

SUMMARY REPORT

Brainstorming Workshop on “The Role of Industry in Responsible International Transfers of Conventional Arms”

Elaborating the Thematic Issue of the Ninth Conference
of States Parties to the Arms Trade Treaty



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ABOUT THE RESEARCH

The United Nations Institute for Disarmament Research (UNIDIR), Conflict Armament Research (CAR), and the Stimson Center are engaged in a research Consortium since 2019 aimed at increasing knowledge and strengthening shared understanding on the Arms Trade Treaty (ATT) to support its effective implementation. In 2023, the Consortium is conducting research and facilitating dialogue events on “The Role of Industry in Responsible International Transfers of Conventional Arms”, in support of the Republic of Korea’s Presidency of the Ninth Conference of States Parties (CSP9) to the ATT.

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ABOUT THE RESEARCH TEAM

The Consortium's research and activities are undertaken by a multi-disciplinary research team consisting of subject matter experts from the partner institutions. The team members guide the conceptual and methodological direction of the research, author and peer review written outputs, and facilitate consultations with government and industry stakeholders.



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ABBREVIATIONS

ATT	Arms Trade Treaty
CSO	Civil society organization
CSP	Conference of States Parties (to the Arms Trade Treaty)
CSP9	Ninth Conference of States Parties (to the Arms Trade Treaty)
IHL	International humanitarian law
IHRL	International human rights law
ISPS	International Ship and Port Facility Security (Code)
NGO	Non-governmental organization
VTF	Voluntary Trust Fund
WGETI	Working Group on Effective Treaty Implementation
WGTU	Working Group on Treaty Universalization

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EXECUTIVE SUMMARY

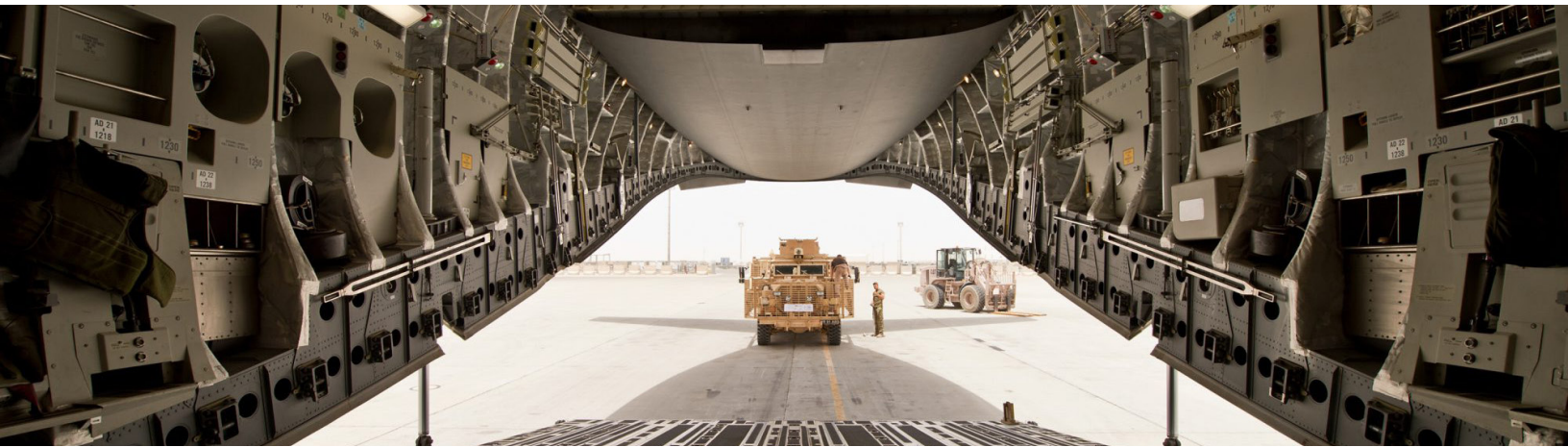
On Thursday 26 January 2023, the United Nations Institute for Disarmament Research (UNIDIR), the Stimson Center and Conflict Armament Research organized a one-day brainstorming workshop on “The Role of Industry in Responsible International Transfers of Conventional Arms” in support of the Republic of Korea’s presidency of the Ninth Conference of States Parties (CSP9) to the Arms Trade Treaty (ATT). This summary report presents some of the workshop’s key discussion points and issues for consideration during the ATT CSP9 cycle of meetings. It is anticipated that this document can support the preparation of a working paper by the CSP9 presidency that contains recommendations for concrete action to support effective implementation and universalization of the ATT.

This report provides some background information on industry expectations regarding the impact of the ATT and explores how to improve industry engagement with the ATT process. It highlights some of the potential benefits for industry – which ranges from arms manufacturers, via logistics companies to financial service providers – if the ATT can facilitate greater convergence of arms transfer laws and regulatory approaches around the world.

A central focus of the workshop was on how to ensure that industry can contribute to achieving the object and purpose of the ATT. It explored this issue by examining challenges that industry currently faces in complying with national transfer control systems. It also looked at opportunities provided by the ATT to share effective practices and lessons learned on providing guidance to industry for conducting risk assessments and due diligence checks, countering diversion, and ensuring clarity in national transfer control procedures and control lists. The workshop participants developed constructive proposals to increase industry engagement with the ATT process and enhance government–industry relations to achieve the treaty’s object and purpose. They identified four broad categories of action for consideration during the CSP9 cycle of meetings:

- 1 Identify how industry can support ATT implementation and universalization.
- 2 Consider ways to raise awareness of the ATT and its benefits for industry and private sector entities involved in all aspects of the international arms trade.
- 3 Share existing guidance and related materials, as well as lessons learned and effective measures, which enable industry to make a positive contribution to responsible international transfers of conventional arms in order to achieve the object and purpose of the ATT.
- 4 Explore opportunities for ATT states parties to collectively establish the highest common international standards and promote effective measures for regulating the international arms trade in order to provide more clarity and predictability for a globalized arms industry.

