

**THE ARMS TRADE TREATY:**

**THE ROLE OF INDUSTRY  
AND OTHER PRIVATE  
SECTOR ACTORS IN  
EFFORTS TO COUNTER  
THE DIVERSION OF  
CONVENTIONAL ARMS**

ANNA MENSAH, ROB PERKINS, RYAN FLETCHER



## ABOUT THE RESEARCH

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The United Nations Institute for Disarmament Research (UNIDIR), Conflict Armament Research (CAR), and the Stimson Center established a research Consortium in 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 PARTNERS

### UNIDIR

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# ABBREVIATIONS

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**AML/CFT** Anti-money laundering and countering the financing of terrorism

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**ATT** Arms Trade Treaty

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**CSP** Conference of States Parties

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**DPRK** Democratic People's Republic of Korea

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**FATF** Financial Action Task Force

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**FGS** Federal Government of Somalia

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**FRC** Financial Reporting Center

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**GITOC** Global Initiative Against Transnational Organized Crime

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**ICP** Internal compliance programme

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**ISU** Implementation support unit

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**KYC** Know Your Customer/Client

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**PSC** Private security company

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**SALW** Small arms and light weapons

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**UAV** Uncrewed aerial vehicle

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**VTF** Voluntary Trust Fund

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**WGETI** Working Group on Effective Treaty Implementation (ATT)

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**WGTU** Working Group on Treaty Universalization (ATT)

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RIFLE BULLETS AND CARTRIDGES, A CLOSE-UP ON ROCK OUTDOORS BY HALFPOINT, 2022

# 1 Introduction





The diversion of conventional arms and related ammunition, parts and components to unauthorized end users and end uses remains a significant global challenge. This diversion hampers attempts to promote responsibility in international transfers of conventional arms according to established international law and international standards. Addressing diversion is an important objective of the Arms Trade Treaty (ATT), which obliges any State Party involved in an arms transfer to implement measures to prevent the arms from being diverted. While the primary responsibility to implement the ATT lies with national governments, other stakeholders – such as industry and other private sector actors involved in arms trade activities – play a significant role in supporting States in the effective implementation of the ATT, including counter-diversion efforts.<sup>1</sup>

The ATT preamble recognizes “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”.<sup>2</sup> In practice, industry’s engagement in the ATT process has evolved considerably since the period preceding the Treaty’s negotiations, during the negotiations, and after the Treaty’s entry into force. At the start of the preparations for the ATT negotiation conferences, 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”.<sup>3</sup> Industry representatives and experts thus played several roles during the ATT negotiations, such as providing input on the practical, everyday activities that facilitate the legitimate trade in conventional arms, and identifying 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.<sup>4</sup> In contrast to the treaty negotiation process, industry voices have been less frequently heard in meetings during the recent annual cycles of ATT Conferences of States Parties (CSPs).<sup>5</sup>

In considering options for re-engaging industry in the ATT process moving forward, the Ninth CSP deliberated on the theme “The Role of Industry in Responsible International Transfers of Conventional Arms”.<sup>6</sup> This provides a timely opportunity to take stock of industry’s engagement in the ATT process and to consider options and opportunities for enhancing their support in all aspects of Treaty implementation. This paper focuses on a critical aspect of Treaty implementation, detecting, preventing, eradicating and addressing the diversion of conventional arms.

1. For the purposes of this issue brief, “diversion” is understood as the rerouting or appropriation of conventional arms or related items while they are being transferred or after they have been transferred contrary to relevant national or international law leading to a potential change in the effective control or ownership of the arms and items. For a detailed description of diversion, see Brian Wood, *The Arms Trade Treaty: Obligations to Prevent the Diversion of Conventional Arms*, Issue Brief 1, UNIDIR, 23 June 2020, [https://unidir.org/sites/default/files/2020-06/ATT\\_Issues\\_Brief\\_No\\_1.pdf](https://unidir.org/sites/default/files/2020-06/ATT_Issues_Brief_No_1.pdf), p. 33.

2. The Arms Trade Treaty, 2 April 2013, [https://www.thearmstradetreaty.org/hyper-images/file/ATT\\_English/ATT\\_English.pdf?templateId=137253\\_preamble](https://www.thearmstradetreaty.org/hyper-images/file/ATT_English/ATT_English.pdf?templateId=137253_preamble).

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\\_Security/0611pp\\_att.pdf](https://www.chathamhouse.org/sites/default/files/public/Research/International_Security/0611pp_att.pdf), p. 4.

4. P. Holtom and A. Mensah, *The Role of Industry in Responsible International Transfers of Conventional Arms*, UNIDIR, 30 March 2023, <https://unidir.org/publication/role-industry-responsible-international-transfers-conventional-arms>

5. For further details on challenges and lessons learned highlighted by industry actors on their engagement in the ATT, see *Ibid*, pp. 18–20.

6. The ATT CSP9 is scheduled to take place from 21st to 25th August 2023 and will be presided over by the Republic of Korea. See <https://thearmstradetreaty.org/csp-9.html> for further details on the Conference.

## 1.1 PURPOSE OF THIS ISSUE BRIEF

This Issue Brief – the fourth in a series from a Consortium of the United Nations Institute for Disarmament Research (UNIDIR), Conflict Armament Research (CAR) and the Stimson Center<sup>7</sup> – examines the role of industry and other private sector actors in supporting States’ efforts to counter diversion. It seeks to raise awareness and increase the knowledge of States and other relevant stakeholders on effective ways of engaging industry and other private sector actors to prevent and address the diversion of conventional arms. It has three main objectives:

1. To highlight which industry and other private sector actors are involved in international arms transfers and the importance of engaging them in discussions on the effective implementation of the Treaty. To achieve this, it proposes an initial and preliminary mapping of industry and other private sector actors engaged in the various stages of the arms transfer chain, along with a description of their different roles and functions, in chapter 1.
2. To facilitate industry’s efforts to support States Parties in the detection and prevention of diversion by highlighting some “red flags”<sup>8</sup> and risk indicators that private sector actors can consider while conducting their day-to-day businesses, in chapter 2.
3. To provide information on existing practices and opportunities for enhancing the engagement of industry and private sectors actors within the ATT framework, including in diversion-prevention efforts and in the effective implementation of the Treaty in general via the analysis and information contained in chapters 3 and 4 respectively.

The information contained in this Issue Brief is gathered from a series of research activities organized by the Consortium in 2023 in support of the Republic of Korea’s presidency of CSP9. This includes an Informal Brainstorming Workshop organised in January 2023<sup>9</sup> and a series of dialogue events organized throughout the CSP9 meeting cycle.<sup>10</sup> Information gathered and generated through these activities has been complemented through further desk research, existing research and information available to Consortium partners.<sup>11</sup>

Overall, the Issue Brief seeks to increase knowledge and raise awareness among all ATT stakeholders on the role of industry and other private sector actors in promoting responsible international transfers of conventional arms as part of substantive efforts to facilitate dialogue and discussions on the topic during CSP9 and beyond.

7. The first Issue Brief in this series explains the legal obligations of States Parties to prevent the diversion of conventional arms. See B. Wood, *The Arms Trade Treaty: Obligations to Prevent the Diversion of Conventional Arms*, Issue Brief 1, UNIDIR, 23 June 2020, [https://unidir.org/sites/default/files/2020-06/ATT\\_Issues\\_Brief\\_No\\_1.pdf](https://unidir.org/sites/default/files/2020-06/ATT_Issues_Brief_No_1.pdf). To support States’ efforts in implementing these obligations, the second Issue Brief provided detailed information and guidance on systemic and practical measures to prevent and address diversion that are already undertaken by ATT States Parties, which others may adopt, be required to adopt, or could develop further in their Treaty-implementation efforts. See B. Wood and P. Holtom, *The Arms Trade Treaty: Measures to Prevent, Detect, Address and Eradicate the Diversion of Conventional Arms*, Issue Brief 2, UNIDIR, 30 October 2020, [https://unidir.org/sites/default/files/2020-10/ATT\\_Issues\\_Brief\\_2\\_-\\_Formatted\\_-\\_v4.pdf](https://unidir.org/sites/default/files/2020-10/ATT_Issues_Brief_2_-_Formatted_-_v4.pdf). Subsequently, the third Issue Brief provided an analytical framework to facilitate the analysis of diversion throughout the various stages of the life cycle of arms and ammunition. See A. Malaret Baldo et al., *Arms Trade Treaty: Diversion Analysis Framework*, Issue Brief 3, 31 August 2021, [https://unidir.org/sites/default/files/2021-08/ATT\\_Issue\\_Brief\\_3-Diversion\\_Analysis\\_Framework.pdf](https://unidir.org/sites/default/files/2021-08/ATT_Issue_Brief_3-Diversion_Analysis_Framework.pdf). This fourth issue brief therefore complements the previous Issue Briefs and seeks to examine the role of industry and private actors in preventing and detecting the diversion of conventional arms and provide examples of practical measures that can be considered by States Parties to enhance industry’s engagement in the ATT framework. The Small Arms Survey was a partner in the Consortium for the first two Issue Briefs.

8. See a description by Conflict Armament Research of what constitutes red flags in chapter 2.

9. For the Workshop Summary Report, see P. Holtom, A. Mensah, UNIDIR, *The Role of Industry in Responsible International Transfers of Conventional Arms*, 30 March 2023, <https://unidir.org/publication/role-industry-responsible-international-transfers-conventional-arms>

10. As at the time of writing, a total of two in-person side events and two virtual intersessional meetings had been organised by the Consortium in partnership with the Republic of Korea in 2023. A final side event, where this Issue Brief will be launched, is envisaged during the ATT CSP9 scheduled in August 2023.

