömäki, *The Arms Trade Treaty's Interaction with Other Related Agreements*.

BASIC PROVISIONS OF THE PROGRAMME OF ACTION, THE ARMS TRADE TREATY, AND THE UN REGISTER⁷

The Programme of Action (PoA)

The Programme of Action recommends action on national, regional, and global levels to “prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects.”⁸ The second paragraph of the document helps indicate the context for concern with these issues:

Gravely concerned about the illicit manufacture, transfer and circulation of small arms and light weapons and their excessive accumulation and uncontrolled spread in many regions of the world, which have a wide range of humanitarian and socio-economic consequences and pose a serious threat to peace, reconciliation, safety, security, stability and sustainable development at the individual, local, national, regional and international levels.⁹

In their initial commitment to the PoA, the assembled governments agreed to work to address all aspects of the illicit trade in small arms and light weapons. They committed to do so by developing or strengthening norms to prevent, combat, and eradicate the illicit trade, manufacturing of and trafficking in small arms and light weapons. The PoA places particular emphasis on post-conflict situations and excessive and destabilizing accumulations of small arms and light weapons.¹⁰

The Arms Trade Treaty (ATT)

The stated purposes of the Arms Trade Treaty are:

- Contributing to international and regional peace, security, and stability;
- Reducing human suffering;
- Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.¹¹

The ATT represents a significant step forward in several respects:

- By setting international standards and creating benchmarks against which to measure States’ performance, the ATT gives governments and civil society alike the ability to draw attention to States’ successes and failures in implementing the treaty.
- The ATT is a global, legally binding treaty. This means that for the first time, States Parties are accepting the treaty’s provisions as legally, rather than only politically binding.
- The ATT’s provisions emphasize ensuring that arms transfers comply with both international humanitarian law and international human rights law.

⁷ See table 1 for more detailed references to specific provisions.

⁸ United Nations, *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*.

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ United Nations, *Arms Trade Treaty*, Article 1, Object and Purpose.

- The ATT includes prohibitions on transfers under certain circumstances.
- The ATT requires States to keep records of weapons they export and import, as well as those that transit or transship their territory.

UN Register of Conventional Arms (“the UN Register”)

The United Nations Register of Conventional Arms was established by a vote of the UN General Assembly in 1991. As originally constituted, the Register covered the same five categories of weapons as those limited by the Treaty on Conventional Forces in Europe: battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, and attack helicopters. It also included two additional categories – one for warships, and one that included both missiles and missile launchers, for a total of seven categories.

The UN Register was designed to increase transparency in weapons transfers. It also focused on preventing “the excessive and destabilizing accumulations of arms.” The General Assembly resolution authorizing the Register summarized the justification for the Register, as well as plans for its initial implementation.¹² The resolution recognized the importance of increasing transparency on arms transfers, procurement through national production, and military holdings as ways of promoting stability. It also emphasized the costs of excessive and destabilizing accumulations of weapons. It called for restraint in arms imports and exports, especially in areas where tensions or conflict were present. From the beginning, the Register was designed to be adjusted and expanded as necessary.¹³

The UN has convened Groups of Governmental Experts regularly since the Register’s inception, and has charged them with evaluating the Register’s operation and recommending changes to increase its effectiveness.¹⁴ Over time, they have recommended expanding and adapting the Register. For example, the 2003 Group of Governmental Experts’ recommendation that Member States be given the option of providing background information on transfers of small arms and light weapons was accepted by the General Assembly. The 2006 Group of Governmental Experts followed on this recommendation by developing a standardized reporting form for States to submit. The 2013 Group of Governmental Experts integrated armed unmanned aerial vehicles into existing Register categories. Groups of Governmental Experts have also amended the definitions of particular weapons systems, resulting in the inclusion of more weapons systems in the Register. Because the Groups of Governmental Experts operate on consensus, however, more ambitious proposals have not been successful.

The 2016 Group of Governmental Experts focused a great deal of attention on the decreasing number of States that have reported to the Register in recent years. One of its core recommendations focused on trying to increase participation, by seeking explanations for States’ decisions not to participate and by making it easier for States that have not had imports or exports to file “nil” reports.¹⁵ The 2016 Group of

¹² United Nations, “General and complete disarmament: Resolution ‘L’ -- Transparency in armaments.”

¹³ *ibid.*

¹⁴ For additional information on the Group of Governmental Experts’ recommendations for the UN Register, see, United Nations, “Continuing operation of the United Nations Register of Conventional Arms and its further development,” A/71/259, 29 July 2016, pp.8-10.

¹⁵ United Nations, “Continuing operation of the United Nations Register of Conventional Arms and its further development,” A/71/259, 29 July 2016.

Governmental Experts also adopted a separate reporting form for twelve categories of small arms and light weapons. The Group of Governmental Experts labeled this approach “seven plus one” for the original seven categories plus the new category for small arms and light weapons. The General Assembly has adopted the approach on a trial basis.

