



The ATT Baseline Assessment Project

Initial Findings and Current State Practice

October 2014



Introduction

The Arms Trade Treaty (ATT) is the first global treaty to establish legally binding standards regulating the international arms trade. The ATT, when effectively implemented, will increase global transparency and promote greater accountability for global arms transfers. The ATT was adopted by the United Nations General Assembly in April 2013. On 25 September 2014, the treaty reached the 50 ratifications required to initiate entry into force, which will occur on 24 December 2014. States Parties need to have the necessary infrastructure in place to ensure that they are able to meet the treaty's obligations upon entry into force. To prepare, States must assess their current arms transfer control systems and identify capacity and resource needs to ensure that their systems are capable of fulfilling treaty obligations. Many States, however, are uncertain about whether their existing arms transfer control systems fulfill ATT requirements. These States, therefore, seek guidance on what resources they may need to ensure effective implementation. The ATT-Baseline Assessment Project (ATT-BAP) has been working with States to enable them to identify this type of information and provide clear guidance on the treaty's provisions.

photo: UK Ministry of Defence/defenceImages via Flickr



The Arms Trade Treaty

- The ATT regulates the cross-border trade in conventional arms, ranging from fighter aircraft and warships to small arms and light weapons.
- The ATT establishes common international standards for the global arms trade that States must incorporate into their national transfer control systems.
- The ATT bans arms shipments that violate UN arms embargoes or that could be used to commit genocide, war crimes, attacks on civilians, and other crimes against humanity.
- The ATT outlines specific criteria for States to apply when making arms transfer decisions.
- The ATT requires consideration of the risk that arms being transferred may be used to facilitate gender-based violence or violence against women and children when making arms transfer decisions.
- The ATT currently has 121 signatories and 53 ratifications.
- The ATT will enter into force on 24 December 2014.



Introducing ATT-BAP

The ATT consists of a list of obligations for establishing and maintaining an effective and transparent transfer control system to ensure responsible arms transfers, but it does not provide detailed instructions for how States Parties should pursue such efforts. ATT-BAP was designed to contribute towards efforts undertaken by States, international and regional organizations, and civil society to address this gap. In particular ATT-BAP is intended to:

- Give clear guidance on the obligations contained within the ATT;
- Increase understanding of measures that can be taken to ensure that States are in a position to ratify the ATT and ensure effective implementation;
- Contribute towards targeted and coordinated international assistance by providing information to help avoid duplication and ensure that scarce resources are utilized most effectively;
- Deliver a baseline assessment of States' abilities to effectively implement the ATT; and
- Provide indicators for future measurement of the treaty's impact.



To achieve these goals, ATT-BAP has developed three key tools that provide guidance on ratification, implementation, assistance, and future monitoring:

Ratification Checklist: the ratification checklist enables States to internally assess 12 areas relating to ATT implementation and facilitates domestic identification of areas that require further development.

Baseline Assessment Survey: completed surveys provide a baseline assessment of the 12 areas relating to ATT implementation identified in the ratification checklist; identify areas for international assistance and capacity-building; and provide information to States, international, regional, and civil society organizations to monitor ATT implementation over time.

Project Portal: the ATT-Baseline Assessment Project Portal (ATT-BAPP) presents information from completed surveys in a user-friendly format for analyzing current State practices and requisite needs for effective treaty implementation. ATT-BAPP is an online platform, www.armstrade.info, that can be used for:

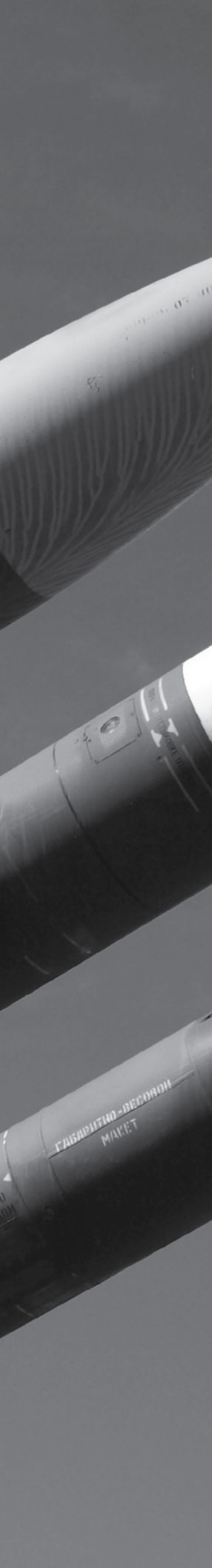
- Completing national surveys;
- Reviewing good practices and measures utilized by States Parties to implement the ATT;
- Identifying areas for international assistance and capacity-building; and
- Drawing conclusions on general trends in treaty implementation.