11. For example, the case studies presented in the Issue Brief were obtained from Conflict Armament Research’s field research activities, while the practical measures for State-industry engagement presented in chapter three were derived from Stimson Center’s detailed analysis of ATT initial reports. Examples of relevant UNIDIR publications consulted to inform this paper include Brian Wood, Elli Kytomaki, Himayu Shiotani, and Sebastian Wilkin, UNIDIR, *Enhancing the Understanding of Roles and Responsibilities of Industry and States to Prevent Diversion*, <https://unidir.org/publication/enhancing-understanding-roles-and-responsibilities-industry-and-states-prevent> and Hardy Giezendanner, Himayu Shiotani and Paul Holtom, *Strengthening End Use/r Control Systems to Prevent Arms Diversion: Examining Common Regional Understandings*, <https://unidir.org/sites/default/files/publication/pdfs/strengthening-end-use-r-control-systems-to-prevent-arms-diversion-en-686.pdf>

## 1.2 MAPPING OF INDUSTRY AND OTHER PRIVATE SECTOR ACTORS IN THE ARMS TRANSFER CHAIN

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The term “industry” does not represent a homogenous group, rather, a diverse set of actors with different interests, concerns, challenges and opportunities depending on the sector and geographic location they operate in.<sup>12</sup> The ATT does not provide a definition of industry, nor does it give examples of the types of private sector actors that are involved in international arms transfers or that could be engaged in the implementation of the Treaty. Nevertheless, industry actors – including arms manufacturers, arms dealers, brokers, carriers and freight forwarders, insurance companies, banks and other financial service providers – are responsible for most of the practical aspects that ensure that arms transfers are conducted responsibly and securely and in accordance with global, regional and national regulations. To illuminate and clarify this responsibility, Table 1 (see below) presents a preliminary, non-exhaustive list of industry and other private sector actors, as well as their roles and engagement throughout the arms transfer chain. It is important to note that industry and other private sector actors vary considerably in their roles and responsibilities across different supply chains, be it maritime, land or air. While some conduct their business only at specific stages of the arms transfer chain, others provide support and ancillary services throughout all the stages. Furthermore, while some may be registered in specific national jurisdictions (e.g. in the importing State or transit State), their roles and activities may transcend international borders. It is therefore important that commercial actors involved in the international arms trade know their own State’s national controls, prohibitions and procedures as well as the controls, prohibitions and procedures that have been agreed by their home State with other States where they are active.<sup>13</sup> This is particularly the case when the laws extend to extraterritorial rules and obligations, some of which may invoke individual responsibility, as is the case with laws on terrorism, organized crime and United Nations Security Council sanctions, including arms embargoes. The activities of large or small industry and other private sector actors in international transfers can have a profound impact on diversion, wherever they operate. It is therefore essential for them to exercise due diligence to respect laws, regulations and administrative procedures designed to prevent such diversion. Such entities should actively assist national authorities where possible to meet their obligations to that end.

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12. P. Holtom and A. Mensah, UNIDIR, The Role of Industry in Responsible International Transfers of Conventional Arms.

13. B. Wood et al., Enhancing the Understanding of Roles and Responsibilities of Industry and States to Prevent Diversion, UNIDIR, 2019, <https://unidir.org/publication/enhancing-understanding-roles-and-responsibilities-industry-and-states-prevent>.

Table 1. Examples of industry and other private sector actors in the arms transfer chain.<sup>14</sup>

Industry or Other Private Sector Actor	Description of roles and functions Before the Transfer	Description of roles and functions During the Transfer	Description of roles and functions at the Delivery Stage and the Post-Delivery Stage
<p><b>Arms manufacturer:</b> A company that designs, develops, produces under licence, assembles, repairs, maintains or modifies arms and related items.<sup>15</sup></p>	<p>Arms manufacturers design, develop, produce under licence, assemble, or modify arms and related items.</p>	<p>(N/A)</p>	<p>Arms manufacturers provide repair and maintenance services for transferred arms post-delivery If agreed in the contract terms between the manufacturer and buyer.</p>
<p><b>Arms dealer:</b> An entity or person involved in retailing and wholesaling, buying and selling quantities of arms and related items obtained from producers according to the demand of users and which operates under national legislation and jurisdiction.<sup>16</sup></p>	<p>Arms dealers facilitate the retailing and wholesaling, buying and selling quantities of arms and related items obtained from producers to buyers.</p>	<p>(N/A)</p>	<p>(N/A)</p>
<p><b>Arms broker:</b> An entity or person acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of arms and related items in return for some form of benefit, whether financial or otherwise.<sup>17</sup> Arms brokers might undertake certain activities closely associated with brokering but do not necessarily in themselves constitute brokering, as part of putting a deal together to gain a benefit.</p>	<p>Arms brokers perform the following functions:</p> <ul style="list-style-type: none"> <li>a. Serve as a finder of business opportunities to one or more parties;</li> <li>b. Put relevant parties in contact;</li> <li>c. Assist parties in proposing, arranging or facilitating agreements or possible contracts between them;</li> <li>d. Assist parties in obtaining the necessary documentation;</li> <li>e. Assist parties in arranging the necessary payments.</li> </ul> <p>Arms brokers might also engage in some other related activities at this stage including:</p> <ul style="list-style-type: none"> <li>a. Providing for technical assistance;</li> <li>b. Training;</li> <li>c. Finance</li> <li>d. Insurance.</li> </ul>	<p>Arms brokers might undertake or support certain activities at this stage depending on the agreement with the transfer parties, including:</p> <ul style="list-style-type: none"> <li>a. Transportation;</li> <li>b. Freight-forwarding;</li> <li>c. Security</li> <li>d. Insurance</li> <li>e. Storage.</li> </ul>	<p>Arms brokers might undertake or support certain activities at this stage depending on the agreement with the transfer parties including:</p> <ul style="list-style-type: none"> <li>a. Maintenance of transferred arms;</li> <li>b. Providing for technical assistance;</li> <li>c. Training;</li> <li>d. Storage;</li> <li>e. Insurance;</li> <li>f. Security.</li> </ul>

14. Table 1 is an initial attempt to highlight the scope of industry and other private sectors actors engaged in arms trade activities and describe their different functions and roles throughout the different stages of the transfer chain. It provides a non-exhaustive list of industry and other private sector actors. Using Table 1 as a basis, the Consortium has developed an infographic on “Industry and other private sector actors in the arms transfer chain” (see Annex 1) that complements the table and illustrates the sequencing intersection of the different actors and demonstrates the overlap of their functions where they exist across the various arms transfer stages.

15. Report of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V of 15 December 1999, entitled “Small arms”, A/CONF.192/2, 11 May 2001, p. 21.

16. Report of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V of 15 December 1999, entitled “Small arms”, A/CONF.192/PC/33, 11 May 2001, p. 19.

17. Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons of 30 August 2007, entitled “The illicit trade in small arms and light weapons in all its aspects”, A/62/163, 30 August 2007, pp. 8 - 9.

*Table 1. Examples of industry and other private sector actors in the arms transfer chain.*

Industry or Other Private Sector Actor	Description of roles and functions Before the Transfer	Description of roles and functions During the Transfer	Description of roles and functions at the Delivery Stage and the Post-Delivery Stage
<p><b>Bank or financial institution:</b> A public or private organization or entity that plays an essential role in fostering economic growth, job creation, trade and investment, as well as in addressing development challenges. They include commercial banks, investment banks, development banks, microfinance institutions, insurance companies, pension funds and other entities that provide financial services.<sup>18</sup></p>	<p>Banks provide funds for arms manufacturers in the form of capital, loans and other financial equities and also facilitate payments of arms transactions.</p>	<p>(N/A)</p>	<p>(N/A)</p>
<p><b>Law firm:</b> An organization composed of one or more lawyers to engage in the practice of law and provide legal advice and services to clients, usually involving representation of clients in civil and criminal matters before courts and government agencies.<sup>19</sup></p>	<p>Law firms support arms trade activities at this stage by:</p> <ul style="list-style-type: none"> <li>a. Providing legal advice to arms transfer parties and actors on advisory and enforcement matters on defence trade controls, including on compliance across various jurisdictions with export controls, economic sanctions, and antiboycott laws and regulations.</li> <li>b. Supporting their clients in obtaining licensing and license agreements and drafting arms trade contracts among parties.</li> <li>c. Establishing or bolstering internal compliance programs.</li> <li>d. Investigating, reporting, and navigating enforcement matters.</li> <li>e. Providing legal advice to clients on their arms trade activities, including during investigations and lawsuits, on suspected or detected cases of arms diversion before the transfer.</li> </ul>	<p>Law firms support the enforcement of agreed contractual arrangements pertaining to the transfer stage, including on agreed transfer routes, carriers, shippers etc. They also provide legal advice in times of litigation of suspected or detected cases of diversion during the transfer.</p>	<p>Law firms support the enforcement of agreed contractual arrangements between the manufacturer and the end-user pertaining to the post-delivery stage, including on agreements on the implementation of post-delivery control measures where applicable. They also provide legal advice to clients during investigations and lawsuits, including on suspected or detected cases of diversion of transferred arms.</p>

18. United Nations General Assembly, Report of the Secretary-General on the Work of the Organization, 2019, <https://undocs.org/A/74/1>.

19. Black's Law Dictionary, 11th edition, Bryan A. Garner (Editor in Chief), Thomson Reuters, 2019.

*Table 1. Examples of industry and other private sector actors in the arms transfer chain.*

Industry or Other Private Sector Actor	Description of roles and functions Before the Transfer	Description of roles and functions During the Transfer	Description of roles and functions at the Delivery Stage and the Post-Delivery Stage
<p><b>Local transportation and logistics service provider:</b> A company that offers transportation and logistics services within a defined geographical area. These providers are responsible for the movement of goods and people within a national jurisdiction, including services such as local trucking, courier services, warehousing, last-mile delivery and other related logistical activities.<sup>20</sup></p>	<p>Local transportation and logistics service providers facilitate the movement of manufactured arms from the production site to the port of export via road, sea or air.</p>	<p>Local transportation and logistics service providers provide intermodal (road/air/sea) transportation services during transit and trans-shipments.</p>	<p>Local transportation and logistics service providers facilitate the movement of transferred arms from importing ports to the site of the final end-user in the importing State via road, sea or air.</p>
<p><b>Insurance company:</b> An incorporated, mutual and other entity whose principal function is to provide life, accident, sickness, fire or other forms of insurance to individual institutional units or groups of units.<sup>21</sup></p>	<p>Insurance companies provide various services related to risk management and financial protection of pre-transfer actors and activities including the provision of:</p> <ul style="list-style-type: none"> <li>a. Political Risk Insurance - this coverage can protect against issues like contract frustration, nationalization, or expropriation.</li> <li>b. Property Insurance - this insurance protects facilities, warehouses, or storage areas of arms manufacturers against risks such as fire, natural disasters, or theft.</li> <li>c. Liability Insurance - this coverage protects against potential legal liabilities for manufacturers, exporters, or brokers involved in the arms trade.</li> </ul>	<p>Insurance companies insure transfer parties against losses and accidents pertaining to arms during the transfer from the exporting to the importing State. Some of the specific services they provide at this stage include:</p> <ul style="list-style-type: none"> <li>a. Marine Insurance - this coverage protects against risks such as damage, loss, or theft during transit and trans-shipment.</li> <li>b. Cargo Insurance - this coverage protects against risks such as accidents, theft, or damage to the cargo.</li> </ul>	<p>Insurance companies provide product liability insurance to protect manufacturers against potential legal claims arising from the use or malfunction of the exported arms.</p>

<sup>20</sup> World Bank, Logistics Service Providers: An Overview, <https://openknowledge.worldbank.org/handle/10986/31881>.