1. INTRODUCTION



Photography credit: Daniel Wiepen, Ministry of Defence, United Kingdom

The Arms Trade Treaty (ATT) preamble recognizes that industry, alongside non-governmental organizations (NGOs) and relevant international organizations, can play an active role in raising awareness of the object and purpose of the ATT and supporting its implementation. The cycle of meetings in advance of the Ninth Conference of States Parties to the ATT (CSP9) provides an opportunity to take stock of this situation as the ATT celebrates the 10th anniversary of its adoption. The meetings also enable interested stakeholders to positively respond to the call in United Nations General Assembly resolution 77/62 of December 2022 for the strengthening of cooperation between ATT states parties, signatory states, civil society and industry to share effective practices, challenges and opportunities for ensuring that the private sector can support a responsible international arms trade and the effective implementation of the ATT.¹

On Thursday 26 January 2023, the United Nations Institute for Disarmament Research (UNIDIR), the Stimson Center and Conflict Armament Research (jointly referred to as “the Consortium”) organized a one-day brainstorming workshop on “The Role of Industry in Responsible International Transfers of Conventional Arms” in support of the Republic of Korea’s presidency of the Ninth Conference of States Parties to the Arms Trade Treaty (ATT CSP9).² The brainstorming workshop brought together representatives of states, industry, NGOs and research institutions to share effective practices, challenges and opportunities for ensuring a responsible international arms trade and to elaborate options to support the effective implementation of the ATT. The meeting was held under the Chatham House Rule.

Workshop participants sought to identify issues to be considered during the CSP9 cycle in meetings of the preparatory committee and working groups in February and May 2023, in intersessional online meetings, as well as at the conference itself in August 2023. Participants

¹ United Nations General Assembly resolution 77/62, “The Arms Trade Treaty”, 7 December 2022, <https://undocs.org/en/A/RES/77/62>, paragraph 15.

² CSP9 will take place in Geneva during 21–25 August 2023, <https://www.thearmstradetreaty.org/csp-9.html>.

were strongly encouraged to identify priority areas for elaboration during CPS9 that can result in concrete recommendations and actions to support ATT universalization and effective treaty implementation, including strengthening reporting and transparency on the international arms trade. It was also expected to lay the foundations for future ATT CSP cycles to elaborate further on the issue and contribute to efforts to ensure that a wide range of relevant stakeholders participate in efforts to achieve the object and purpose of the ATT.

This summary report seeks to capture some of the key discussion points during the brainstorming workshop. It highlights some of the main challenges and opportunities shared during the workshop relating to the presidency theme on “The Role of Industry in Responsible International Transfers of Conventional Arms”. It is hoped that this report can inform CSP9 deliberations and stimulate creative thinking by key ATT stakeholders to support the development of a constructive and impactful presidency thematic paper on “The Role of Industry in Responsible International Transfers of Conventional Arms”.

Section 2 of this report provides some background information on industry expectations regarding the impact of the ATT on their activities. Section 3 explores how to improve industry engagement with the ATT process. Section 4 summarizes the workshop discussion on challenges for legitimate industry activities in relation to ATT implementation. It also identifies opportunities for overcoming these challenges within the ATT framework to ensure responsible international transfers of conventional arms. Section 5 explores potential entry points for inputs from industry for the CSP9 sessions of the Working Group on Effective Treaty Implementation (WGETI). The final section presents several proposals for consideration during the ATT CSP9 cycle of meetings to support the development of the CSP9 presidency’s working paper.

2. BACKGROUND



Photography credit: Timothy Jones, Ministry of Defence, United Kingdom

It is the responsibility of national governments to implement the Arms Trade Treaty. Yet, a wide range of industry sectors play an important role in ensuring the treaty's effectiveness and universalization. Arms manufacturers and export and import companies, as well as brokers, freight forwarders, logistics and transportation providers, banks and other financial service providers, and insurance companies, and other private sector actors are obliged to comply with the national laws, regulations, processes and procedures that states put in place to regulate the international arms trade and fulfil their ATT obligations. Put simply, while industry actors are not directly responsible for ATT implementation, their participation in ATT processes is crucial to the treaty's success.

Back in 2011, at the start of the preparations for the United Nations negotiating conferences that led to the ATT, a representative of the arms trade research community and arms industry representatives from the United Kingdom and the United States stated that, "Without industry involvement, the ATT could turn out to be a missed opportunity to improve the arms transfer process globally, and could potentially harm the way in which industry does business in the future".³ These experts identified several reasons for industry to be actively engaged in the negotiations for the treaty, as well as potential benefits for industry from the adoption of a robust ATT. Some of the main reasons for engagement are outlined below.

The ATT should facilitate greater convergence of arms transfer laws and regulatory approaches around the world. This in turn could enable industry actors to achieve compliance across many national jurisdictions in the course of their activities in an increasingly globalized trade. Such convergence can help to decrease the risk of non-compliance and the expense of undertaking activities to satisfy different national requirements for compliance. Further, it could help to close loopholes exploited by unscrupulous brokers looking to evade controls in order to supply entities subject to arms embargoes or engaged in other activities that are either prohibited under Article 6 of the ATT or which undermine international peace and security and thus contribute to human suffering.

The ATT establishes clear elements that should be included in a national control system and criteria for states parties to consider when making arms transfer decisions. This allows for greater predictability in the arms transfer process and eliminates inconsistent application of rules and regulations. Thus, the ATT can help to clarify obligations and responsibilities for private sector actors engaged in the international arms trade – not just the producers of conventional arms, but also those involved in the financing, insurance and transportation of arms during an international transfer. Therefore, the ATT framework could provide companies involved in different aspects of the international arms trade with some degree of guidance on what constitutes responsible behaviour. It could thus support efforts to establish robust corporate responsibility practices and limit or mitigate reputational risks from some of the potential negative consequences of engaging in the international arms trade.

At the same time, **the ATT establishes common understandings amongst the varied actors in the arms transfer supply chain.** It ensures that these stakeholders play by the same rules and operate under the same basic principles, which prevents delays along the supply chain. Many of the most active entities along the supply chain operate in the jurisdictions of an ATT state party. Thus, companies appreciate when states play by the same rules and operate by the same basic principles to ensure that items are not delayed due to differences in understandings of ATT obligations across the global supply chain. It is expected that the ATT will not lead to unintended consequences that could undermine the legitimate trade in conventional arms or create undue additional costs or burdens for industry undertaking legal transactions. Moreover, adding clarity to the responsibilities and requirements for industry delineates responsible from irresponsible transfers and prevents the disruption of legal transfers and processes.

