

National Implementation of the proposed Arms Trade Treaty: A Practical Guide

Summary

Introduction

In December 2009, the UN General Assembly voted to start negotiations to achieve an international Arms Trade Treaty (ATT) by 2012, to create international standards governing the global conventional arms trade. While the details of an ATT are still to be negotiated, it is clear that such a treaty will be implemented at the national level, and thus will require that all countries have in place a national system for the licensing and control of international transfers of conventional arms.

There is no 'one size fits all' solution. The systems of individual countries will be based on the extent and nature of their arms trading, as well as their system of government, technological infrastructure, capacity, and legal tradition. The practical guide draws out the core principles and elements from different systems and gives examples from a number of different countries to demonstrate how these are implemented. The guide is intended to provide a framework for how states can adopt a functional and effective national control system.

Elements of a national control system

All national systems must consider three major components: licensing, enforcement, and external outreach to industry and international partners. In addition, for each of these they must consider legal requirements, institutions and procedures, training, and proof of implementation.

Licensing

Licensing is at the core of any arms transfer control system. All conventional arms that enter, leave, or pass through a country's customs membrane or national jurisdiction require authorisation.

Legal requirements

Control list: The list of items and technologies subject to transfer controls should be as clear and as detailed as possible, and ideally established in secondary legislation to allow for regular updating.

Types of transfer subject to control: To ensure a high level of control and to avoid loopholes, international transfer controls must cover exports, imports, transit/transshipment, and re-export. Ideally, they are provided for in primary legislation. Controls should be exercised on government and commercial transfers, gifts, and aid. To be effective, a licensing system should also cover a wide variety of other transactions and services, such as brokering, transportation and freight forwarding services, financial services, and technical assistance.

Rules for licensing determinations: Primary legislation will include a range of criteria or parameters against which a potential transfer is judged.

Institutions

The agencies tasked with managing the licensing process, whether government departments or independent agencies, must have:

- Clearly delineated responsibilities and relevant powers to fulfil the tasks;
- Clear procedures for how to carry out licensing or update the control list;
- Clear and effective communication between relevant institutions to ensure that effective licensing, enforcement, transparency, and accountability are achieved.

Procedures

Decision-making: The licensing decision should be based on an overall assessment of the proposed transfer, against the criteria; this should be objectively informed, using reliable and credible evidence.

Different types of licence: Most countries assess licences on a case-by-case basis and grant individual licences (one transfer, one destination). Occasionally other licence types such as open, global, or general licences are granted, which can apply to more than one transfer or destination.

End-use(r) processes: An end-use(r) certificate (EUC) is the most commonly used method of providing an assurance of the use of the arms by the end-user and an undertaking that the items will not be used for any other purpose or by any other end-user. An EUC often includes a reference to whether/when the arms may be re-exported. EUCs should be issued by a competent national authority and printed on banknote-quality paper bearing a unique serial number. Their authenticity must be verified. Delivery Verification Certificates (DVCs) and/or a physical post-delivery check may be used to ensure that goods have reached the authorised destination and end-user.

Import certificate: This is a confirmation from the importing state that it is aware of and does not object to the proposed import of a specific good. This certificate can be used as part of the end-use verification process, or in other cases it may be mandatory in the country of import.

Brokering controls: Authorities will require slightly different processes to regulate arms brokers. These should include registration of brokers operating within their territory and licensing or authorisation of each proposed arms brokering activity.

Transparency and accountability

National control systems for international arms transfers can and should include provisions for information sharing and transparency. Information accessible to the public should include:

- All laws, regulations, policies, practices, procedures, control lists etc. pertaining to arms transfers;
- Regular periodic reporting that includes information on licences granted and refused, and deliveries made.

Increased accountability can be achieved through parliamentary scrutiny of transfer licensing policy and practice and the involvement of all key stakeholders in the development and oversight of arms transfer control policy and practice.

Training and capacity-building

Effective implementation of laws, regulations, policies, and administrative procedures requires sufficient dedicated institutional and human resources, including adequate numbers of licensing officers to rigorously process applications in a timely manner; an intra-governmental co-ordination mechanism to enhance the efficiency of the system; and staff training in all government ministries, departments, and agencies involved in transfer licensing.

Enforcement

2

Legal requirements

Enforcement provisions are often found in international arms transfer controls legislation, as well as in other laws and regulations such as customs laws or codes; border security laws; laws on police and/or criminal procedures; penal or criminal codes; administrative procedures acts and/or administrative violations codes; and laws governing prosecutors. Laws will need to establish specific arms transfer offences, such as submitting false or misleading information or transferring without proper authorisation. Systems must include provision for investigations of possible breaches of the law and for prosecution where appropriate.