<sup>21</sup> United Nations Economic and Social Commission for Western Asia (UN ESCWA), Glossary of Social Development Terms - Insurance Corporations, <https://www.unescwa.org/sd-glossary/insurance-corporations>.

*Table 1. Examples of industry and other private sector actors in the arms transfer chain.*

Industry or Other Private Sector Actor	Description of roles and functions Before the Transfer	Description of roles and functions During the Transfer	Description of roles and functions at the Delivery Stage and the Post-Delivery Stage
<p><b>Storage service provider:</b> A company (also known as a third-party logistics provider, Cargo company or a warehousing firm) that offers secure and convenient storage facilities for goods and materials. These providers specialize in managing the physical inventory and storage needs of businesses, offering services such as inventory control, order fulfilment and distribution logistics.<sup>22</sup></p>	<p>Storage and logistical service providers offer facilities for storing manufactured arms at the production site and at the exporting ports before transfer.</p>	<p>Storage and logistical service providers offer facilities for storing arms during transit and trans-shipment.</p>	<p>Storage and logistical service providers offer facilities for storing transferred arms at importing ports, before transportation to the final end user.</p>
<p><b>Carrier</b> (shipping companies, air charter company/airlines, truckers/road/rail cars/way services): An independent entity that undertakes to transport goods from one place to another, usually under the terms of a contract of carriage. The carrier may act as principal or agent and may operate its own means of transport or use the services of another carrier under a subcontract or bill of lading.<sup>23</sup></p>	<p>(N/A)</p>	<p>Carriers provide equipment for the transfer of arms via land, sea or air, across international borders.</p>	<p>(N/A)</p>
<p><b>Freight forwarder:</b> A company that arranges commercial transportation for the cargo of other firms. The freight forwarder generally assumes responsibility for consignments until they reach their destinations, depending on the trade and transport terms agreed.<sup>24</sup></p>	<p>(N/A)</p>	<p>Freight forwarders provide transportation services for the transfer of arms across international borders.</p>	<p>(N/A)</p>
<p><b>Private security company (PSC):</b> A non-governmental entity that offers physical protection services in return for a fee and whose employees (some or all) possess, carry and use arms and related items in the course of their work.<sup>25</sup></p>	<p>PSCs ensure security of arms at the production site, during transfer from the production site to the port of export, and at the port of export prior to loading onto the vessel or carrier.</p>	<p>PSCs ensure security of arms during transfers including by using sensitive technologies for tracking and monitoring cargoes and also provide security services for arms and related items during transit and trans-shipments.</p>	<p>PSCs ensure security of transferred arms at importing ports, during transportation from importing ports to final end-user and at the site of the end-user.</p>

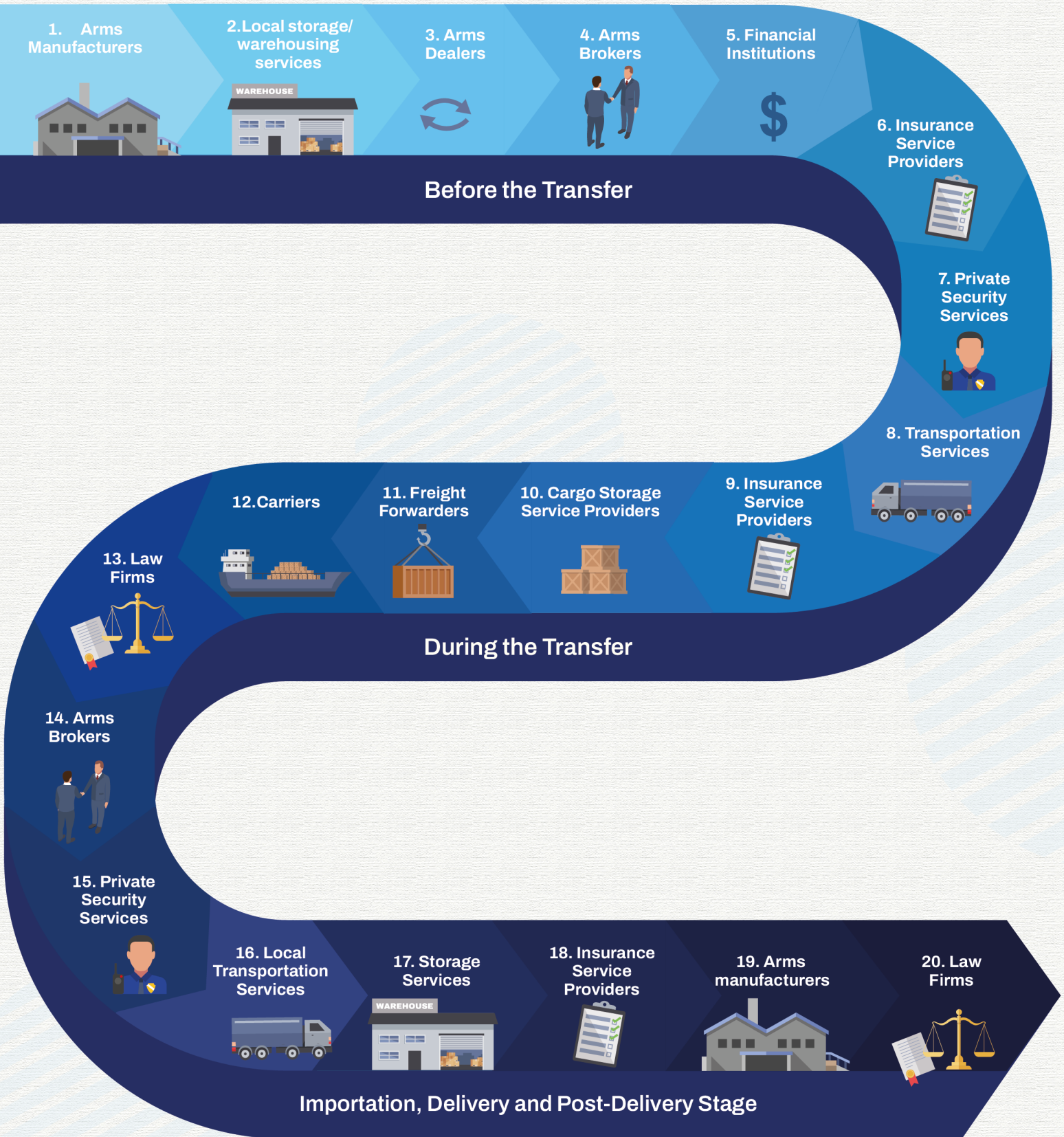
22. International Trade Administration (ITA), US Department of Commerce, <https://www.trade.gov/logistics-service-providers>.

23. International Chamber of Commerce (ICC), Incoterms® 2020, <https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-2020/>.


24. Trade Facilitation Implementation Guide, <https://fig.unece.org/contents/freight-forwarding.htm>.

25. MOSAIC 01.20, Glossary of Terms, Definitions and Abbreviations.

# Examples of Industry and other Private Sector Actors in the Arms Transfer Chain







# 2. Industry risk indicators and red flags to prevent and detect diversion

Measures taken by industry and private sector actors could have a profound impact on the likelihood that arms and ammunition will be diverted to unauthorised end users, including illegal non-state armed groups, criminals, groups designated as terrorist groups, as well as entities and individuals sanctioned and subject to UN Security Council arms embargoes. They may also – wittingly or unwittingly – facilitate acts of diversion through, for example, overlooking or ignoring critical risk factors, or failing to implement necessary transfer safeguards and counter-diversion measures.<sup>26</sup> Industry actors can also be responsible for diversion (see the case study in box 1). As noted in chapter 1, the ATT obligations apply directly to national government authorities of States Parties and the treaty does not include specific commitments for industry. However, as a 2023 report from the Flemish Peace Institute notes, [industry and other private sector actors] play a distinct role in export decisions.

As governments cannot realistically verify all the descriptions and statements submitted by exporters, licensing decisions are partly built on a range of information sources provided by arms-exporting companies, which have unique insights into their relationships with end-users and end-use, prior to licensing decisions being made and also after they have been made.<sup>27</sup>

This chapter therefore provides case studies that illustrate how industry can wittingly and unwittingly play a critical role in the diversion of conventional arms. It also provides a series of risk indicators and red flags for use by industry and private sector actors involved in the international arms trade to prevent, detect, and address the diversion of conventional arms, ammunition, and related parts and components.

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26. A. Malaret Baldo et al., *The Arms Trade Treaty: Diversion Analysis Framework*, Issue Brief 3, 2021, [https://www.unidir.org/sites/default/files/2021-08/ATT\\_Issue\\_Brief\\_3-Diversion\\_Analysis\\_Framework.pdf](https://www.unidir.org/sites/default/files/2021-08/ATT_Issue_Brief_3-Diversion_Analysis_Framework.pdf).

27. Machiko Kanetake and Cedric Ryngaert, *Due Diligence and Corporate Liability of the Defence Industry*, Flemish Peace Institute, 2023, p. 7.