In the short term, ATT-BAP will assist States in identifying critical gaps and resources needed for effective treaty implementation. In the medium term, ATT-BAP will enable the development of implementation assistance projects that are targeted and relevant to the needs of individual States. In the long term, ATT-BAP will provide a tool for charting the progress of ATT implementation and determining the efficacy of the treaty over time.

This report presents baseline data using information provided by 44 States that completed and returned their ATT-BAP Surveys by 2 October 2014. It draws solely upon the self-assessments conducted by these States for ATT-BAP. The report provides quantitative data and highlights several examples of State practice with regard to fulfilling ATT obligations.

A Summary of Key ATT Obligations

- Establishing and maintaining an effective national control system for export, import, transit and transshipment, and brokering activities (defined as “transfers”) related to at a minimum eight categories of conventional arms, as well as exports of related ammunition and of parts and components that are used for assembling conventional arms covered by the treaty (Articles 3, 4, and 5.2)
- Establishing and maintaining a national control list (Article 5.3)
- Designating competent national authorities responsible for maintaining a national control system (Article 5.5)
- Designating at least one national contact point responsible for exchanging information related to the implementation of the ATT (Article 5.6)
- Prohibiting transfers of conventional arms, ammunition, or parts and components for the eight categories of conventional arms covered by the ATT that would violate obligations under Chapter VII of the UN Charter or international agreements relating to the transfer or illicit trafficking of conventional arms, or where there is knowledge that the items will be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, or other war crimes (Article 6)
- Reviewing applications for exports of the eight categories of conventional arms covered by the treaty and conducting a risk assessment to consider whether the exported arms could have “negative consequences” for peace, security, and human rights; denying an arms export if the assessment determines that there is an overriding risk that the exported arms will be used to commit or facilitate a serious violation of international humanitarian or human rights law or offenses under international conventions or protocols relating to terrorism or international organized crime; and taking into account the risk of the exported arms being used to commit or facilitate serious acts of gender-based violence or violence against women and children (Article 7)

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- Taking measures to regulate conventional arms imports (Article 8)
 - Providing information to assist the exporting State Party in conducting its national export assessment, including by providing documentation on the end use, or end user when importing conventional arms (Article 8)
 - Taking measures, where necessary and feasible, to regulate the transit and transshipment of conventional arms (Article 9)
 - Taking measures to regulate brokering taking place under its jurisdiction (Article 10)
 - Taking measures, including risk assessments, mitigation measures, cooperation, and information sharing, to prevent the diversion of conventional arms to the illicit market or for unauthorized end use and end users (Article 11)
 - Maintaining national records for each export authorization or delivery of conventional arms for at least 10 years (Article 12)
 - Providing an initial (and then updated as necessary) report on the measures taken to implement the ATT, including national laws, control lists, regulations, and administrative measures (Article 13)
 - Providing annual reports to the secretariat on export and import authorizations or deliveries of conventional arms to be distributed to States Parties (Article 13)
 - Taking appropriate measures to enforce national laws and regulations to implement the ATT (Article 14)
 - Cooperating with other States Parties in order to implement the ATT effectively (Article 15)

Adapted from Holtom, Paul, and Mark Bromley. "Next Steps for the Arms Trade Treaty: Securing Early Entry Into Force." Arms Control Today 43, no. 5 (June 2013). Accessed 29 September, 2014. https://www.armscontrol.org/act/2013_06/Next-Steps-for-the-Arms-Trade-Treaty_Securing-Early-Entry-Into-Force.



The ATT-Baseline Assessment Survey: The Source for Baseline Assessment Data

The ATT-BAP's Ratification Checklist (available in English) and Baseline Assessment Survey (available in Arabic, English, French, and Spanish) were developed with guidance and input from UN Member States and other key stakeholders, such as the United Nations, regional organizations, and civil society to support States' preparations for effective implementation of the treaty.

The ATT-Baseline Assessment Survey was created for States to assess 12 areas relating to ATT implementation, and an additional area for providing information on signature and ratification of the treaty. By completing the survey and checklist, each State will be able to clearly identify:

- What a State already does to implement the treaty;
- What a State needs to do to implement the treaty; and
- What type of assistance a State requires, or may be able to provide, to effectively implement the treaty.

Completed surveys, therefore, identify areas for international assistance and capacity building as well as provide the basis for future ATT monitoring.

photo: Sgt. Melissa Wenger via Defense.gov



Establishing a Baseline for Assessing ATT implementation

As States complete their national self-assessments and submit their surveys to ATT-BAP, the information is entered into an online searchable database accessed via ATT-BAPP. This database collates the submitted information from completed surveys – including those kept private – and presents it as individual country profiles. Users can then conduct searches of specific survey topic areas to better understand how States are fulfilling their treaty obligations. Moreover, the data can be used to identify successful implementation practices being employed by States as well as to help countries in need of implementation assistance match up with countries in a position to provide such assistance. Using this data, States can ensure that they are effectively implementing the ATT and that scarce resources are utilized most efficiently.