Opportunities for Synergy

One way of creating synergy among the instruments is using the strength of one instrument to enhance another. For example, reporting on transfers of small arms and light weapons is likely to be more detailed in the annual reports for the ATT than in the UN Register, as the ATT includes small arms and light weapons as one of its core categories, but the Register only includes them as optional additional information. This means that States could use their more detailed ATT reports to strengthen their UN Register reports.

The ATT has not eliminated the need for the Register, however. More than 170 countries have reported to the UN Register since it began in 1991, while 90 States have ratified or acceded to the ATT.¹⁶ The 2016 Group of Governmental Experts “...expressed its firm conviction that the Register needed to continue to play its role as the only global voluntary transparency and confidence-building measure in international conventional arms transfers.”¹⁷

¹⁶ For UN Register data, see: <https://www.un.org/disarmament/convarms/register/> For ATT status as of 6 February 2017, see: <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2017/02/Table-of-States-parties-Feb-6-2017.pdf> The Republic of Korea will become the 91st States Party on 26 February 2017.

¹⁷ United Nations, “Continuing operation of the United Nations Register of Conventional Arms and its further development,” A/71/259, 29 July 2016.

Table 2: Comparison of the Programme of Action and the Arms Trade Treaty: Transactions

	PoA	ATT
Recording and Reporting	<ol style="list-style-type: none"> 1. Comprehensive and accurate records are kept for as long as possible. [II.9] 2. Voluntary biennial reports on implementation. [II.33] 	<ol style="list-style-type: none"> 1. Each State Party shall maintain national records on transfers. Records shall be kept for a minimum of ten years. [12.1, 12.2, 12.3] 2. Each State Party must submit a report annually to the Secretariat by 31 May. [13.3]
Transfers, Export Assessment, and Diversion	<ol style="list-style-type: none"> 1. Assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade. [II.11] 2. Establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons. [II. 11] 3. Put in place and implement adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of small arms and light weapons, including the use of authenticated end-user certificates and effective legal and enforcement measures. [II.12] 4. Make every effort to notify the original exporting State in accordance with their bilateral agreements before the retransfer of those weapons. [II.13] 5. To take appropriate measures against any activity that violates a United Nations Security Council arms embargo in accordance with the UN Charter. [II.15] 	<ol style="list-style-type: none"> 1. Each State Party shall prohibit a transfer of conventional arms if it would (i) violate UN Security Council sanctions or embargoes or (ii) violate its relevant international obligations to which it is a party, or (iii) if it has knowledge that it would be used in the commission of genocide, crimes against humanity or war crimes. [6.1, 6.2, 6.3] 2. Each exporting State Party shall conduct an export assessment before transfer. If, after considering measures to mitigate the risk, the exporting State determines that there is an overriding risk of any of these negative consequences, it will not authorize the export. [7.1, 7.2, 7.3] 3. The exporting State shall take into account the risk of the arms being used to commit or facilitate serious acts of gender-based violence, or serious acts of violence against women or children [7.4] 4. Underlining the need to prevent diversion of conventional arms to the illicit market, unauthorized end use and end users, each State Party shall take measures to prevent diversion and exporting State Parties shall consider measures to mitigate risks of diversion. [Preamble para 3, 11.1, 11.2, 11.3] 5. Each exporting State Party is encouraged to reassess an authorized export if it becomes aware of new relevant information. [7.7]
	<ol style="list-style-type: none"> 1. States must take appropriate measures to prohibit transfers that violate Security Council arms embargoes and obligations under the UN Charter and Geneva Conventions and Protocols. PoA [II.11, II.15], ATT [6] 2. States must assess the risks of a potential export and must not authorize an export that would be used to commit or facilitate serious violations of relevant international law. PoA [II.11], ATT [11.12, 11.13] 3. States should take into account the risk of diversion of these weapons into the illegal trade and take measures to prevent such diversion. PoA [II.2, II.11], ATT [7.1, 7.4, 11.1, 11.2, 11.3] 4. Ensure all authorizations before export. PoA [II.12], ATT [7.5] State shall make information on transfer available to importing State Party or original exporting State. PoA [II.13], ATT [7.6] 	
Import	<ol style="list-style-type: none"> 1. Authorized documentation on import is required. PoA [II.11], ATT [8.1, 8.3] 2. States should take effective measures to regulate import. PoA [II.12], ATT [8.1, 8.2] 	
Transit	<ol style="list-style-type: none"> 1. Ensure effective control over transit of SALW, including authenticated end-user certificates and effective legal and enforcement measures. [II.12] 	<ol style="list-style-type: none"> 1. Each State Party shall regulate the transit or trans-shipment of arms through its territory in accordance with relevant international law. [9] 2. States are encouraged to maintain records of conventional arms that are authorized to transit or trans-ship territories under its jurisdiction. [12.2]
	States shall take appropriate measures, including laws, regulations and administrative procedures to regulate the transits of arms. PoA [II.12], ATT [9]	
Brokering	States shall develop legislation or administrative procedures to regulate arms brokering. Such measures may include registration of brokers or authorizations of brokering transactions. PoA [II.14], ATT [10]	

TRANSACTIONS

The PoA and the ATT have similar standards for several aspects of the arms transfer process, including the need to keep comprehensive records of transfers.¹⁸ They also both include regular reporting requirements. The Programme of Action calls for States to report every two years on their implementation of the PoA, and the ATT calls for annual reports on implementation.