### Box 1. Case study: Private actors as facilitators of diversion

Investigations by Conflict Armament Research (CAR) have shown how a network of private actors – including several companies linked through the marriage of the company owners – supplied an L-39 trainer/ground attack aircraft to the armed forces of South Sudan, the Sudan People's Liberation Army (SPLA, now renamed the South Sudan People's Defence Forces) from the US via Uganda. CAR obtained commercial documents and conducted interviews with people directly involved in this transfer.<sup>28</sup>

In 2009, a brokering company registered in Delaware, United States, arranged the sale of the aircraft from a private US owner to Yamasec USA LLC. The broker informed CAR that the owner of Yamasec USA LLC personally approached his company to acquire the aircraft, and subsequently formed a corporation in Delaware at the same address as that of the broker in order to take legal title of the aircraft in the United States.

The broker then disassembled the aircraft for export to Uganda in a shipping container, and subsequently travelled to Uganda to help reassemble the aircraft. He also informed CAR that he took responsibility for applying for a dual-use export licence. However, the US Department of Commerce has stated that no licence had been issued and that the aircraft would have in fact required a military export licence. US arms export reports in 2008 and 2009 list no licence for the export of complete military aircraft to Uganda, and the only relevant transfer was the export of 2,002 aircraft parts and components worth \$6 million.

The US Federal Aviation Authority has no record of any request to cancel the registration of the aircraft in the United States due to export from the country and it appears that Yamasec USA LLC stopped responding to correspondence from the authority. The aircraft's US registration expired in 2011.

In May 2011, the aircraft was seen flying in an air show in Uganda, still bearing its former US registration number. It was then photographed at Malakal airport in South Sudan in September 2016, bearing the insignia of the SPLA and the partially erased logo of a Ugandan aviation company that CAR discovered is co-owned and directed by the same individual who controls Yamasec USA LLC. The other co-owner is married to the person who signed the US registration papers on behalf of Yamasec USA LLC. CAR also obtained images taken inside the cockpit of the aircraft during a flight between Malakal and Ayod that clearly show the aircraft's original US registration number and verified its location in South Sudan. This transfer was carried out before the United Nations Security Council imposed an arms embargo on South Sudan in 2018. However, its retransfer from Uganda means that the companies may have violated non-retransfer conditions, assuming that they did indeed receive a licence for the original export.

28. For more information on this case study see Conflict Armament Research, *Weapon Supplies into South Sudan's Civil War*, 2019, <https://www.conflictarm.com/reports/weapon-supplies-into-south-sudans-civil-war/>, pp. 57–62.

## 2.1. Risk assessments and red flags

As industry and other private sector actors are often on the frontlines of managing the security and safety of transferred arms, they may often be faced with red flags in the course of their business: these are irregularities in a transfer process or suspicious or unusual behaviour that industry actors may regard as indicating that transferred materiel could be diverted or misappropriated. Red flags can arise throughout the supply chain and can pertain to different actors or aspects of a transfer. They may relate, for example, to the nature of the proposed end user or purchaser, the payor (if different), or the transport and logistics (see table 2). While a single red flag in isolation does not necessarily prove illicit transfer activity, a set of red flags provides a basis for companies involved in conducting commercial due diligence to assess and identify risks of diversion and act to prevent or halt a transfer (see the case study in box 2 for an example). In some respects, these irregularities may be hard to detect at the time of transfer, and individually might not be outliers of ordinary commercial practice.<sup>29</sup> Taken together, however, they create a picture of suspicious and unusual transfer activity worthy of additional due diligence.

*Table 2. Examples of red flags in commercial supply chains.<sup>30</sup>*

Entity	
Client	New or one-time customer
	Sensitive location (e.g., bordering a conflict-affected territory)
	Business type unrelated to purchase
	Unusually large purchase (especially for new clients)
	Unexpected changes in specifications
	Refusal to communicate by voice or video
	Undue pressure or haste to complete a transfer
Payor	Sensitive location (e.g., bordering a conflict-affected territory)
	Unconnected to client or consignee
	In a location that differs from the client's
	Business type unrelated to purchase
	Use of payment methods with weak identity checks
Consignee	Unconnected to client or payor
	Sensitive location
	Business type unrelated to purchase
Logistics	Sensitive route (e.g., through disputed territory or a conflict-affected area)

29. It is important to note that practices such as email-only communication, or payments through international cash transfers, may be routine in some industries.

30. This table is adapted from Conflict Armament Research, Procurement Networks behind Islamic State Improvised Weapon Programmes, 2020.

## Box 2. Case study: Illustrating red flags in arms trade activities

CAR investigations have shown how Islamic State forces in Iraq and the Syrian Arab Republic used multinational networks of affiliates – including front companies and family-run groupings – to procure a range of commercially available materials, including components for uncrewed aerial vehicles (UAVs).<sup>31</sup> These procurement efforts highlight multiple pre-export red flags.

In December 2014, for example, a company registered in the United Kingdom called Ibacstel Electronics Ltd purchased a small turbojet engine from a German supplier of turbines and civilian UAVs. Ibacstel's primary business was the provision of electronic point-of-sale systems to restaurants and retail businesses (**Red Flag 1: Business type unrelated to purchase**). The company subsequently instructed the German supplier to dispatch the micro-turbine to a seemingly unrelated consignee, at an address in Türkiye (**Red Flag 2: Consignee unconnected to client or payor**). The location of the consignee was in a town close to the border crossing with an area of Syria that was under the control of Islamic State at the time (**Red Flag 3: Sensitive location**).

Ibacstel was a front company for Islamic State affiliates, and the purchased UAV components were probably diverted for use in the group's weapon-development programmes in Iraq and Syria. Over the next seven months, representatives of Ibacstel – as well as a second company registered at the same address called Advance Technology Global Ltd – made several other purchases of UAV components, counter-surveillance equipment and precursors for improvised explosive devices. The owner of both companies and his associates registered Advance Technology Global Ltd with fictitious directors and shareholders and created several fake employee names to discuss business or technical questions with suppliers via email (**Red Flag 4: No communication by voice or video**). Orders and payments were all made online, often through third-party providers, using accounts registered to representatives of two companies registered in the United Kingdom (**Red Flag 5: Use of payment methods with weak identity checks**).

The term “due diligence” can mean different things to different industry actors. In the context of arms transfers, a relevant framework is the Guiding Principles on Business and Human Rights. Principle 17 of the Guiding Principles states that

*A human rights due diligence process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence . . . Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.*<sup>32</sup>

The Guiding Principles cover a far broader range of activities than arms transfers, but they apply to all businesses equally and therefore encompass the arms sector. In a 2022 report on the impact of arms transfers on human rights, the Office of the United Nations High Commissioner for Human Rights affirmed that “States should make it clear that [the Guiding Principles] apply to companies in the arms sector and that they include the requirement for companies to conduct human rights due diligence, as a separate and company-led process outside of the export licensing decisions and obligations assumed by States.”<sup>33</sup>

31. The information for this case study is taken from Conflict Armament Research, Red Flags and Choke Points: Procurement Networks Behind Islamic State Improvised Weapon Programmes, 2020.

32. Office of the United Nations High Commissioner on Human Rights, Guiding Principles on Business and Human Rights, 2011, [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf), Principle 17(a).

33. Report of the Office of the United Nations High Commissioner for Human Rights, “Impact of arms transfers on human rights,” 16 September 2022, A/HRC/51/15, paragraph 55.

Risk assessments are required in order to implement due-diligence obligations (see, e.g., the case study in box 3).<sup>34</sup> As such, Article 7 of the ATT provides a clear set of criteria on which industry actors can base their own risk assessments in order to independently determine whether their business activities will be consistent with the commitments under the Treaty. However, a recent study conducted by the Flemish Peace Institute notes that an overarching challenge facing arms exporters in exercising due diligence is a lack or limited availability of industry-specific guidance.<sup>35</sup> The paper on “Possible Measures to Prevent and Address Diversion” prepared by the ATT Working Group on Effective Treaty Implementation (WGETI) notes that national authorities could organize “industry outreach programmes (such as with industry associations) to share diversion risk assessment guidance and encourage industry to play a cooperative role in risk assessment and management”.<sup>36</sup> For outreach activities to have an impact on assisting industry actors to assess, prevent, detect and eradicate diversion risks, States Parties could consider requiring companies involved in conventional arms transfer activities to produce evidence that they operate an effective internal compliance programme (ICP).<sup>37</sup>

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34. Ibid, paragraph 45.

35. M. Kanetake and C. Ryngaert, *Due Diligence and Corporate Liability of the Defence Industry*, Flemish Peace Institute, 2023, p. 33.

36. ATT Working Group on Effective Treaty Implementation, “Chair’s Draft Report to CSP4”, 20 July 2018, [https://thearmstradetreaty.org/hyper-images/file/ATT\\_CSP4\\_WGETI\\_Draft\\_Report\\_EN/ATT\\_CSP4\\_WGETI\\_Draft\\_Report\\_EN.pdf](https://thearmstradetreaty.org/hyper-images/file/ATT_CSP4_WGETI_Draft_Report_EN/ATT_CSP4_WGETI_Draft_Report_EN.pdf), annex D, p. 23.