When the ATT is effectively implemented and adhered to, it can reduce reputational risk for private sector entities involved in the international arms trade. The treaty can provide a framework that industry actors can refer to when responding to government investigations and inquiries from investors and journalists on risk and corporate responsibility. The export criteria described in the ATT, which incorporates a diverse range of factors, can provide some protection for industry against accusations of irresponsible arms transfers. This is because government transfer decisions are weighed against these internationally agreed upon standards. While governments establish legislation and regulations, it is industry actors throughout the transfer chain that need to take measures to ensure that arms transfers are conducted responsibly and securely, and in accordance with global, regional and national regulations.

³ P. Lichtenbaum, R. Stohl and A. Wood, *The Transatlantic Defence Industry and the Arms Trade Treaty*, Chatham House, June 2011, https://www.chathamhouse.org/sites/default/files/public/Research/International%20Security/0611pp_att.pdf, p. 4.

Further, **the ATT contains provisions to prevent, mitigate the risk of and respond to cases of diversion of conventional arms.** The ATT Working Group on Effective Treaty Implementation has elaborated these provisions in multiple sessions of its multi-year workplan. The WGETI sub-working group on ATT Article 11 (on diversion) has highlighted the role of the private sector in addressing the diversion of conventional arms throughout the transfer chain. However, to date, industry has not yet made significant contributions to the deliberations of this sub-working group. CSP9 provides an opportunity to address this gap.

Industry actors are often at the frontlines of ensuring the security and safety of transferred arms. It is therefore especially critical that measures taken by these actors ensure that the activities in which they are involved do not lead to conventional arms being transferred in ways that are prohibited under the ATT, that undermine international peace and security, or that lead to their diversion. To that end, robust corporate due diligence, record-keeping and information-sharing are just some examples of areas through which industry actors could identify the emergence of “red flags” that could jeopardize the security and integrity of an arms transfer.⁴

⁴ B. Wood, The Arms Trade Treaty: Assessing its Impact on Countering Diversion, UNIDIR, Conflict Armament Research and the Stimson Center, 2022, https://www.unidir.org/sites/default/files/2022-08/UNIDIR_The_Arms_Trade_Treaty_Assessing_its_Impact_on_Countering_Diversion.pdf; Conflict Armament Research, Procurement Networks behind Islamic State Improvised Weapon Programmes, December 2020, https://www.conflictarm.com/download-file/?report_id=3354&file_id=3358.

3. TAKING STOCK OF THE ROLE OF INDUSTRY IN THE ATT PROCESS



Photography credit: Conflict Armament Research

During the ATT negotiations, industry representatives provided input on the practical, everyday activities that facilitate the legitimate trade in conventional arms. They also identified ways in which a multilateral instrument could help to provide guidance to states on how to close loopholes and ensure a more responsible and transparent arms trade.

Compared to the treaty negotiation process, industry voices have been less frequently heard in recent meetings during ATT CSP cycles. One of the first sessions during the brainstorming workshop provided an opportunity for participants to reflect on the role of industry in the ATT process and to explore questions such as:

- What issues are of greatest interest to industry with regards to the ATT, its implementation and universalization?

- How can industry be more involved in the ATT process?

- What types of activity could industry undertake to best support states in the implementation and universalization of the ATT?

In response to these questions, workshop participants highlighted three main considerations. First, participants underlined that, even though there are 113 states parties to the treaty, there is still a **lack of harmonization and different regulatory approaches between national jurisdictions** with regards to ATT implementation. Second, several participants from industry highlighted a **lack of knowledge and awareness about the ATT**. Third, there was general agreement that **the current format for ATT meetings does not provide an appropriate platform for industry engagement** and other approaches should therefore be considered. It was also recognized that the answers to the second and third points are related and need to be sequenced. Workshop participants also highlighted the fact that industry is not a homogenous

group and that there will be different interests, concerns, challenges and opportunities depending on industry sector and geographic location.

Throughout the workshop, industry participants emphasized the challenge of conducting legitimate international arms transfers in multiple national jurisdictions due to different national transfer control arrangements and different approaches to implementation of the ATT and other arms control treaties and instruments. The ATT has therefore not fulfilled its promise of helping to establish a level playing field and increasing transparency and predictability with regards to government decision-making on international arms transfers. At the same time, challenges and changes in national transfer control policies and practices in recent years have not all been connected with the impact of ATT implementation. Some participants noted that there have been changes to national legislation in connection with a state becoming a party to the ATT that made conducting business operations more complicated than was perhaps necessary. The issue of brokering was introduced in this regard. It is one of the most complicated aspects of ATT implementation and an area in which industry experience is considered important to ensure that the objective of preventing, detecting and addressing illicit brokering and arms embargo violations does not disrupt legitimate business activities in multinational companies. In contrast, the armed conflict in Ukraine had caused dramatic changes in arms transfer policies in many states in a very short space of time and this is unconnected with ATT implementation.

Several participants highlighted a perception that knowledge and awareness of the ATT within industry is mainly confined to European and North American arms producers. Defence associations, CSOs, and governments have played a role in promoting the benefits – or “business case” – for companies involved in the arms trade to be engaged with the ATT process in these cases. More work therefore needs to be done to engage with the wider range of sectors that can support effective implementation of the ATT and other multilateral arrangements relating to safe and secure transfers of conventional arms in accordance with principles contained in the ATT. In this regard, there was a call for knowledge about the ATT to be spread to arms producers around the world, as well as to the finance, insurance and transportation sectors. For several workshop participants, this does not need ATT-specific outreach. Instead, it needs references to the ATT and the resources and tools developed in the framework of CSPs to be included in existing government outreach on transfer controls to industry or in industry training programmes to support compliance with national legislation and regulations in ATT state parties.