The PoA and the ATT also have similar principles with respect to taking into account the risk of diversion of weapons into the illegal trade. This logic of this approach is that it is easier to prevent diversion than to try to capture the weapons once diversion has already taken place.

Both instruments also seek to regulate weapons that transit countries' territory and to document imports and exports. In both cases, they seek to improve the tracking of weapons and to help States develop better information on what weapons are coming into, leaving, or transiting their territory.

However, the PoA indicates that States should keep their records as long as possible, while the ATT requires keeping records for at least a decade. The PoA also has more extensive information on certification of the end user for weapons transfers. End user certification is a critically important tool for helping to ensure that prospective recipients of arms transfers are legitimate and that the weapons transferred reach their intended recipients.

Opportunities for Synergy

On several of these issues, States could make their implementation of the ATT more robust by applying PoA standards. For example, States could declare their intent to apply the PoA record-keeping requirement to their implementation of the ATT, by extending the period of time during which they would retain records. They could also declare their intent to follow the PoA's end user certification requirements.

Another opportunity for synergy would be to apply the stronger PoA standards on diversion to the implementation of the ATT.¹⁹ By following the PoA's standards for record keeping, end user certification, and diversion in their implementation of the ATT, States could enhance ATT implementation.

¹⁸ See table 2 for more detailed references to specific provisions.

¹⁹ Pacific Small Arms Action Group, *Arms and Ammunition in Oceania: A guide for Pacific Governments*.

**Table 3: Comparison of the PoA and the ATT:
Stockpile Management, Cooperation, and Assistance**

	PoA	ATT
Stockpile Management	States shall take necessary measures to manage the stocks of weapons and authorized bodies should regularly review the stocks. [II.8, II.17, II.18, II.29]	Only reference is to stockpile management as an area in which States may seek assistance. [16.1]
Post-conflict, Public Awareness, and Destruction of Surplus Weapons	States shall develop and implement necessary measures to control or destroy surplus weapons especially in post-conflict situations and promote public awareness on peace. [II.20, II.21, II.30, II.34, II.41, III.16, III.18]	1. Mindful of the role regional organizations can play in assisting States Parties in implementing this Treaty. 2. Recognizing the voluntary and active role that civil society, including non-governmental organizations, and industry, can play in raising awareness of the object and purpose of this Treaty, and in supporting its implementation. [Preamble, para 15]
Customs Cooperation	Regional and international trans-border customs cooperation among relevant bodies shall be encouraged. [II.27, II.37]	1. To address diversion, measures may include alerting potentially affected States Parties, examining diverted shipments of conventional arms and following up through investigation and law enforcement. 2. Sharing 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. [11.4, 11.5, 14]
International Cooperation and Assistance	<ol style="list-style-type: none"> States and international and regional organizations shall consider assisting and promoting conflict prevention. [III.4] International cooperation and assistance to examine technologies on monitoring illicit trades are encouraged. [III.10] States shall address human and sustainable development issues and activities in post-conflict situations. [III.17] 	<ol style="list-style-type: none"> States Parties shall cooperate with each other, consistent with their respective security interests and national laws, to effectively implement this Treaty. [15.1] States Parties are encouraged to facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation. [15.2, 15.3, 15.4, 15.7] States Parties shall, where jointly agreed and consistent with their national laws, afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to this Treaty. [15.5] States are encouraged to cooperate to prevent the transfer of weapons becoming subject to corrupt practices. [15.6]
	<ol style="list-style-type: none"> Recognize the roles that regional organizations, civil society, including non-governmental organizations and industry can play in preventing conflicts, in raising awareness and in supporting the instruments. PoA [I. 15, I.16, I.18, II.40, IV.2], ATT [Preamble 14, 15] States parties shall cooperate with each other on sharing information and exchanging experience on training. PoA [III.5, III.7, III.8, III.9, III.12], ATT [15.1, 15.2, 15.3, 15.4, 15.7] Each state party may seek or render assistance including legal, legislative, technical, material, financial and capacity-building assistance. PoA [III.3, III.6, III.14, III.15], ATT [15.5, 16.1] 	

STOCKPILE MANAGEMENT, COOPERATION, AND ASSISTANCE

The PoA has extensive language on stockpile management, calling for numerous measures, including ensuring physical security for stocks, controlling access, managing inventory, and training staff.²⁰ By contrast, stockpile management is only mentioned once in the ATT. The only use of the term is in a section about areas where States may need assistance.