37. For a detailed discussion on industry outreach and ICPs, see sections 3 and 4.

### Box 3. Case study: “Know your customer” and money transfers facilitating weapons trafficking

The concept of Know Your Customer/Client (KYC) is a set of guidelines in the financial sector to counter a range of financial crimes, including terrorist financing. Its key elements include customer identification, due diligence, and ongoing monitoring and risk management.<sup>38</sup> The key elements of the KYC principle are elaborated in the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, developed and updated since 1990 by the Financial Action Task Force (FATF) and endorsed in 2003 by over 180 countries as the international standard for anti-money laundering and countering the financing of terrorism (AML/CFT). These standards recommend a risk-based approach to ensuring that measures to prevent or mitigate these challenges are efficiently applied.<sup>39</sup>

Financial institutions may face challenges in implementing KYC principles in the absence of efficient record-keeping and registration of individuals. In 2020, a report by the Global Initiative Against Transnational Organized Crime (GITOC) found that arms dealers in Yemen and Somalia exploited gaps in the AML/CFT controls in the semi-informal system of international money transfers between the two countries, including effective application of the KYC principle. This included the routine use of dozens of aliases, names and spelling variations, and the use of proxy agents to conduct transactions. The report identified 176 individual transactions between July 2014 and May 2020 that had been either remitted or received by known arms dealers in Somalia and Yemen.<sup>40</sup> These transactions collectively totalled US\$3.7 million and were all transacted in cash. They included transfers to a Yemeni national who has been identified and sanctioned by the United States Department of the Treasury as a weapons dealer and financier for al-Qaida in the Arabian Peninsula since at least 2016. The GITOC investigation uncovered evidence that this individual and his proxy had received funds in multiple transfers carried out after the US sanctioning. According to information provided by security forces in Puntland in Somalia, the beginning of these transactions coincided with a shipment of rifles, machine guns, pistols and ammunition arriving by speedboat on Puntland's north-east coast on 19 December 2017.<sup>41</sup>

In 2016, the Federal Government of Somalia (FGS) adopted the Anti-Money Laundering and Countering the Financing of Terrorism Act.<sup>42</sup> Article 5(2)(b) mandates that reporting entities “identify and verify the identity of their customers” when transactions are equal to or exceed US\$10,000.

The FGS also established the Financial Reporting Center (FRC) in 2018 as a financial intelligence and investigative unit. The FRC collects information on suspicious or unusual financial activity related to money laundering or the financing of terrorism from required reporting entities.<sup>43</sup>

However, the effectiveness of these new initiatives and the ability of financial institutions in Somalia to apply the KYC principles have been inhibited by several systemic issues in Somalia such as the lack of a credible national identification system and spelling and naming conventions that often result in numerous different renderings of the same individual's name. For example, GITOC researchers found 6 aliases and name variations used in financial transfer documentation for the Yemeni arms dealer, and 14 for his main proxy. Reuters journalists contacted the four financial companies that facilitated these transactions, which stated that they did their best to comply with global KYC norms and maintained databases of internationally sanctioned individuals provided by the Central Bank of Somalia but cited the absence of a national identity card as a barrier to effective implementation.<sup>44</sup>

38. The World Bank, Combating Money Laundering and the Financing of Terrorism, 2009, <https://documents1.worldbank.org/curated/ru/408211469672186872/pdf/499600v-80PUB0C000Official0Use0Only0.pdf>.

39. The FATF is an independent intergovernmental body of 38 governments and multilateral groupings include the European Commission and the Gulf Cooperation Council. FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, The FATF Recommendations, Updated February 2023, [https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF Recommendations 2012.pdf.coredownload.inline.pdf](https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf).

40. J. Bahadur, Following the Money: The Use of the Hawala Remittance System in the Yemen–Somalia Arms Trade, Global Initiative Against Transnational Organized Crime, 2020, <https://globalinitiative.net/analysis/yemen-somalia-arms/>.

41. GITOC researchers aggregated a total value for the shipment, to be approximately US\$463,250. Aggregate payments to the Yemeni arms dealer in this period corresponded to roughly half of this amount, and researchers surmised that, if linked, these remittances might indicate payments sent in instalments following the receipt of the illicit consignment.

42. Federal Government of Somalia, Anti-Money Laundering and Countering the Financing of Terrorism Act, 2016, <https://centralbank.gov.so/wp-content/uploads/2020/08/Anti-Money-Laundering-and-Countering-the-Financing-of-Terrorism-Act-English-Version1.pdf>.

43. Somalia Financial Reporting Center, <https://frc.gov.so>.

44. K. Houreld, “Exclusive: Suspected arms dealers moved millions in Somali money transfers, report says”, Reuters, 17 September 2020, <https://www.reuters.com/article/somalia-weapons/exclusive-suspected-arms-dealers-moved-millions-in-somali-money-transfers-report-says-idINL4N2G028W>.

## 2.2. Sanctions lists and enhanced due diligence to detect evasion techniques

Referring to third-party or in-house lists of sanctioned entities is one common approach through which private sector actors aim to ensure compliance with international restrictions. Conducting name-recognition searches for end users and other entities identified in transfer documentation is one way to identify potential embargoed actors and transfers that may therefore risk violating Article 6 of the ATT. However, while sanctions lists are a crucial tool, they can become outdated very quickly. The act of publishing an entity on a sanctions list itself potentially generates an incentive for actors controlling the entity to move its activities to another entity with a different name, address or location in order to evade detection or suspicion.

Moreover, sanctioned entities and individuals rarely operate through one corporate entity. They often transact through a network of multiple companies. For example, the United Nations Security Council has listed Green Pine Associated Corporation – a company it describes as the primary arms dealer and main exporter of conventional weapons from the Democratic People’s Republic of Korea (DPRK) — and has identified at least eight different aliases under which the company operates.<sup>45</sup> Under the arms embargo established through resolution 1718, all United Nations Member States are required to prevent the direct or indirect supply, sale or transfer of arms to the DPRK,<sup>46</sup> and to prohibit the procurement of arms, ammunition and related military equipment from the DPRK. As such, arms transfers to or from the DPRK would be a violation of the ATT’s prohibitions under Article 6(1).

A United Nations Panel of Experts and investigative researchers have identified multiple embargo-evasion techniques deployed by the DPRK, including:

- Establishing overseas facilities and brokering networks to source, broker or trans-ship related goods;
- The use of front companies and aliases; and
- Accompanying shipments of arms with false or misleading customs declarations and bills of lading, while the genuine documents are sent separately via commercial courier to representatives in-country.<sup>47</sup>

The Panel of Experts reported in 2017 on a citizen of the DPRK who was arrested in Utah, United States, in 2015 for purchasing controlled items on the United States Munitions List, including night-vision goggles, and illicitly transferring them to his residential address in China, followed by possible transfer to the DPRK.<sup>48</sup> The Panel noted that the signature on the individual’s plea bargain is identical to that of the owner of a company registered in Hong Kong, China, called Greenpine International Corporation Ltd. The Panel’s investigation further found that Greenpine International itself was a major shareholder of two trading companies that shared a registered address with the individual’s residential address.<sup>49</sup> Several employees and representatives of these companies overlap. Customs records from a subscription database accessed by the Panel show that one of these trading companies exported maritime-related dual-use products to Angola, including boat engines and motors, and radar systems. The Panel assessed that these companies were fronts for the sanctioned company Green Pine.

45. United Nations Security Council Consolidated List, Generated on 6 June 2023, <https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/7h9u3en-all.html>.

46. United Nations Security Council, Security Council Committee established pursuant to resolution 1718 (2006), <https://www.un.org/securitycouncil/santions/1718>.

47. H. Griffiths, Supporting Effective Implementation of United Nations Sanctions on North Korea, Small Arms Survey, [https://www.smallarmssurvey.org/sites/default/files/resources/SAENK\\_Guides\\_WEB\\_ENG.pdf](https://www.smallarmssurvey.org/sites/default/files/resources/SAENK_Guides_WEB_ENG.pdf).

48. United Nations Security Council, Letter dated 17 February 2017 from the Panel of Experts established pursuant to resolution 1874 (2009) addressed to the President of the Security Council, S/2017/150, 27 February 2017.

49. The reply of China to the Panel stated that the companies “have moved away from their registry address”



If a due-diligence process were to stop after a basic search for commonalities between a prospective transfer entity and sanctioned entities, it may miss certain connections such as those described in the example above. A range of relevant indicators and red flags can help identify these connections:

- Common personnel or ownership;
- Shared assets and the same physical or registered address; and
- Linked past transactions or common suppliers, customers or shippers.

It is therefore important that industry actors involved in the sanctions due-diligence process (e.g., exporters of controlled commodities, logistics providers or financial institutions) look beyond official sanctions lists where possible. This may involve scrutiny of offline and non-public data sources and conducting verification exercises (e.g., by obtaining original transfer documentation or seeking contextual information from the suspect individuals or companies) to eliminate 'false positives' and confirm linkages to sanctioned entities. States can provide support and guidance to industry and other private sector actors engaged in the international arms trade to help counter diversion and ensure effective implementation of the ATT.

# 3. State–industry engagement to prevent diversion and ensure enforcement



### 3.1. State–industry engagement as reported in ATT initial reports

ATT initial reports are potentially valuable sources of information on State–industry engagement to prevent diversion and enhance enforcement in the context of the ATT. Article 13(1) of the ATT requires each State Party to submit an initial report to the ATT Secretariat within one year of the Treaty’s entry into force for that State Party on the measures it has undertaken to implement the ATT. These reports provide an opportunity for States Parties to share information on a wide range of national transfer control laws, policies and practices. Indeed, the recommended initial reporting template explicitly invites them to include information regarding industry outreach in the report.<sup>50</sup>

In practice, the insights that these reports provide are somewhat limited, particularly with respect to industry engagement. Just 88 of the 110 States Parties due to submit an initial report had done so as of 11 July 2023, including 21 that are available only to the Secretariat and other States Parties. Consequently, the 67 reports available for public analysis probably do not capture the full range of State–industry engagement in which all States Parties are engaged.<sup>51</sup> In addition, although the recommended reporting template invites States Parties to report on “outreach to private actors such as industry”, it does not place significant weight on the topic; the template references it once, and only as one of several types of “additional voluntary information” that States Parties may provide.<sup>52</sup>

Despite this, a review of ATT initial reports for mentions of State–industry engagement yields several useful insights. It helps to paint a picture of ways in which States Parties engage with relevant industry stakeholders. Based on a review of the 67 publicly available initial reports submitted as of 11 July 2023, at least 14 States Parties (21 per cent) engage with industry as part of their national arms transfer control system: Bulgaria, Canada, Estonia, France, Latvia, Luxembourg, Montenegro, the Netherlands, New Zealand, the Republic of Korea, Romania, South Africa, Sweden and Switzerland.