In connection with a lack of awareness of the ATT, one participant asked: “What is the clear business case for engaging with the ATT?” An industry representative who has attended CSP and working group meetings explained that the current format does not provide a conducive environment for industry to engage in and contribute to discussions. It is difficult for industry representatives to justify to their company that they should attend ATT CSP and working group meetings to listen to pre-prepared statements. The most dynamic discussions of

substance currently take place during side events, but it is also difficult to justify travelling to Geneva for a side event. Thus, if there is a desire to secure greater engagement from industry representatives during working group meetings and the CSP, consideration should be given to changing the format of such meetings and the topics to be discussed there. Several ideas were put forward for engaging industry, including:

- Examine lessons learned from other processes for engaging industry. One example of engagement with industry to encourage commitment to undertake due diligence checks is the process to develop the United Nations Guiding Principles for Business and Human Rights.⁵ The United Nations Working Group on Business and Human Rights has also looked at the issue of responsible business conduct in the arms sector, including the ATT.⁶
- Include outreach to industry by the CSP presidency and the ATT Secretariat as activities for the workplan of the Working Group on Treaty Universalization (WGTU). ATT awareness-raising activities could include providing feature articles on the ATT and related developments to relevant industry newsletters and magazines; organizing ATT awareness-raising events targeting industry; and meeting with key industry representatives during missions to promote treaty universalization.
- Consider applications to the ATT Voluntary Trust Fund (VTF) that would support national government outreach to industry activities. VTF project activities could be used not only to inform industry about national transfer control developments but also about the ATT itself, recent developments, and relevant tools and resources.

⁵ Office of the United Nations High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, HR/PUB/11/04, 2011, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, endorsed by United Nations Human Rights Council resolution 17/4, “Human rights and transnational corporations and other business enterprises”, 16 June 2011, <https://undocs.org/en/A/HRC/RES/17/4>.

⁶ United Nations Working Group on Business and Human Rights, “Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights”, Information note, United Nations Human Rights Special Procedures, 30 August 2022, <https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>.

4. CHALLENGES, OPPORTUNITIES AND EFFECTIVE PRACTICES FOR RESPONSIBLE INTERNATIONAL TRANSFERS OF CONVENTIONAL ARMS



Photography credit: U.S. Air Force photo/Senior Airman Jordan Castelan

Advocates of the ATT expected that efforts to effectively implement treaty provisions to achieve the treaty’s object and purpose would require changes to the national legislative and regulatory frameworks that govern international transfers of conventional arms. As noted in section 1, some of these changes could help to harmonize national approaches and provide for greater predictability and transparency in national government decisions on arms transfers. Throughout the brainstorming workshop, participants shared examples of challenges to legitimate and responsible international transfers of arms due to inconsistencies in national regulatory frameworks and practices. They also identified, examples of effective practices and approaches that could be shared openly in the ATT framework.

- Has industry faced any particular legal or practical challenges in complying with national transfer controls since the entry into force of the ATT?
- How could the ATT framework enhance efforts to ensure responsible arms transfers?
- Which types of measure, programme and approach are considered most effective for ensuring that industry can comply with national transfer controls, and thereby support effective ATT implementation?

In response to the first of these questions, workshop participants highlighted several areas where industry has encountered challenges in relation to complying with national transfer controls. In no particular order, the challenges discussed during the workshop included the following:

- Several participants requested more targeted government outreach in advance of planned changes to arms transfer control legislation and regulations to implement the ATT. Workshop participants noted that in some ATT states parties there are good examples of regular formal outreach activities for arms producers, and also opportunities for informal interactions and inquiries regarding specific deals and applications for written authorizations. However, participants considered that commercial enterprises involved in the financial, insurance and transportation sectors might not be well-informed, especially if national legislation and regulations are not clear on the responsibilities of those enterprises when engaging with the international arms trade.

- Participants also noted the challenge of determining which entities should conduct risk assessments, and when, in relation to prospective international transfers of conventional arms. Many workshop participants from industry felt that it is the responsibility of government authorities to conduct a comprehensive risk assessment before reaching a decision on whether to authorize or deny an application for an international transfer of conventional arms. However, commercial entities cannot afford to invest in exploring a potentially lucrative business opportunity only to have the application for a written authorization refused without a detailed explanation of why the government has decided that the proposed transfer should not take place.

- The workshop discussion also touched upon the challenge of determining which items are subject to national transfer controls in different national jurisdictions, as national control lists are not always clear or publicly available and the ATT does not provide sufficient clarity on which types of item are to be subject to national transfer controls. One participant asked if this could be an area to be explored further within the ATT framework. Particular challenges related to small arms and light weapons, to parts and components, and to transfers of technology.

- One participant noted the unintended negative consequences for legitimate industry operations that followed a change in national legislation on arms brokering. A state party had introduced brokering provisions in national legislation to implement the ATT, but the changes required multinational companies to hold a brokering licence from country A in order for a national from country A to undertake business with another part of the company that operates in country B. Several participants noted the challenges of implementing, and enforcing, extraterritorial controls not only in cases relating to arms brokering.

- Participants also considered the challenges of different national controls on the production and transfer of conventional arms, noting also the challenges of dealing with some of the practices of commercial entities based in states that are not party to the ATT that have negative consequences for ATT states parties.

In response to the second and third questions, participants made concrete recommendations to address some of the challenges highlighted above that could be conducted in the ATT framework. For example, several participants noted that industry associations and government authorities in several ATT states parties provide guidance for companies in conducting risk assessments in order to try to avoid situations in which their applications for an authorization are refused (e.g. guidance for companies to put in place internal compliance programmes). Participants noted that this issue could be explored further during ATT CSP cycles of meetings via the sharing of lessons learned in developing such guidance and of perspectives from industry on its use in day-to-day operations. It was evident that the ATT community does not need to develop new guidance on some issues if good practices and guidance already exist. At the same time, there is already useful guidance developed within the ATT framework that could be used by the private sector – but the private sector is unaware of this guidance. In addition, some participants considered that it could be beneficial to ensure that guidelines, frequently asked questions and information for awareness raising is tailored for different private sectors.