The PoA provides significant detail on destruction of surplus weapons. Importantly, the PoA makes clear that destruction is the preferred form of disposal for surplus weapons; it also gives priority to destruction in post-conflict situations. The ATT doesn't even use the words "destruction" or "disposal".

The PoA and ATT have similar approaches with respect to civil society's role in supporting the two instruments. Unfortunately, neither instrument provides much guidance on the most effective ways to involve civil society. Efforts to ensure that civil society is integrated more fully in the deliberative processes around these instruments have not been successful.

Both instruments also devote significant attention to providing assistance to other States Parties. The ATT has more detailed language on international cooperation and assistance than the PoA.

Opportunities for Synergy

Although the ATT focuses on arms transfers, it also has an objective of restraining the illicit trade in conventional weapons. States could enhance the ATT through robust adherence to the PoA's provisions on managing weapons stocks. They could also reduce the quantity of weapons available for diversion into the illicit market by following the PoA's focus on destroying surplus weapons.

²⁰ See table 3 for more detailed references to specific provisions.

Table 4: Top Exporters and Participation in Key Instruments²¹

Exporter rank 2011-2015	Exporting country	PoA 2016	PoA 2014	PoA 2012	UN Register 2014	UN Register 2013	UN Register 2012	ATT status	Baseline Assessment Project report
1	USA	Y	Y	Y	Y	Y	Y	S	Y
2	Russia	Y	Y	Y	Y	Y	Y	N	N
3	China	Y	Y	N	Y	Y	Y	N	N
4	France	Y	Y	Y	Y	Y	Y	R	Y
5	Germany	Y	Y	Y	Y	Y	Y	R	Y
6	UK	Y	Y	Y	Y	Y	Y	R	Y
7	Spain	Y	Y	N	Y	Y	Y	R	Y
8	Italy	Y	Y	Y	Y	Y	Y	R	Y
9	Ukraine	Y	Y	Y	Y	Y	Y	S	N
10	Netherlands	Y	N	N	Y	Y	Y	R	Y

Table 5: Top Importers and Participation in Key Instruments

Importer rank 2011-2015	Importing country	PoA 2016	PoA 2014	PoA 2012	UN Register 2014	UN Register 2013	UN Register 2012	ATT status	Baseline Assessment Project report
1	India	Y	Y	Y	Y	N	Y	N	N
2	Saudi Arabia	Y	N	N	N	N	N	N	N
3	China	Y	Y	N	Y	Y	Y	N	N
4	UAE	N	N	N	N	N	N	S	N
5	Australia	Y	Y	Y	Y	Y	Y	R	Y
6	Turkey	Y	N	Y	N	Y	Y	S	Y
7	Pakistan	Y	Y	Y	N	N	Y	N	N
Tie 8	Viet Nam	N	N	N	Y	Y	Y	N	N
Tie 8	USA	Y	Y	Y	Y	Y	Y	S	Y
10	South Korea	N	Y	Y	Y	Y	Y	*	N

Key for tables 4 and 5:

PoA 2016, 2014, 2012	Y = submitted national report on the Programme of Action that year N = did not report that year Note that some countries do not submit their reports in English, limiting their accessibility. For example, in 2016, Russia, China, and Saudi Arabia submitted reports, but not in English.
UN Register 2014, 2013, 2012	Y = submitted at least a partial report to the UN Register for that year N = did not report that year
ATT status column:	S = signed R = ratified N = neither signed nor ratified * = The ATT will enter into force for South Korea on 26 February 2017.
Baseline Assessment Project report:	Y = report available at http://www.armstrade.info/country-profiles/ as of 18 February 2017 N = report not available

²¹ Data on top exporters and importers are from: Aude Fleurant, Sam Perlo-Freeman, Pieter D. Wezeman and Siemon T. Wezeman, "Trends in International Arms Transfers, 2015." Stockholm International Peace Research Institute, SIPRI Fact Sheet, released 22 February 2016. BAP data are up to date as of 18 February 2017, PoA data as of 12 February 2017, and ATT data as of 7 February 2017.

ENHANCING IMPLEMENTATION OF THE INSTRUMENTS

This section identifies common obstacles to the full implementation of these instruments, and suggests ways forward. The challenges include limited and inconsistent reporting and transparency; lack of universality, comprehensiveness, and capacity; and procedural barriers to progress.

Challenge: Transparency and participation

Tables 4 and 5 provide data on the participation of top importers and exporters in certain aspects of the Programme of Action, the UN Register, and the Arms Trade Treaty.²² The tables focus primarily on States' reporting to the PoA, the UN Register, and the ATT Baseline Assessment Project.²³ They also give States' status with respect to ATT signature and ratification. The UN Register is a reporting tool. In contrast, full implementation of States' commitments to the PoA and the ATT requires action far beyond reporting, as is evident in Tables 1, 2, and 3. Tables 4 and 5 summarize basic levels of participation in the context of the PoA and the ATT for top suppliers and recipients of weapons transfers.