Several observations can be made regarding the types of States Parties that reported on State–industry engagement in their initial reports. First, they are predominantly European: 10 of the 14 States Parties are in Europe. Second, despite their lack of geographic diversity, they are fairly diverse in terms of their role in the global arms trade. The list includes States Parties that are home to some of the largest arms-producing and military services companies in the world (Canada, France, the Republic of Korea, and Sweden), as well as States Parties that do not produce significant quantities of conventional arms.<sup>53</sup> Similarly, while seven of these States Parties are among the world’s top 25 exporters or importers of major conventional weapons or SALW, the remaining seven are neither significant importers nor significant exporters.<sup>54</sup>

The initial reports also shed light on the types of industry engagement practices that States Parties utilize. Eight of the 14 States Parties identified above (Canada, Estonia, France, Netherlands, New Zealand, Romania, South Africa and Sweden) provided concrete examples of outreach activities in their initial reports, as discussed in more detail below. While the other six described engaging in “outreach” to industry, companies or organizations in their initial reports, they did not explain what this outreach looks like in practice.

50. ATT Working Group on Transparency and Reporting, “Co-Chairs’ Draft Report to CSP7”, ATT/CSP7.WGTR/2021/CHAIR/676/Conf.Rep, 22 July 2021, [https://www.thearmstradetreaty.org/hyper-images/file/ATT\\_WGTR\\_Co-Chairs\\_Draft\\_Report\\_to\\_CSP7\\_with\\_all\\_Annexes\\_EN/ATT\\_WGTR\\_Co-Chairs\\_Draft\\_Report\\_to\\_CSP7\\_with\\_all\\_Annexes\\_EN.pdf](https://www.thearmstradetreaty.org/hyper-images/file/ATT_WGTR_Co-Chairs_Draft_Report_to_CSP7_with_all_Annexes_EN/ATT_WGTR_Co-Chairs_Draft_Report_to_CSP7_with_all_Annexes_EN.pdf), p. 33.

51. ATT Secretariat, “Initial Reports”, accessed 11 July 2023. <https://thearmstradetreaty.org/initial-reports.html?templateId=209839>.

52. Arms Trade Treaty, Seventh Conference of States Parties, “ATT Working Group on Transparency and Reporting Co-Chairs’ Draft Report to CSP7”, p. 33.

53. Four of the 100 largest arms-producing and military service companies in the world (in terms of the value of their 2021 arms sales) are headquartered in Canada, France, the Republic of Korea and Sweden. L. Béraud-Sudreau et al., “The SIPRI Top 100 Arms-Producing and Military Services Companies, 2021”, SIPRI, December 2022, [https://sipri.org/sites/default/files/2022-12/fs\\_2212\\_top\\_100\\_2021.pdf](https://sipri.org/sites/default/files/2022-12/fs_2212_top_100_2021.pdf), pp. 9–11.

54. Canada, France, the Netherlands, the Republic of Korea, South Africa, Sweden and Switzerland were among the top 25 exporters or the top 25 importers of major conventional weapons or SALW, according to the most recently available data. The remaining seven were not. P.D. Wezeman et al., “Trends in International Arms Transfers, 2022”, SIPRI, March 2023, <https://sipri.org/publications/2023/sipri-fact-sheets/trends-international-arms-transfers-2022>, pp. 2, 6; and N. Florquin et al., “Trade Update 2020”, Small Arms Survey, December 2020, <https://www.smallarmssurvey.org/sites/default/files/resources/SAS-Trade-Update-2020.pdf>, pp. 21, 26.

### 3.2. Typologies of State–industry engagement

States Parties have taken several different approaches to engaging with the arms industry, as illustrated by the information provided in their initial reports.

First, a State Party may seek to ensure industry compliance by **undertaking audits, site visits or inspections** of a company's facilities or operations. At least five States Parties reported doing so in their initial reports (Estonia, France, the Netherlands, New Zealand and South Africa). The Netherlands, for example, explained that its licensing-enforcement team regularly audits relevant companies. Relatedly, to improve awareness of national control systems, Estonia described organizing site visits to companies producing strategic goods and New Zealand described visits to export firms. For its part, South Africa reported that its national legislation provides for the establishment of an Inspectorate and Audit Unit, which conducts inspections and investigations of registered entities to ensure compliance.

Second, a State Party may also organize or participate in **events to raise awareness** of relevant control measures among industry actors. At least four States Parties described doing so in their initial reports (Canada, Estonia, New Zealand and Romania). These States Parties reported utilizing various types of event as part of their engagement efforts, including “targeted outreach and training sessions” (Canada), “seminars” (Estonia), and “speaking engagements” (New Zealand), as well as presentations on export control laws and policies at annual military exhibitions (Romania).

**Consultations** are a third way that a State Party can engage with industry. At least three States Parties described undertaking such consultations in their initial reports (Estonia, New Zealand and Romania). In some cases, consultations are used to provide regular updates to industry actors on relevant legal and policy matters. For example, New Zealand reported that its Firearms Community Advisory Forum, which meets at least twice a year, “provides an opportunity for relevant government agencies (including the New Zealand Customs Service and Ministry of Foreign Affairs and Trade) to provide updates [to private actors] on issues of interest”, which has included “progress in Treaty negotiations and the introduction of a domestic brokering regime”. In other cases, consultations are carried out as part of a State's national transfer controls. This is the case in Romania, which reported that its Department of Export Controls (ANCEX) offers “free of charge, specialized consultancy to legal persons and individuals interested in carrying out export, import or other transfers of military goods . . . with respect to the national export policies”. It is also the case in Estonia, which reported that its “Strategic Goods Commission is authorized to seek information or consult with any public or private institution in making decisions on export, import or transit license applications”.

Fourth, a State Party can also develop **guidance documents** to educate and promote compliance among industry actors. At least two States Parties (Canada and the Netherlands) described developing such documents in their initial reports. The Export Controls Division of Global Affairs Canada, for example, maintains an “Export and Brokering Controls Handbook”. The document “is intended as a reference tool for exporters and brokers, and provides practical information about the administration of Canada's export controls”, including “how to obtain the necessary permits for the export, brokering, or transfer of controlled items and how to comply with the requirements of the Export and Import Permits Act and its related regulations”.<sup>55</sup> Notably, the document was updated following Canada's accession to the ATT to include a description of the Treaty and an explanation of how it is operationalized in Canadian law.

55. Government of Canada, Global Affairs Canada, Export Controls Division, “Export and brokering controls handbook”, amended August 2019, [https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/ebc\\_handbook-cce\\_manuel.aspx?lang=eng](https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/ebc_handbook-cce_manuel.aspx?lang=eng).

Finally, a State Party can encourage or require industry actors to implement an **internal compliance programme** or other internal safeguards. An ICP is an arrangement that a company or other entity can put in place to ensure compliance with its own internal policies as well as with relevant national controls, including arms transfer controls.<sup>56</sup> At least one State Party (Romania) explicitly referenced ICPs in its initial report. Under Romanian law, legal entities registered to carry out foreign trade in military goods are required to implement an ICP, and the government is empowered to audit implementation.<sup>57</sup> Another State Party (Sweden) noted in its initial report that “defence industry companies maintain internal safeguards/codes of conduct against corrupt practices”.

Although most of the publicly available initial reports contain no mention of State–industry engagement, anecdotal evidence, due diligence practice, and other national practices show that ATT States Parties do undertake regular engagement with industry stakeholders. While it is unclear how many undertake such outreach as part of their ATT-implementation efforts specifically, or for countering diversion in particular, State–industry engagement is mentioned explicitly in several ATT initial reports. State–industry engagement takes several forms, including:

- Conducting consultations and ad hoc events;
- Undertaking audits, site visits or inspections;
- Producing guidance documents; and
- Imposing ICP requirements. Moreover, national governments are not alone in engaging with industry actors (*see box 4*).

Enhancing understandings of the scope and types of State–industry engagement undertaken in the ATT context can help develop and implement good practice for industry.

56. S. Bauer et al., Challenges and Good Practices in the Implementation of the EU's Arms and Dual-User Export Controls, SIPRI, [https://www.sipri.org/sites/default/files/2017-07/1707\\_sipri\\_eu\\_duat\\_good\\_practices.pdf](https://www.sipri.org/sites/default/files/2017-07/1707_sipri_eu_duat_good_practices.pdf), p. vii.

57. Romanian Ministry of Foreign Affairs, “Order No. 849/2013 of the Minister of Foreign Affairs for the implementation of Government Ordinance no. 158/1999 on the control regime of exports, imports and other transfers of military goods”, [https://ancex.ro/wp-content/uploads/old\\_upload/Ordinul\\_849\\_din\\_21\\_iunie\\_2013\\_MOf\\_409\\_din\\_8\\_iulie\\_2013.pdf](https://ancex.ro/wp-content/uploads/old_upload/Ordinul_849_din_21_iunie_2013_MOf_409_din_8_iulie_2013.pdf), Article 16; and “Government’s Emergency Ordinance No. 158/1999 on the control regime of exports, imports and other operations with military goods”, [https://ancex.ro/wp-content/uploads/2023/03/OUG\\_158\\_republicata\\_2013\\_engleza\\_Cor.pdf](https://ancex.ro/wp-content/uploads/2023/03/OUG_158_republicata_2013_engleza_Cor.pdf), Article 24

## Box 4. Organizations and associations offering compliance training, resources and guidance

National governments are not alone in engaging with industry actors to raise awareness of and enhance compliance with arms transfer controls in the private sector. This work is also carried out by a range of non-profit organizations, industry associations and other non-governmental actors. Below is an illustrative, non-exhaustive list of these actors and descriptions of the training, resources and guidance they provide.