Participants also considered the benefits for the ATT community of further discussing lessons learned in implementing and enforcing the provisions on brokering contained in ATT Article 10. Building on discussions undertaken during the CSP7 cycle of meetings, participants noted that new developments in the marking of conventional arms could be usefully shared in CSP discussions on effective measures to counter diversion. They could potentially also be used to update existing ATT guidance for preventing and addressing the diversion of conventional arms.⁷ On the issue of countering diversion, it was noted that the CSP9 cycle of meetings envisages discussions on the issue of post-delivery controls and coordination and that it would be useful to better understand the role of industry on this issue.

⁷ For example, one consideration is to update “Possible measures to prevent and address diversion”, which is annex D of ATT Working Group on Effective Treaty Implementation, “Chair’s draft report to CSP4”, ATT/CSP4. WGETI/2018/CHAIR/355/Conf.Rep, 20 July 2018, https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP4_WGETI_Draft_Report_EN1/ATT_CSP4_WGETI_Draft_Report_EN.pdf, pp.18–24.

5. EXPLORING POTENTIAL CONTRIBUTIONS FROM INDUSTRY FOR THE CSP9 SESSIONS OF THE WORKING GROUP ON EFFECTIVE TREATY IMPLEMENTATION



Photography credit: Conflict Armament Research

The third ATT CSP, which took place in 2017, decided to establish the Working Group on Effective Treaty Implementation, with three sub-working groups focusing on ways to support efforts to implement specific treaty articles. In the CSP9 cycle, there are three sub-working groups, which focus on Articles 6 and 7 (prohibitions and export and export assessment), Article 9 (transit/trans-shipment), and Article 11 (diversion). The states parties adopted multi-year workplans for the sub-working groups in February 2021.⁸ The workplans for the sub-working groups on Articles 9 and 11 include plans for sessions dedicated to exploring the role of the private sector (i.e., industry).

The brainstorming workshop provided an opportunity for participants to contribute inputs for consideration. This included highlighting relevant existing guidance or practices that could be shared within the ATT framework regarding ways in which industry could support effective implementation of Articles 6, 7, 9 and 11. Thus, the discussions examined issues on the agenda of the WGETI sub-working groups for the CSP9 meeting cycle, but also considered issues beyond those contained in the workplans for 2023.

Article 6 (Prohibitions) and Article 7 (Export and Export Assessment)

During the CSP9 cycle, the sub-working group on Articles 6 and 7 is due to consider the drafting of a section on implementing Article 6 for a “Voluntary Guide to Assist States Parties in Implementing Articles 6 & 7”; the relationship between these articles and other ATT articles; and mitigation measures under Article 7. Workshop participants discussed four broad areas in

⁸ Arms Trade Treaty, Seventh Conference of States Parties, “Final report”, ATT/CSP7/2021/SEC/681/Conf.FinRep. Rev1, 2 September 2021, [https://thearmstradetreaty.org/hyper-images/file/CSP7_Final_Report_\(ATT.CSP7.2021.SEC.681.Con.FinRep.Rev1\) - 02 September 2021/CSP7 Final Report \(ATT.CSP7.2021.SEC.681.Con.FinRep.Rev1\) - 02 September 2021.pdf](https://thearmstradetreaty.org/hyper-images/file/CSP7_Final_Report_(ATT.CSP7.2021.SEC.681.Con.FinRep.Rev1) - 02 September 2021/CSP7 Final Report (ATT.CSP7.2021.SEC.681.Con.FinRep.Rev1) - 02 September 2021.pdf) para. 23.

relation to the implementation of Articles 6 and 7. They also provided some considerations on how the ATT framework could help industry to support effective implementation of the ATT.

First, participants emphasized the **importance of providing for industry perspectives in the development of the “Voluntary Guide to Assist States Parties in Implementing Articles 6 & 7”**. To continue a theme running through the workshop, the involvement of industry in such a process could help to ensure that the guide could help with ATT implementation and with raising awareness of existence of the treaty among private sector entities involved in international transfers of conventional arms. Several participants highlighted the importance of ensuring transparency in the process of developing the guide. Workshop participants considered the need to avoid a situation where the word “voluntary” provides cover for introducing new responsibilities or for efforts to reinterpret these articles or to extend the application of the treaty.

Second, one industry representative asked: “What direct responsibilities should companies have for respecting human rights? How should we carry out due diligence on the human rights risks associated with certain transfers?” In response, participants highlighted that **existing guidance developed within other multilateral frameworks can support ATT implementation**. Therefore, there was a call to not reinvent the wheel and not ignore existing relevant guidance. At the same time, it could be useful to further clarify the linkages between the ATT and other relevant international and regional instruments and guidelines. Several participants highlighted the utility of the United Nations Guiding Principles for Business and Human Rights for helping to unpack the responsibilities with regards to international humanitarian law (IHL) and international human rights law (IHRL) of industrial sectors involved in the international arms trade.⁹ Further, the European Union’s “User’s Guide to Council Common Position 2008/944/CFSP Defining Common Rules Governing the Control of Exports of Military Technology and Equipment” and the International Forum on Business Ethical Conduct (IFBEC) also provide guidance that can be used by companies to conduct risk assessments and corporate due diligence, respectively.¹⁰ It was noted that such instruments and guidance can also cover states that are not party to the ATT. The ATT community overall could benefit from more engagement with entities involved in developing and supporting the implementation of IHL and IHRL instruments.

⁹ Office of the United Nations High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, HR/PUB/11/04, 2011, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf; United Nations Working Group on Business and Human Rights, “Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights”, Information note, United Nations Human Rights Special Procedures, 30 August 2022, <https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>.

¹⁰ Council of the European Union, “EU User’s Guide Council Common Position 2008/944/CFSP Defining Common Rules Governing the Control of Exports of Military Technology and Equipment”, 12189/19, 16 September 2019, <https://www.consilium.europa.eu/media/40659/st12189-en19.pdf>; International Forum on Business Ethical Conduct (IFBEC), <https://www.ifbec.info/>.