Example: There is a need for greater participation in ATT by top suppliers, though their participation in other instruments is more consistent

One of the core challenges to the full implementation of the ATT is the lack of participation by some key arms suppliers. Of the countries the Stockholm International Peace Research Institute (SIPRI) identified as the top ten weapons suppliers (by dollar value) between 2011-2015, eight of the ten have signed the Arms Trade Treaty (all but China and Russia), but just six have ratified it. Notably, the United States and Russia – by far the dominant suppliers – have not ratified the treaty.

Even though the top three exporters and four of the top ten exporters by dollar value from 2011-2015 have not ratified the ATT, top exporters have participated in other efforts.²⁴ For example, in 2016, 89 countries submitted national reports on their implementation of the PoA, including all of the top 10 exporters listed in the SIPRI factsheet. This was a significant increase from 2014, when 76 countries submitted national reports on their implementation of the PoA, including nine of the top 10 exporters listed in the SIPRI factsheet. In addition, all ten of the top exporters submitted at least partial reports to the UN Register for 2014, 2013, and 2012. Seven of the ten have submitted reports to the ATT Baseline Assessment Project.²⁵

Comment [N1]: New SIPRI data on leading suppliers and recipients of arms transfers are under embargo until 20 February 2017.

²² Information about the ten largest importers and exporters in these tables and the following section is drawn from Aude Fleurant, Sam Perlo-Freeman, Pieter D. Wezeman and Siemon T. Wezeman, "Trends in International Arms Transfers, 2015."

²³ Reporting to the Baseline Assessment Project is treated as a proxy for reporting to the ATT.

²⁴ Stockholm International Peace Research Institute, "Trends in International Arms Transfers, 2015."

²⁵ Arms Trade Treaty Baseline Assessment Project. as of 18 February 2017.

Example: The leading importers' record is less consistent, although almost all of the top importers have participated in at least one of the three instruments

There is also a great deal of work to do on the importing side. Of the top ten importing States measured by dollar value from 2011-2015, five States have signed the treaty. The top three importers (India, Saudi Arabia, and China) have not done so. Of the five countries that have signed the treaty, Australia has ratified it and the Republic of Korea will become a States Party on 26 February 2017.

Leading importers' participation in PoA and UN Register reporting is also less reliable than that of the leading exporters. Even so, four of the top five importers and seven of the top ten submitted national reports to the PoA in 2016. Only five of the top importers submitted reports to the UN Register for 2014, 2013, and 2012, although seven of the top ten importers submitted reports for two of the three years. Three of the top 10 importers have submitted reports to the Baseline Assessment Project.

Even though the participation of some States has been variable, each of the top ten importers has participated in at least one of the three instruments. Saudi Arabia had been the only exception, but it submitted its report on its implementation of the Programme of Action in 2016.

A way forward: States' willingness to participate in some instruments may provide leverage to encourage movement toward universality

The fact that virtually all of the leading importers and exporters of conventional weapons have participated at some level in at least one of the three instruments gives a basis for encouraging them to move toward participation in all three. As mentioned above, by completing their reports to the ATT, for example, countries are also compiling data that can be used in their UN Register reporting.

Challenge: Lack of specificity of weapons categories, lack of comprehensiveness, and excessive focus on major weapons limits the relevance of these instruments for some States

Another consistent problem across instruments is the categories of weapons included. The UN Register was established as the Cold War had just ended. The Register was built on the traditional Cold War weapons categories, and simply took those categories from the "offensive weapons" listed in the Treaty on Conventional Forces in Europe – battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, and warships.²⁶ The list was amended to add missile and missile launchers, but they were added as a single category. As noted in the section above on "Basic Provisions of the Programme of Action, the Arms Trade Treaty, and the UN Register," small arms and light weapons were subsequently added to the UN Register, but an optional category, not within the main form.

This lack of specificity and failure to comprehensively include weapons, ammunition, and munitions was then repeated with the Programme of Action and to a lesser extent with the Arms Trade Treaty. This

²⁶ Treaty on Conventional Armed Forces in Europe.

lack of comprehensiveness has resulted in insufficient attention to small arms and light weapons (and their corresponding ammunition), which are the weapons most commonly used in armed violence.

A way forward: Disaggregating small arms and light weapons would be a good first step

The weapons that are causing most of the killing in current and recent conflicts are not considered a core part of the UN Register. Making the small arms and light weapons category an integral part of the Register, and breaking the category out into specific types of weapons systems would help resolve this problem.

Fully integrating small arms and light weapons in the UN Register would also foster synergy among the instruments. Small arms and light weapons are already an integral part of the ATT; that approach should be a model for the future development of the UN Register. The 2016 Group of Governmental Experts took an important step in this regard in adopting the “seven plus one” approach.