A key point of enforcement control is the screening of shipments at borders. This will include land, water, and airspace border crossings, but can also include the surveillance of web-based communications to capture intangible transfers of technology. The legal mandate to search and detain goods in cases of suspicion should be specified, as should seizure of financial assets.

Institutions

Customs agencies, border guards, police, and the prosecutorial courts are the most common institutions used to enforce control systems for international transfers of arms, with assistance from intelligence agencies, and in co-operation with other states.

Penalties and sanctions

States may use a variety of administrative and criminal penalties and sanctions to encourage participants in the transfer system to obey the law, including:

- Warning letters;
- Monetary fines;
- Revocation of licences;
- Downgrading of preferential treatment;
- Denial of access to government contracts or offset programmes/projects;
- Denial of privilege to trade;
- Seizure or forfeiture of goods;
- Imprisonment.

Procedures for enforcement

At the border, customs officers and/or border guards will perform the necessary checks on shipments crossing the border. Such procedures can include:

- Surveillance of vehicles and individuals passing the border;
- Checking of documents relating to the shipment;
- Inspection of cargo.

To do this, officers need a legal mandate to stop, search, seize, and detain shipments. If a shipment is detained, the prosecutorial phase will have to include an investigation of all details related to the transfer.

Information sharing and transparency

Effective enforcement is greatly assisted by the circulation of information, domestically as well as internationally. In some cases, this is best done in the public domain, in other cases more privately to safeguard commercial and national security concerns. Full public information on a prosecution is often the most efficient way of encouraging industry compliance.

Training and capacity-building

Dedicated institutional and human resources are required to ensure that laws, regulations, policies, and administrative procedures are implemented – this includes adequate numbers of enforcement officers (such as customs and border police, investigation agencies, public prosecutors, and judges) relative to the quantity of transfers. Training programmes would need to be developed in similar ways as for licensing institutions.

External outreach to industry and international partners

3

The government-to-industry relationship

Legal requirements: The defence industry is legally bound to abide by national arms transfer control laws and regulations. However, sometimes primary legislation sets out a duty of governments to inform companies of their obligations. Lack of knowledge of transfer control laws and policies may lead to inadvertent violations. In some states, companies must have internal compliance programmes (ICPs) in place to access certain types of licence e.g. general licences.

Institutions and procedures: The licensing authority, or occasionally an independent agency, is often the primary institution to reach out to industry and the academic community. As well as working through trade associations and publishing information, more and more states are developing web-based programmes that allow industry to apply for licences, check the status of applications, and obtain information about changing laws, policies, procedures, and lists.

Transparency and implementation: States should avoid using a 'one size fits all' approach in working with industry. Tailored assistance can respond to specific trader questions or concerns and helps government and industry to develop a more co-operative working relationship, thereby improving efficiency.

The external relationship

Inter-governmental information sharing and exchange: Many states have formal information-sharing or information exchange obligations and/or commitments as a consequence of bilateral, regional, multilateral, or international agreements. Moreover, contacts with other states, generated through membership of these agreements or by other means, may also allow access to important information that could be helpful in the case of a complicated licensing situation, or an end-user check or commodity classification. This may be promoted by establishing a national point of contact for national arms transfer control policy and practice.

Public transparency: In addition, all governments have via the UN Register of Conventional Arms made a commitment to place in the public domain certain information on their international arms transfers. Some states have additional commitments or obligations, either as a member of regional agreements or because of provisions in national legislation. In principle, governments should operate their national transfer control systems on the basis that information will be made publicly available unless there is good reason why it should not be.

International capacity-building and assistance: Very few states will be starting completely from scratch in terms of their arms transfer control capabilities, but many may need to further develop and improve their existing national frameworks. Capacity-building must be tailored to the requirements and capabilities of partner states, with time and care taken to allow information, culture, mechanisms, and systems to embed themselves across the relevant institutions. States willing to provide assistance should co-ordinate with other providers and be clear about the types of support on offer.

Oxfam is an international confederation of fourteen organizations working together in more than 100 countries to find lasting solutions to poverty and injustice.

The **Center for International Trade and Security** at the University of Georgia, USA endeavors to promote peace and prosperity through the use of research, training, and outreach focused on the mitigation of threats posed by the trade of weapons of mass destruction materials and technologies and other military-related transfers as well as the illicit trade in conventional arms. The Center (CITS) carries out its mission by engaging and informing policymakers, industry representatives, educators, students, and the general public, both in the United States and abroad, about the dangers of trade in and theft of weapons and weapons components.

Saferworld works to prevent and reduce violent conflict and promote co-operative approaches to security. We work with governments, international organisations and civil society to encourage and support effective policies and practices through advocacy, research and policy development and through supporting the actions of others.

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