Third, in addition to guidance developed in multilateral and regional forums, and given that industry is obliged to comply with national legislation and regulations governing the conduct of international arms transfers, participants noted that **states could provide clearer guidance and support to industry to ensure compliance with national rules** that ultimately enable the implementation of international instruments such as the ATT. In relation to a discussion on the implementation of multilateral sanctions and arms embargoes covered by Article 6, one participant highlighted that effective implementation of end-user controls at the national level could help to ensure that arms embargoes are not violated, and thus support the effective implementation of Article 6. National authorities could also provide guidance to help industry comply with sanctions and arms embargoes, including explaining how ATT obligations have been incorporated into domestic law and expectations for how companies should comply – that is, national authorities should provide guidance on standard operating procedures, among other things.

Fourth, participants noted the existence of a broad range of indicators that could be used for conducting a risk assessment. One of the challenges currently appears to be **a lack of convergence and uniform interpretation of the application of different risk indicators and red flags**. Participants considered the potential for exploring and learning from experiences in other industrial sectors, especially industries in high-risk environments or industries producing high-risk products including the pharmaceutical, finance, insurance and transportation sectors.

Some of the recommendations on ways in which states could provide further guidance to industry to facilitate the effective implementation of Articles 6 and 7 include the following:

- 1 Consider if states can provide more transparency in the decision-making process on export authorizations.** In other words, consider whether states can provide more information on the reasons or criteria that have influenced a decision to deny an application for an authorization to export conventional arms. A better understanding of the reasons for refusing to grant an authorization could help companies to strengthen the conduct of their own due diligence checks and risk assessments in the future.
- 2 Explain to industry that changes in national legislation and regulations made by national authorities are influenced by international obligations.** This could help industry actors to understand why particular regulations and standards are in place and help to strengthen compliance. At the national level, compliance is an important issue for industry.
- 3 Consider if the ATT framework could help to overcome the challenges posed for companies that operate internationally by the use of different national control lists in different national jurisdictions.** If the ATT framework could support convergence in national practices, this in turn could help to facilitate industry's role in supporting effective treaty implementation.

Article 9 (Transit or Trans-shipment)

During the CSP8 cycle, a session of the WGETI sub-working group on Article 9 addressed “The role of the private sector in the transit and trans-shipment of arms”. The discussions focused on raising the awareness of industry actors on the relevant transit and trans-shipment regulations. In the CSP9 cycle, the facilitator of this sub-working group is due to prepare draft elements for a possible voluntary guide on the implementation of Article 9. Workshop participants therefore outlined several key issues regarding the implementation of transit and trans-shipment obligations.

First, several industry participants highlighted **a lack of understanding on their roles and responsibilities in terms of the compliance and regulatory measures applied to private actors engaged in the transit and trans-shipment of conventional arms.** Workshop participants noted that the multiplicity of actors involved in this stage of the transfer chain – ranging from freight forwarders, transportation and security agencies to insurance service providers, often based in different national jurisdictions with different sets of applicable rules – makes it very difficult to determine who is responsible for taking certain risk-prevention, risk-mitigation or due diligence measures and who is liable for certain misconducts. Furthermore, some states do not have very clear national regulations regarding goods in transit or trans-shipment. In cases where these exist, participants noted a low level of awareness of these regulations or their inaccessibility and unavailability to industry actors.

Second, industry participants explained that complying with transit and trans-shipment regulations is very complex due to challenges with:

- Different national regulations and practices for regulating transit and trans-shipment of conventional arms
- Changes in national practices without adequate awareness raising to industry
- Extraterritorial controls used by some states
- A perceived non-universal application of transit and trans-shipment regulations

Participants noted that some major freight forwarders no longer transport conventional arms and related materiel because these companies perceive there to be higher risks and liabilities than before, including compliance with human rights due diligence requirements. At the same time, using accredited shipment companies that are specialized in transporting regulated and controlled goods such as conventional arms can increase the cost of transportation. It seems that for small-scale companies that engage in international arms transfers, but which have limited capacities for due diligence checks and compliance programmes, there are potentially significant reputational and operational costs for unwittingly violating national regulations.

Third, participants highlighted key **challenges regarding access to information and information sharing among actors involved in the transit and trans-shipment stage**. As parties to a transfer do not always have full information or knowledge of all the different actors involved in the supply chain, especially private entities, certain relevant information that could support efforts to prevent diversion are not available during the transit or trans-shipment stages of an international transfer. Some concrete examples of these challenges include:

- Transportation, security or storage service providers in transit not always having access to the cargo manifest, hence not having adequate knowledge on the items and the risks involved with their handling
- Freight forwarders not being physically present in the transit state or not having full control of the routes taken by carriers, especially in instances where carriers change routes due to unforeseen circumstances including weather conditions

Fourth, participants discussed the **sensitivities related to reporting on “suspected” cases of diversion or red flags**. There is a general lack of knowledge on clear procedures or mechanisms for reporting suspected diversion cases that are identified during the transit and trans-shipment stage. Further, there is a risk of being sued if a suspicion turns out to be baseless. One participant also flagged a potential risk of increased vulnerability in the arms transfer chain due to the high rate of digitalization of processes and the application of technology for some important due diligence procedures and measures.

There were several recommendations for state support and guidance to help ensure responsible industry conduct and support for effective treaty implementation during the transit and trans-shipment stage. Effective measures were also proposed to ensure responsible arms transfers during the transit/trans-shipment stage. These include the following:

- Establish and enact clear national laws and guidelines regarding the implementation of Article 9 that would regulate private actors during transit and trans-shipment.
- Ensure appropriate awareness raising, education and training on the obligations specific to private actors and entities engaged in a national jurisdiction. Such activities should begin with a mapping of all relevant actors involved and should be targeted at a broad range of actors, including competent national authorities, law enforcement agencies involved in arms transfers and the diverse set of industry actors.
- Consider other existing applicable guidance regarding the safe and secure management of goods during transit and trans-shipment. For example, the International Ship and Port Facility Security (ISPS) Code requires all actors to develop sources of intelligence to conduct meaningful assessments of their ports, vessels and links in supply chain, as well as regulations for the transfer of dangerous goods.