Challenge: The need to build capacity in States and in civil society

Many States need significant assistance in order to carry out initiatives such as the PoA and the ATT. Issues include a lack of regulations and laws governing arms transfers, systems for record keeping that are minimal or do not exist, inadequate guidelines for stockpiles, unsafe and unsecured storage facilities, and lack of financial resources to implement new programs and regulations.

A significant challenge for implementing these instruments is that the “weakest link” may well determine their success or failure. Arms traffickers have long shown themselves adept at finding new routes for their weapons, adapting to changing circumstances. This means that, for example, porous borders in one country are likely to affect the ability to implement controls in the neighboring countries. The country with the weakest standards in a region or subregion may effectively set the standard for the other countries in the area.

Another challenge is that NGOs and other civil society organizations, which can contribute a great deal of expertise and can mobilize public support for these instruments, are severely constrained in their ability to participate fully in UN fora. These organizations are offered limited opportunities to participate in the debate, often being limited to presentations in a single session of a conference or preparatory meeting. They also suffer from a chronic lack of material resources, which forces them to make difficult decisions about which international and regional processes to track and which meetings they can afford to attend.

A way forward: Increasing technical assistance and ensuring that NGOs and other civil society organizations receive appropriate funding

Capacity building for state officials, NGOs, and UN partners is underway through programs such as UNSCAR, the UN Trust Facility Supporting Cooperation on Arms Regulation.²⁷ This has helped lessen problems with funding for the organizations that have secured support, though NGOs working to help States and international organizations implement these initiatives are still chronically underfunded and understaffed.

NGOs need additional funding to effectively participate in implementation of these instruments. In addition, targeted funding for specific groups will help ensure that their communities are fully represented in UN fora. For example, participants from developing countries are often only able to attend conferences when they receive outside aid. Such funding could also help ensure that survivors of armed violence, including survivors of gender-based violence, are heard.

In turn, States with limited technical and financial resources have long lists of projects for which they seek assistance.²⁸ Continuing to expand these programs will help ensure full implementation of these instruments. Initial reports suggest that there are significant gaps between existing conventional arms control and disarmament capacities of States and what is needed for States to fully implement the ATT, for example.²⁹

Challenge: Insisting on absolute consensus continues to inhibit progress

Defining consensus as virtual unanimity in international negotiations and deliberations on conventional weapons is a tactic that some skeptical States have frequently used to block change. This means that even when the vast majority of States support a particular measure, one or a small number of States can prevent progress.

The minimalist strategies fostered by an overly strong insistence on consensus can carry significant risks. The history of these instruments suggests that expanding programs and documents after their initial adoption tends to be difficult, for example.

A way forward: The instruments and their interpretations need to change in response to altered circumstances

Circumstances change over time. In the best case, these instruments will be living documents that can be adapted to different needs over time. If it is impossible to adapt the instruments themselves, States will need to adapt their practices. This section provides a brief summary of actions at the 2014 Biennial

²⁷ For additional information on UNSCAR, see: <https://www.un.org/disarmament/UNSCAR/>

²⁸ For example, see: United Nations Programme of Action Implementation Support System, "Matching Needs and Resources, 2012-2014," found at: <http://www.poa-iss.org/Poa/2012-Matching-Needs-and-Resources.pdf>

²⁹ The Caribbean Community (CARICOM) Working Paper for BMS6 highlights the need for additional financial resources and technology transfers, as well as improved border controls and information sharing.

Meeting of States and a longer assessment of the 2016 Biennial Meeting of States as short case studies in both the problems and prospects in this regard.

At the Biennial Meeting of States in 2014 (“BMS5”), States showed progress in responding to concerns about the PoA.³⁰ Although States did not change the text of the PoA, NGOs were able to influence the results of the conference in several important ways. NGOs improved references to women, strengthened the understanding of the role of civil society, and were also successful in increasing attention to survivors of armed violence and to issues of gender-based violence. NGOs were somewhat successful in increasing States’ focus on the public health dimensions of armed violence and to the relationship between crime and armed violence.³¹ The progress made at BMS5 is an indication that the Programme of Action and its interpretation have the potential to change to respond to current circumstances and needs, even if the document itself may not have changed.

Progress continued at the Biennial Meeting of States in 2016 (BMS6).³² The outcome document from BMS6 included welcome attention to key areas of potential synergy among the PoA, other activities at the UN, and other instruments dealing with arms transfers.

The outcome document was particularly strong on issues related to gender, another indication of the development of this issue over the 15 years since the adoption of the PoA. The issue of gender was so controversial in the original negotiation of the PoA that the word was not even used in the document. The BMS6 outcome document seeks synergy among various efforts by linking a recommendation on ensuring that women participate in all phases of PoA implementation to relevant UN General Assembly and Security Council resolutions. It also refers to seeking gender equality and the need for disaggregated data on gender and the illicit trade in SALW.