- The Maritime Security Council (MSC) is a non-profit organization representing an array of maritime industries around the globe, including ocean carriers, cruise lines, port facilities and terminals, logistics providers, importers, and exporters. One of the services available to MSC members is the Maritime Security Capacity Program, which is designed to provide “a structured security program that focuses on maintaining functional compliance with the applicable security standards and industry best practices”.<sup>58</sup>
- The International Code of Conduct Association (ICoCA) is an organization of private security companies, governments and civil society organizations working to ensure that private security service providers respect international human rights and humanitarian law.<sup>59</sup> The ICoCA, in partnership with the Small Arms Survey, has developed weapon and ammunition management indicators for use by private security companies. The indicators are based on authoritative publications and established good practice and can be used by private security
- Companies seeking to enhance their proficiency in weapon and ammunition management and ensuring regulatory compliance.<sup>60</sup>
- The International Union of Marine Insurance (IUMI) offers webinars, online courses, in-class instruction, information about national education initiatives and an online database of educational content – all aimed at educating members of the global marine insurance industry.<sup>61</sup> IUMI offers educational content on arms-related issues, including sanctions compliance, illicit shipping, risk assessment and management, cargo theft, and the transport of dangerous goods.
- The Dangerous Goods Advisory Council, a non-profit organization, provides education, assistance, and information to industry and public sector actors on the safe transportation of hazardous materials and dangerous goods, including through online courses and in-person trainings.<sup>62</sup>
- The Maritime Anti-Corruption Network (MACN) is a business network working to eliminate corruption in the maritime industry by “raising awareness of the challenges faced; implementing the MACN Anti-Corruption Principles and co-developing and sharing best practices; collaborating with governments, non-governmental organizations, and civil society to identify and mitigate the root causes of corruption; and creating a culture of integrity within the maritime community”.<sup>63</sup>
- Several companies offer specialized training, consulting or certification in strategic trade control compliance for industry actors. Examples include the Export Compliance Training Institute,<sup>64</sup> Export Compliance Solutions & Consulting,<sup>65</sup> and Compliance and Capacity Skills International.<sup>66</sup>
- On a national level, industry associations and local and national chambers of commerce often provide guidance and resources to assist companies in understanding and navigating national laws and regulations, including with respect to strategic trade controls.

58. Maritime Security Council, “Services”, <https://www.maritimesecurity.org/services>.

59. International Code of Conduct Association, “About Us”, <https://icoca.ch/about/>.

60. International Code of Conduct Association, “Indicators on Management of Weapons and Ammunition Available”, 30 March 2022, <https://icoca.ch/2022/03/30/indicators-on-management-of-weapons-and-ammunition-available/>.

61. International Union of Marine Insurance, “IUMI education programme”, <https://iumi.com/education/iumi-education-programme>.

62. Dangerous Goods Advisory Council, “About”, <https://dgac.org/page/about>.

63. Maritime Anti-Corruption Network, “MACN Overview and History”, <https://macn.dk/overview-and-history/>.

64. Export Compliance Training Institute, “About the Export Compliance Training Institute, Inc. (ECTI)”, <https://www.learnexportcompliance.com/about-ecti/>.

65. Export Compliance Solutions & Consulting, “Export Compliance Solutions & Consulting (ECS)”, <https://exportcompliancesolutions.com/about/about.php>.

66. Compliance & Capacity Skills International, LLC, <https://ccsi.global/>.

# 4. Options and opportunities at the multilateral level



In addition to State–industry engagement measures at the national level, other multilateral and regional instruments also offer lessons and innovative approaches for engaging industry that can be further considered in the ATT framework. This chapter provides examples of such measures in support of United Nations Security Council resolution 1540,<sup>67</sup> the United Nations Guiding Principles on Business and Human Rights,<sup>68</sup> and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. While these instruments differ from the ATT in various ways, including in their objectives, intent and scope, they offer valuable lessons on ways to engage industry and private sector actors to support the effective implementation of multilateral arms control instruments, and could thus be relevant points of reference for the ATT.

#### 4.1. Lessons and innovative approaches from other international and regional frameworks

##### Guidance

One common approach for the multilateral instruments mentioned above is guidance to support implementation, which can be provided to all stakeholders, including industry actors. This guidance takes different forms, including reference documents and lists, information notes, best practice documents, frequently asked questions (FAQs), and lessons learned documents. Such guidance helps industry and other private sector actors to know the different legislation and rules applicable in different national jurisdictions and highlights red flags to look for while conducting business. They also provide them with some form of direction on their possible contributions, types of opportunities, and predictability in their engagement with relevant States, including in diversion prevention.

In the case of **Security Council resolution 1540**, the 1540 Matrices published on the website of the 1540 Committee of the United Nations Security Council are a good source of information on national implementation measures, which can guide industry when conducting business with respective States or within their national jurisdictions. The Committee has also published a list of experiences, lessons learned<sup>69</sup> and effective practices shared by the Committee itself and Member States (including reports of peer reviews conducted with other States), as well as submissions from international, regional and subregional organizations.

The **Wassenaar Arrangement's** “List of Advisory Questions for Industry” provides a list of questions that industry could ask about the items to be transferred, the end user and end use, the shipment route, and the finance and contract conditions in order to determine red flags and ascertain the need to contact national export control authorities in case of suspicion. The Wassenaar Arrangement's “Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies” also provides guidance to industry in the form of a list of elements that industry could consider when establishing ICPs to ensure responsible business conduct.<sup>70</sup>

67. United Nations Security Council resolution 1540, 24 April 2004, <http://unscr.com/en/resolutions/doc/1540>.

68. 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](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>.

69. The sharing of lessons learned by the Committee is mandated in operative paragraph 10 of United Nations Security Council resolution 1977, 20 April 2011. For examples see <https://www.un.org/en/sc/1540/national-implementation/experiences-shared-lessons-learned-and-effective-practices.shtml>.

70. For more information on the documents see “List of Advisory Questions for Industry”, 2018, <https://www.wassenaar.org/app/uploads/2019/consolidated/Advisory-Questions-for-Industry-Amended.pdf>; and “Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies”, 2011, <https://www.wassenaar.org/app/uploads/2019/consolidated/2-Internal-Compliance-Programmes.pdf>.



Another example of guidance provided for industry is the “Information Note on Responsible Business Conduct in the Arms sector” developed by the [United Nations Working Group on Business and Human Rights](#). The note provides a list of recommendations to the arms industry on ways to apply the United Nations Guiding Principles in the conduct of their business, to ensure that human rights are protected.<sup>71</sup>

## Outreach

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Outreach events targeted at industry and other private sector actors are another common practice for several multilateral frameworks. These can include workshops, seminars, conferences, and country- or region-specific meetings. These outreach activities provide a platform for key stakeholders – including secretariats, committees or implementation support units (ISUs), and States Parties – to share information on the latest guidance to national industrial sectors, as well as to seek their views on their challenges, lessons learned and effective ways of enhancing their contribution to the implementation of the instruments. They also provide a platform for States to raise industry awareness on the latest national export legislations and regulations, penalties for violations, as well as ICP requirements to support industry compliance.

In the context of [Security Council resolution 1540](#), for example, the 1540 Committee in cooperation with States and other stakeholders, has organized, participated in, and contributed to several outreach events to support industry engagement. Between 2016 and 2022, Committee experts attended 249 events, of which 17 targeted industry and professional associations.<sup>72</sup> The Weisbaden Process, a unique model of industry outreach in the implementation of resolution 1540, is worthy of particular mention. Under this model, a series of annual workshops are organized on the global, regional and national levels to provide a platform for an exchange between industry actors and national export control officials on their latest arms export policies and to jointly deliberate on effective approaches to enhance the implementation of the resolution.<sup>73</sup>

Similarly, the Secretariat of the Wassenaar Arrangement also organises or participates in outreach activities that feature industry representatives or topics related to industry’s contributions to the framework. For example, in June 2023, the Secretariat hosted an “Enhanced Technical Briefing for WA Outreach Partners”, which featured a presentation on interagency cooperation and the ways in which governments can effectively work with industry and encourage exporters’ adoption of effective ICPs.<sup>74</sup>

71. 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>.

72. 1540 Committee, “2021–2022 Comprehensive Review Background Paper for the Open Consultations of the 1540 Committee 31 May to 2 June 2022, New York”, [https://www.un.org/en/sc/1540/documents/Background Document-1540 Committee Open Consultations CR 2021-22.pdf](https://www.un.org/en/sc/1540/documents/Background%20Document-1540%20Committee%20Open%20Consultations%20CR%202021-22.pdf), p. 8.

73. The Weisbaden Process or Conference Model is an initiative of the Government of Germany to enhance partnership with industry in implementing Security Council resolution 1540 (2004). For further information on the initiative and examples of conferences organised see <https://www.un.org/en/sc/1540/documents/Germany2022.pdf>; and <https://www.un.org/en/sc/1540/documents/Info-Note-Wiesbaden-1540-Conf-2023-2.pdf>.

74. <https://www.wassenaar.org/outreach/>

## Working groups and committees

Another innovative approach that can be learned from efforts to support implementation of **Security Council resolution 1540** is the establishment by the 1540 Committee of the Working Group on Transparency and Media Outreach. It oversees the organization of a wide range of outreach activities, including those targeted at industry actors, and ensures the inclusion of industry perspectives on the implementation of the resolution.<sup>75</sup>

The approach of establishing dedicated working groups or committees for industry outreach and engagement ensures that the contributions of industry associations and representatives are included in the planning and preparatory processes for relevant instrument meetings and activities. This includes seeking their inputs in the development of conference agendas and programmes of work, as well as their substantive presentations on thematic areas and relevant topics during conferences to ensure a consistent, sustained and dynamic contribution from and engagement within industry. Further, this allows for the adaption of meeting procedures and formats to suit and encourage the effective participation of representatives of industry and the private sector.

## Regional focal points

Lessons can also be learned from how other multilateral instruments engage with industry at the regional level. This includes via the appointment and work of regional focal points, as well as via cooperation with relevant organizations, instruments and groups of States at the regional level.

There are regional focal points appointed to support implementation of Security Council resolution 1540, with regional workshops organized with industry actors.<sup>76</sup> For example, UNODA organized regional workshops featuring industry representatives in the Pacific Alliance in June 2017, Southern Africa in May 2019 and the Asia-Pacific in February 2023 to consider industry perspectives from these regions in the implementation of the resolution.<sup>77</sup>

75. For information on the 1540 Committee's Working Groups see <https://www.un.org/en/sc/1540/about-1540-committee/working-groups.shtml>.

76. The 2021–2022 Comprehensive Review Background Paper for the Open Consultations of the 1540 Committee indicated the appointment of regional focal persons in Asia and Africa during the period of review. For further information on the work of the regional focal persons see 1540 Committee, "2021–2022 Comprehensive Review Background Paper for the Open Consultations of the 1540 Committee 31 May to 2 June 2022, New York", <https://www.un.org/en/sc/1540/documents/Background Document-1540 Committee Open Consultations CR 2021-22.pdf>.