- Enhance information-sharing among all actors involved in the transfer chain, including ensuring clarity on responsibilities for all actors involved in international arms transfers. For example, states could consider providing feedback from risk assessments to industry actors. They could also consider establishing mechanisms for transit and trans-shipment actors to confidentially share information on suspicious cases or red flags without fear of negative unintended consequences.
- Conduct thorough assessments of risks specific to the transit and trans-shipment stage. In addition to the risk assessments primarily conducted by states, all private actors engaged in arms transfers could also conduct vulnerability and threat assessments on the role in an arms transfer of their specific industry or company or service. Such assessments should include a consideration of risks involved with certain types of item, the accredited entities to engage, shipment routes, transit ports or jurisdictions, safety and security practices in transit or trans-shipment destinations, and so on.
- Industry can provide states with relevant information from their risk and vulnerability assessments. It can also support states in the identification of private entities engaged in the supply chain and provide information on them.
- Technological innovations in the monitoring and tracking of items during transit and trans-shipment, such as the use of GPS trackers and scanning machines at ports, can be used to help prevent – or at least help to detect – diversion attempts.

Article 11 (Diversion)

The multi-year workplan of the WGETI sub-working group on Article 11 includes sessions on the role of the private sector in “mitigating diversion risk – before transfer”, “mitigating diversion risk – during transfer”, and “mitigating diversion risk – post-delivery”. In the CSP9 cycle, the sub-working group on Article 11 is due to continue discussions on post-delivery cooperation. The brainstorming workshop provided an opportunity for participants to contribute industry perspectives on this topic as well as on the role of industry in preventing diversion in general. It also allowed a focused consideration of industry’s role in post-delivery cooperation.

Participants shared five main considerations regarding industry engagement in post-delivery cooperation, including on-site inspections.

- 1 Industry’s potential engagement at this stage depends on whether the contractual agreement between the industry and the buyer (e.g., a state) provides for post-delivery cooperation. As one industry representative stated, “industry cannot just enter a state to conduct post-shipment controls unless we have been invited by states via the appropriate diplomatic and corporate channels”.

- 2 The geographical distance between the location of the industry headquarters and the recipient state and end-users was also highlighted as a potential practical challenge. Proximity could facilitate industry engagement in post-delivery cooperation in cases where contractual arrangements allow (e.g., if there is a local production facility or a form of representation in the importing state).
- 3 It can be challenging to justify a business case for post-delivery engagement, considering the reputational risks and financial and logistical costs involved for industry.
- 4 The type of items being transferred will influence whether post-delivery cooperation is feasible or desirable. Workshop participants highlighted the fact that consumable items such as ammunition present limited opportunities for post-delivery cooperation measures such as on-site inspections. Parts and components of arms and ammunition present an additional level of complexity as these items are not always subject to control.
- 5 For some participants from industry, there was a lack of clarity on their roles and responsibilities and on the mechanisms for industry's engagement in diversion-prevention efforts at the post-delivery stage. Participants generally agreed on the complexity of addressing diversion and recognized the political sensitivities of industry's engagement in such efforts.

In addition to the role of industry, participants recommended further exploration in the ATT framework of the role that NGOs could play in post-delivery cooperation. It might be easier, less politically sensitive and less risky for such organizations to engage in post-delivery cooperation activities, such as advocacy and awareness-raising, compared to industry.

While diversion prevention is a shared responsibility for all entities involved in the supply chain, a greater responsibility lies on states to initiate efforts and engage other actors when and where necessary. Overall, participants welcomed how the ATT framework provides opportunities for meaningful cooperation between states parties and industry to collectively address diversion, including at the post-delivery stage. One possible method for the ATT framework to help improve information-sharing to facilitate diversion prevention efforts is by helping with the sharing of information on suspected or detected diversion cases (e.g., the points of diversion, enabling factors, and means and methods used). This could help company risk-assessment procedures. Participants wondered if this issue could be further explored, building upon the nascent experience of the ATT's Diversion Information Exchange Forum (DIEF).

Workshop participants reviewed the WGETI document "Possible measures to prevent and address diversion" as an example of guidance provided via the ATT framework.¹¹ Participants

¹¹ ATT Working Group on Effective Treaty Implementation, "Chair's draft report to CSP4", ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep, 20 July 2018, https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP4_WGETI_Draft_Report_EN1/ATT_CSP4_WGETI_Draft_Report_EN.pdf, annex D.

noted the utility of the material, while industry representatives reported a lack of awareness of the material. This exchange highlighted the need to raise awareness of accessible and practical tools and guidance developed within the ATT framework that could be useful for industry. Practical ways to do this include the following:

- Ensure that all the documents are translated into the official United Nations languages as well as national languages for national outreach activities.

- Consider other platforms in addition to the ATT Secretariat's website for publicising and making ATT guidance documents more accessible to other stakeholders. Examples include posting them on or linking to them from the webpages of other relevant instruments and industry organizations and printing hard copies and distributing them during relevant meetings.

- Develop online and in-person training modules on such resources and guidance and target them to a broad range of ATT stakeholders, including diplomats, industry, competent national authorities and law enforcement officers. Developing self-paced and train-the-trainer modules to serve multiple purposes could also be considered. The ATT Secretariat and other relevant entities that develop such trainings could consider establishing partnerships with universities and training and academic institutions so that these trainings can be incorporated into their academic curriculums.

- Examine lessons learned on how guidance is provided in other forums. Participants mentioned the examples of the exchange forums on United Nations Security Council 1540 and the Wiesbaden Conference model.

6. CONSIDERATIONS FOR THE CSP9 CYCLE OF MEETINGS ON THE PRESIDENCY'S PRIORITY THEME



Photography credit: United States Navy

The priority theme of the Republic of Korea's presidency of the Ninth Conference of States Parties to the ATT – “The Role of Industry in Responsible International Transfers of Conventional Arms” – provides a platform for greater engagement with industry and private sector entities involved in the international arms trade. Participants in the brainstorming workshop identified a number of ways for the CSP9 cycle of meetings to consider how to meet the call for strengthened cooperation made in United Nations General Assembly resolution 77/62 of December 2022. Some proposals were made during the workshop to enable the sharing of effective practices and to identify challenges and opportunities for ensuring that the private sector can support a responsible international arms trade and the effective implementation of the ATT. Concrete proposals for action are provided below in four broad categories that could be considered in preparing the presidency's working paper on its thematic priority issue.