Another positive aspect of the outcome document was attention to the Sustainable Development Goals (SDGs), recognizing the intrinsic connections between sustainable development and peace and security. In particular, states recognized the importance of SDG target 16.4, which includes a call for significantly reducing illicit arms flows by 2030.

The outcome document also covers the full weapons life cycle, including destruction. As states recognized in this document, destruction is the only way to ensure that weapons that are no longer needed are removed from circulation and cannot be reused.

Arguably, the biggest failing of BMS6 was that it did not deal directly with the issue of ammunition. After protracted debate, the conference adopted ambiguous language that did not use the word ammunition, but mentioned that some states may choose to apply the PoA’s provisions to items in addition to the list of SALW contained in the International Tracing Instrument. BMS6 also did not deal sufficiently with the Arms Trade Treaty, which has important points of synergy with the PoA. Another failing of BMS6 was

³⁰ United Nations, “Report of the Fifth Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.”

³¹ For additional detail on BMS5, see: IANSA, “The Fifth Biennial Meeting on Small Arms – IANSA Report,” found at: http://www.iansa.org/system/files/BMS5_Report_From_IANSA.pdf

³² This section is largely from: IANSA (Natalie J. Goldring), “Small Arms and Light Weapons” in the Reaching Critical Will First Committee Briefing Book, 2016.

that although non-governmental organizations provide significant substantive expertise, NGOs were still largely excluded from many sessions.

Continued implementation challenges with the PoA include uneven commitment to the instrument, resource constraints, and lack of infrastructure for implementation. Consensus decision-making remains a weak link of the process.

Consensus decision-making has also made it difficult for the Groups of Governmental Experts on the UN Register to agree on significant changes to the Register. As a result, States that have suffered most from armed violence have questioned its relevance. The “seven plus one” approach is a step forward, and would make it easier for States to report more information about their transfers of small arms and light weapons.³³ However, fully integrating small arms and light weapons into the main body of the Register would counter the concern that small arms and light weapons are an afterthought for much of the UN community.

In contrast, by abandoning the consensus rule and taking the treaty to the General Assembly for adoption by a vote, the overwhelming majority of States that supported the ATT were able to reach a decision. Moving away from defining consensus as virtual unanimity will better position each of these instruments to respond to current and future challenges.

CONCLUSION

Although significant obstacles make it difficult to fully implement these instruments, this paper has described some ways in which synergies among the instruments may help resolve these problems. And despite diverse perspectives on specific policy initiatives, there seems to be a shared understanding throughout the international community that an unregulated trade in conventional weapons risks severe negative consequences.

Seeking a new global norm that takes into account the short- and long-term benefits and costs of the weapons trade requires activity at the local, national, regional, and global levels. Although many useful initiatives are already underway, significant change is likely to be impossible without cooperative efforts by governments and civil society. The instruments analyzed in this paper are interdependent; favoring one approach to the exclusion of the others may risk broader failure.

³³ United Nations, “Continuing operation of the United Nations Register of Conventional Arms and its further development,” A/71/259, 29 July 2016, p. 29.

WORKS CITED AND SELECTED ADDITIONAL PUBLICATIONS

Amnesty International, *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights*, 1 February 2015, Index number: ACT 30/0003/2015, found at: <https://www.amnesty.org/en/documents/act30/0003/2015/en/>

CARICOM, "CARICOM Working Paper," 26 April 2016, found at: <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2016/04/2016-04-26-Working-Paper-CARICOM.pdf>

Control Arms, *ATT Monitor 2015*, found at: <http://armstreatymonitor.org/current/wp-content/uploads/2015/08/Full-Annual-Report.pdf>

Control Arms, "Extraordinary Meeting of States Parties Geneva, 29 February 2016 Summary and Analysis," found at: <http://controlarms.org/en/wp-content/uploads/sites/2/2016/03/Extraordinary-Meeting-Summary.pdf>

Control Arms, "Looking Ahead: Making the ATT Work," February 2016, found at: <http://controlarms.org/en/wp-content/uploads/sites/2/2016/03/PolicyPaperGeneva-1.pdf>

"The Devil is in the Detail: The importance of comprehensive and legally binding criteria for arms transfers," Oxfam International, May 2012, found at: http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-devil-detail-arms-trade-treaty-030512-en_0_3.pdf

Aude Fleurant, Sam Perlo-Freeman, Pieter D. Wezeman and Siemon T. Wezeman, "Trends in International Arms Transfers, 2015." Stockholm International Peace Research Institute, SIPRI Fact Sheet, released 22 February 2016, found at: <http://books.sipri.org/files/FS/SIPRIFS1602.pdf>

Mia Gandenberger, "RCW's report on the extraordinary meeting of the Arms Trade Treaty," 1 March 2016, found at: <http://www.reachingcriticalwill.org/disarmament-fora/att/extraordinary-meeting/report>