77. For more information on the 29th Asian Export Control Seminar organized in cooperation with UNODA, see <https://www.un.org/en/sc/1540/documents/Info-Note-CIS-TEC-29-Asian-ExpCtrl-Seminar-Japan-2023-3.pdf>. For information on the government–industry partnership in the implementation of Resolution 1540 (2004) workshop organized in Southern Africa, see <https://www.un.org/en/sc/1540/documents/Info Note SADC 1540 Regional WS and 1540 Industry Mtg Zambia 2019-23&24.pdf>. For information on the Regional Industry Outreach Conference for the Pacific Alliance States and Brazil, see <https://www.un.org/en/sc/1540/documents/Info Note Mexico 1540 Industry Conf 2017-24.pdf>.

## 4.2. Opportunities for further exploration in the ATT framework

Drawing lessons from other multilateral and regional instruments and identifying innovative approaches to engaging industry offers a range of useful measures that can be considered in the ATT framework. Relevant measures include the provision of guidance to industry actors and the organization of targeted industry outreach events, as well as the establishment of dedicated industry engagement working groups. These measures could be further explored in the ATT framework to support efforts towards re-engaging industry.

First, the provision of further guidance to industry could be considered, including through raising awareness of existing guidance and reference documents in the ATT framework that might be useful for industry actors. Such documents include the “List of Possible Measures to Address and Prevent Diversion” drafted by WGETI.<sup>78</sup> This contains measures that might be useful for consideration by industry actors, including during risk assessment. This effort can be complemented by the sharing of effective measures, regulations and policies that, in different national contexts, facilitate industry’s compliance with national regulations in support of the effective implementation of the ATT. Such guidance could be shared by ATT States Parties and stakeholders during meetings of the ATT working groups and preparatory committee, at CSPs, and at industry outreach events. Information and material could also be provided directly to the ATT Secretariat for sharing, including via its website and other industry associations platforms such as newsletters.

Second, the organization of more targeted industry outreach events at the national, regional and multilateral levels could be further explored in the ATT framework. Such outreach activities could provide a platform for exchange among industry representatives and other stakeholders on the latest developments in national export control policies and the ATT framework. They could also provide opportunities to raise awareness on the most recently developed guidance and resources. The outreach events could be included in the workplan of the ATT Working Group on Treaty Universalization (WGTU) or organized by the ATT Secretariat in cooperation with the CSP President as part of efforts to expand membership of the ATT. As part of the planning for changes to arms transfer control legislation and regulations to implement the ATT, national governments could also organize national industry outreach events. These would provide an opportunity for industry actors to learn about upcoming legislative changes that might affect their day-to-day business and allow them to adjust their internal policies and ICPs where necessary. ATT stakeholders could consider exploring applications to the VTF to secure funds to organize such industry outreach activities.

Third, another opportunity that could be explored further in the ATT framework is the development of ATT training, awareness-raising and certification programmes specifically for industry actors. Such programmes could be designed as in-person training modules or as online self-paced and train-the-trainer modules. They could focus on Treaty provisions that are relevant for industry actors in their day-to-day activities to support compliance with national arms trade legislation and ATT implementation. The ATT Secretariat and other relevant entities that develop such training programmes could consider establishing partnerships with universities or other training and academic institutions so that the training can be incorporated into their academic curriculums. It could also be considered as part of required or recommended certifications for membership in industry associations and sectors. Again, exploring the feasibility of using VTF funds for such initiatives could be useful in the ATT framework.

78. ATT Working Group on Effective Treaty Implementation, “Chair’s draft report to 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](https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP4_WGETI_Draft_Report_EN1/ATT_CSP4_WGETI_Draft_Report_EN.pdf), annex D, pp. 18–24

Fourth, the format of ATT meetings could be adapted to facilitate the effective participation and constructive engagement of industry representatives and associations. In addition to pre-prepared statements, ATT stakeholders could consider ways of making plenary sessions and working group meeting discussions more dynamic, to facilitate effective contributions from industry. Furthermore, ATT meeting agendas and programme of work could be enhanced to include more sessions dedicated to the discussion of issues pertinent to enhancing industry's role in supporting effective treaty implementation.

Finally, ATT stakeholders can also consider exploring and strengthening cooperation with other relevant international and regional bodies involved in the safe and secure transfer of goods, including conventional arms and related items. Such cooperation could provide a platform for dialogue and exchange on ways of integrating ATT provisions into existing relevant international and regional instruments and standards in order to facilitate industry's compliance with and support for effective Treaty implementation. In addition, these organizations may have guidance that can support industry actors in preventing and addressing diversion. 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) are two examples of relevant guidance provided by such regional and international entities that can be used by companies to conduct risk assessments and corporate due diligence. Another example is the International Ship and Port Facility Security (ISPS) Code, managed by the International Maritime Organization (IMO), which requires all actors to develop sources of intelligence to conduct meaningful assessments of their ports and vessels and the links in their supply chain, as well as to consider other relevant regulations for the transfer of dangerous goods, which could also support detecting and preventing diversion.

Overall, successful identification of opportunities for re-engaging industry in the ATT framework, including in diversion-prevention efforts, would require cooperation and collaboration among all ATT stakeholders including States Parties, Presidents of CSPs, the ATT Secretariat, civil society and non-governmental organizations, industry associations, regional organizations, academia and others.

The image shows three dark, weathered metal barrels of World War 2 field guns, laid out horizontally on a light-colored wooden plank surface. The barrels are arranged from left to right, with the middle one being the most prominent and in focus. The lighting is dramatic, highlighting the textures of the metal and wood.

# 5. Conclusion

The diversion of conventional arms and related items is a complex phenomenon that poses a significant threat to global peace and security. While ATT States Parties have an obligation to detect, prevent and eradicate diversion, including of arms already transferred, industry and private sector actors involved in arms trade activities also play a significant role in supporting States in the effective implementation of the ATT, including in counter-diversion efforts.

The ATT and other international instruments relevant to the international arms trade lack a definition, or even examples, of the types and scope of industry actors engaged in international conventional arms transfers. This absence complicates the understanding of the important role that industry and other private sector actors can play in counter-diversion efforts. In this regard, the non-exhaustive illustration of the key industry actors engaged in the different stages of the arms transfer chain provided in this Issue Brief is intended as a starting point for further unpacking and addressing the issue.

Actions taken by industry actors, especially their efforts to assess and identify risks in their transfer dealings, can have a significant impact in ensuring the security of arms transfers and preventing diversion of arms transfers. While engaging in legitimate arms trade activities in their day-to-day business, industry and other private sector actors may wittingly or unwittingly facilitate or commit acts of diversion. They may, for example, overlook or ignore critical risk factors, or fail to implement necessary transfer safeguards and counter-diversion measures. Risk factors and irregularities in commercial supply chains, referred to here as “red flags”, may relate to the entity involved in the transfer, the type of transfer, the modes of transportation and logistics used as well as the proposed end user. Although it might be difficult to deny a transfer based on the identification of a single red flag, a series of red flags along with a consideration of the risks that they present could necessitate the implementation of effective due diligence and practical measures by industry and private actors to prevent and detect diversion. Useful measures that could be implemented by industry to eliminate false positives and confirm linkages to sanctioned entities include the consultation of official sanctions lists; the scrutiny of offline and non-public data sources; and conducting verification exercises (e.g., by obtaining original transfer documentation or seeking contextual information from the suspect individuals or companies).

In addition to the practical measures that industry and private sector actors can take to prevent and detect diversion discussed in chapter 2, ATT States Parties have a variety of tools at their disposal for engaging with industry actors to raise awareness of and promote compliance with national transfer controls and enhance ATT implementation efforts. Such tools include audits, site visits or inspections, outreach events, consultations, guidance documents and requesting industry actors to establish ICPs as part of the requirements for engaging in arms trading activities. Apart from national governments, it is possible for non-profit organizations, industry associations and other non-governmental actors to contribute significantly to raising awareness of and enhancing compliance with arms transfer controls in the private sector through the provision of training, resources and guidance to industry and private actors.

Furthermore, the ATT itself provides a cooperative framework to explore opportunities and options at the multilateral level for engaging industry actors. Awareness and knowledge of existing documents that might be useful for industry actors can be enhanced and further guidance developed by States Parties, ATT Working Groups and other stakeholders for industry and private actors to support their efforts in detecting and preventing diversion.

To promote knowledge and strengthen shared understanding on the issue, during Treaty meetings ATT stakeholders could share lessons learned on effective measures and different national approaches for engaging with industry in diversion-prevention efforts. There could also be utility in organizing more targeted industry outreach events as well as developing ATT training and certification programmes specifically for industry actors. Such activities could be considered as part of the WGTU's workplan, while the VTF represents a potential source of funding to organize and increase such industry engagement efforts at the national level. In addition to these is the range of lessons and innovative approaches identified from other multilateral and regional instruments for facilitating industry engagement to support Treaty implementation that are presented in chapter 4.

By examining the important role that industry and private sector actors play in international conventional arms transfers, as well as identifying practical measures that they can take in preventing and detecting diversion, compliance with national arms control regulations would be enhanced. This, in turn, will contribute to achievement of the object and purpose of the ATT.

THE ARMS TRADE TREATY:

# THE ROLE OF INDUSTRY AND OTHER PRIVATE SECTOR ACTORS IN EFFORTS TO COUNTER THE DIVERSION OF CONVENTIONAL ARMS

This Issue Brief is intended to raise awareness and increase the knowledge of States Parties and other relevant stakeholders on effective ways of engaging industry and other private sector actors to prevent and address the diversion of conventional arms. It presents a preliminary non-exhaustive mapping of industry and other private sector actors engaged in the various stages of the arms transfer chain and highlights some “red flags” and risk indicators that they can consider while conducting their day-to-day businesses to support States Parties in the detection and prevention of diversion. It also provides information on existing practices and opportunities for enhancing the engagement of industry and other private sectors actors within the ATT framework. The paper is the fourth in a series of issue briefs released from a research Consortium established by UNIDIR, Conflict Armament Research and Stimson Center in 2019. The research aims at increasing knowledge and strengthening shared understanding on the Arms Trade Treaty (ATT) to support its effective implementation.

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