1 Identify how industry can support ATT implementation and universalization. Examples shared during the workshop included the following:

- Some companies and industry associations have expressed an interest in promoting the universalization of the ATT but lack guidance from the states parties in which they are based on how they can be most effective in supporting universalization efforts. As noted above, this could be an issue to be explored by the WGTU and during national industry outreach activities.
- During the workshop, specific examples of industry practices that can help states parties to implement the ATT and fulfil state party obligations included:
 - 1. Reporting:** Company record-keeping and reporting to government authorities, departments and ministries on authorized activities can help to demonstrate company compliance with national legislation and regulations, but can also support the

compilation of national annual reports on exports and imports of conventional arms – that is, companies can be legally required to report on actual transfer (deliveries) of conventional arms falling within the eight categories of conventional arms covered in Article 2(1) of the ATT.

2. Preventing diversion: There are different types of opportunity for companies to share information with regulators and government law enforcement agencies on diversion risks. Some of the examples provided during the workshop include providing information in applications for written authorizations to transfer conventional arms; informal consultations before submitting an application for a written authorization to transfer conventional arms; mechanisms for providing information to national authorities when a company acquires relevant new information regarding a current transfer authorization or completed transfer – a confidential hotline was mentioned as one option for sharing such information.

- States parties could be encouraged to review the workplans for the WGETI and its sub-working groups with a view to enhancing opportunities for increasing understanding of how industry can support responsible international transfers of conventional arms and contribute to effective ATT implementation.

2 Consider ways to raise awareness of the ATT and its benefits for industry and private sector entities involved in all aspects of the international arms trade. Examples shared during the workshop on how this could be achieved included the following:

- For each CSP presidency, in cooperation with the ATT Secretariat, the WGTU workplan could include activities for outreach to industry. Such activities could include providing feature articles on the ATT and developments in relevant industry newsletters and magazines; ATT awareness-raising events targeting industry; and meeting with key industry representatives during missions to promote treaty universalization.
- The ATT Secretariat could use its website and other appropriate measures to engage industry and share relevant information on the ATT and developments (recommendations contained in item 2(a) above could be considered for distributing ATT materials).
- States parties should share information on relevant ATT developments in national “outreach to industry” activities and share information via updated initial reports and interventions during the CSP cycle on such activities (see item 3 below on sharing information on “outreach to industry” activities via the ATT framework).

3 Share existing guidance and related materials, as well as lessons learned and effective measures, which enable industry to make a positive contribution to responsible international transfers of conventional arms in order to achieve the object and purpose of the ATT. Workshop participants recommended the following methods for facilitating such exchanges:

- All interested ATT stakeholders could highlight the existing commitments and obligations, and related guidance, of different industrial sectors involved in the international arms trade that can also support efforts to achieve the object and purpose of the ATT. This can be via exchanges during working group and preparatory committee meetings and each CSP, as well as via the provision of information and material directly to the ATT Secretariat for sharing. Examples shared during the workshop related to the ISPS Code, the Guiding Principles on Business and Human Rights (including the information note on the arms industry), and guidance prepared by United Nations entities to support implementing United Nations sanctions, including arms embargoes.
- States parties and signatories could be encouraged to share, via the ATT Secretariat and working groups, guidance prepared and provided to national industrial sectors to ensure compliance with national legislation and regulations that implement the ATT (e.g., guidance on internal compliance programmes).
- States parties and signatories could also be encouraged to share, via the ATT Secretariat and working groups, examples of effective measures for ensuring industry awareness and compliance with national transfer controls and efforts to prevent and eradicate the illicit trade and diversion (e.g., formal and informal support for licensing, and industry outreach activities such as awareness days, online or in-person training, guidance notes, etc.).
- Industry associations could be encouraged to share information on their activities to support compliance with national legislation and regulations and international requirements (e.g., guidance documents, online tools, advice hotline, training, etc.).

4 Explore opportunities for states parties to collectively establish the highest common international standards and promote effective measures for regulating the international arms trade in order to provide more clarity and predictability for a globalized arms industry. Examples of opportunities that support effective ATT implementation to achieve the treaty’s object and purpose in this regard include the following:

- Where national authorities appear to have introduced “unintended negative consequences for legitimate trade” when trying to faithfully implement the ATT, the “gaps” could be identified, and the lessons learned could be shared.
- The ATT community could be encouraged to provide support and guidance at the multilateral level in response to the gaps and unintended negative consequences arising from ATT implementation. Suggestions from the workshop included further exploration of the following issues:
 1. Brokering
 2. Control lists
 3. Risk-assessment processes, including risk indicators and red flags
 4. Risk-mitigation measures
 5. Transit and trans-shipment

Brainstorming Workshop on “The Role of Industry in Responsible International Transfers of Conventional Arms”

Elaborating the Thematic Issue of the Ninth Conference of States Parties to the Arms Trade Treaty

This report summarizes the key discussions of a brainstorming workshop on the theme “The Role of Industry in Responsible International Transfers of Conventional Arms”.

It provides some background information on industry expectations regarding the impact of the Arms Trade Treaty (ATT) and explores how to improve industry engagement with the ATT process. It highlights some of the potential benefits for industry – which ranges from arms manufacturers, via logistics companies to financial service providers – if the ATT can facilitate greater convergence of arms transfer laws and regulatory approaches around the world. It is hoped that this report can inform deliberations for the Ninth Conference of States Parties (CSP9) to the ATT and stimulate creative thinking by key ATT stakeholders to support the development of a constructive and impactful presidency thematic paper for the ATT CSP9.

The Brainstorming workshop and report were delivered by the United Nations Institute for Disarmament Research (UNIDIR), Conflict Armament Research and Stimson Center (the Consortium). Since 2019, the Consortium has engaged in joint research aimed at increasing knowledge and strengthening shared understanding on the ATT among diverse stakeholders to support its effective implementation. In 2023, the Consortium is conducting research and facilitating dialogue events on “The Role of Industry in Responsible International Transfers of Conventional Arms”, in support of the Republic of Korea’s Presidency of the ATT CSP9.

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