Natalie J. Goldring, "The Programme of Action, the Arms Trade Treaty, and the UN Register of Conventional Arms: Seeking Synergy and Overcoming Challenges," IANSA Briefing Paper, June 2016, found at: <http://www.iansa.org/system/files/IANSA%20POA%20ATT%20Synergies%20ENG.pdf>

IANSA, "Differences between the United Nations Programme of Action and the United Nations Arms Trade Treaty," found at: <http://www.iansa.org/system/files/03%20Differences%20between%20the%20Arms%20Trade%20Treaty%20and%20the%20Programme%20of%20Action.pdf>

IANSA, "The Fifth Biennial Meeting on Small Arms – IANSA Report," June 2014, found at: http://www.iansa.org/system/files/BMS5_Report_From_IANSA.pdf

IANSA (written by Natalie J. Goldring), "Small Arms and Light Weapons" in: Reaching Critical Will First Committee Briefing Book, 2016, found at: <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/briefingbook/FCBB-2016.pdf>

Elli Kytömäki, *The Arms Trade Treaty's Interaction with Other Related Agreements*, Chatham House, The Royal Institute of International Affairs, February 2015, found at: https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20150227ATTInteractionKytomaki.pdf

Pacific Small Arms Action Group, *Arms and Ammunition in Oceania: A guide for Pacific Governments*, found at: <http://nebula.wsimg.com/d5ea93bf5869fd0ddbccfd8c271229e5?AccessKeyId=1940C9FB33ADD86BB12A&disposition=0&alloworigin=1>

Sarah Parker, "The Arms Trade Treaty: A Step Forward in Small Arms Control?" Small Arms Survey Research Note 30, June 2013, found at: http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-30.pdf

Rachel Stohl, "Substance Lacking at Arms Trade Treaty Meeting in Geneva," Stimson Spotlight, 1 March 2016, found at: <http://www.stimson.org/content/substance-lacking-arms-trade-treaty-meeting-geneva>

Rachel Stohl and Paul Holtom, Arms Trade Treaty Baseline Assessment Project, found at: <http://www.armstrade.info/country-profiles/>

Small Arms Survey, "Armed Violence", found at: <http://www.smallarmssurvey.org/armed-violence.html>

United Nations, *Arms Trade Treaty*, found at: <http://www.un.org/disarmament/ATT/>

United Nations, "Continuing operation of the United Nations Register of Conventional Arms and its further development," A/71/259, 29 July 2016, found at: <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2016/10/A-71-259-GGE-Register.pdf>

United Nations, Fact Sheet on Transparency: United Nations Register of Conventional Arms, November 2012, found at: http://www.poa-iss.org/UNRegister/Transparency%20in%20arms_Fact_Sheet_2012.pdf

United Nations, "General and complete disarmament: Resolution 'L' -- Transparency in armaments," A/RES/46/36, 6 December 1991, found at: <http://www.un.org/depts/ddar/Register/4636.html>

United Nations, *Treaty on Conventional Armed Forces in Europe*, found at: <http://disarmament.un.org/treaties/t/cfe/text>

United Nations Office for Disarmament Affairs, "UN Register of Conventional Arms," found at: <https://www.un.org/disarmament/convarms/register/>

United Nations Office of Drugs and Crime, *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, found at: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

United Nations Programme of Action Implementation Support System, *Matching Needs and Resources, 2012-2014*, found at: <http://www.poa-iss.org/Poa/2012-Matching-Needs-and-Reources.pdf>

United Nations, Programme of Action on Small Arms and Light Weapons, Second Open-ended Meeting of Governmental Experts 2015, Chair's summary ("MGE2"), found at: https://s3.amazonaws.com/unoda-web/wp-content/uploads/2015/03/2015-06-17-Chairs_Summary-MGE2.pdf

United Nations, *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, A/CONF.192/15, found at: <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/salw/UNPoA.pdf A/CONF.192/15>.

United Nations, "Report of the Fifth Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," 26 June 2014, found at: http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.192/BMS/2014/2

United Nations, "Report of the Fourth Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," 30 June 2010, found at: <http://www.poa-iss.org/BMS4/Outcome/BMS4-Outcome-E.pdf>

United Nations, "Report of the Sixth Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," 15 June 2016, found at: https://s3.amazonaws.com/unoda-web/wp-content/uploads/2016/04/N1617624_English.pdf

United Nations, "Report of the United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," 18 September 2012, found at: <http://www.poa-iss.org/RevCon2/Documents/RevCon-DOC/Outcome/PoA-RevCon2-Outcome-E.pdf>

United Nations, Sustainable Development Knowledge Platform, found at: <https://sustainabledevelopment.un.org/>

United States Government, Programme of Action on Small Arms and Light Weapons, Meeting of Governmental Experts, 2015, United States Working Paper, found at: https://s3.amazonaws.com/unoda-web/wp-content/uploads/2015/03/MGE2_US_Working_Paper.pdf