What ATT-BAP Has Found Thus Far

Data presented in this report is extracted and aggregated from States' responses to a sample of questions from the ATT-BAP Survey. The percentages are divided between "yes" responses (dark gray) and "no," "don't know," or blank responses (yellow), and are rounded to the nearest percentage. As of 2 October 2014, ATT-BAP received completed surveys from 44 States. Thirty respondents have already ratified the ATT.

Survey Responders as of 2 October 2014

AFRICA

Botswana, *Burkina Faso, Democratic Republic of the Congo, *Mali, South Africa

ASIA

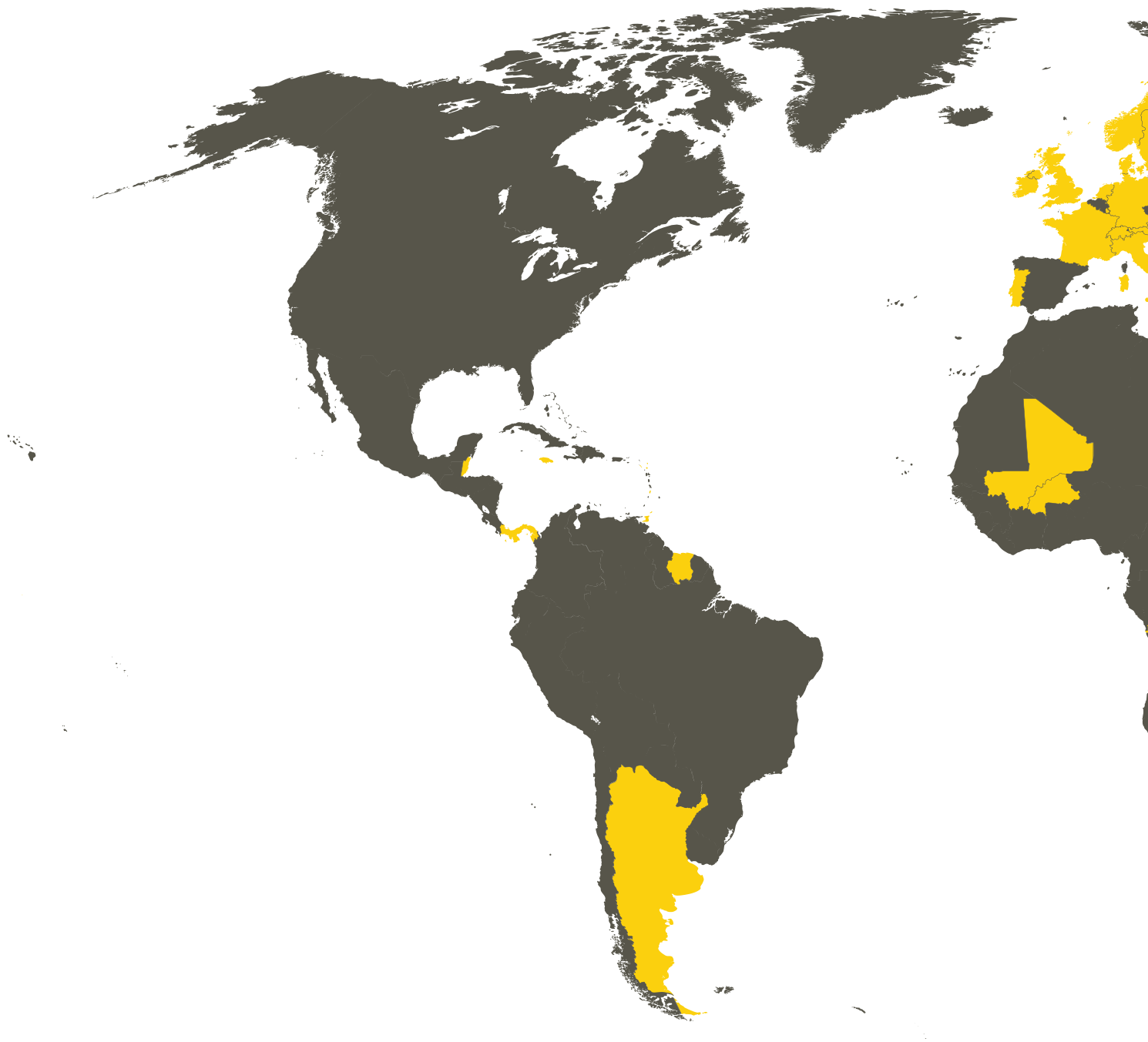
*Japan, Philippines

AMERICAS

*Antigua and Barbuda, *Argentina, Belize, *Grenada, *Jamaica, *Panama, *St. Lucia, St. Kitts and Nevis, Suriname, *Trinidad and Tobago

OCEANIA

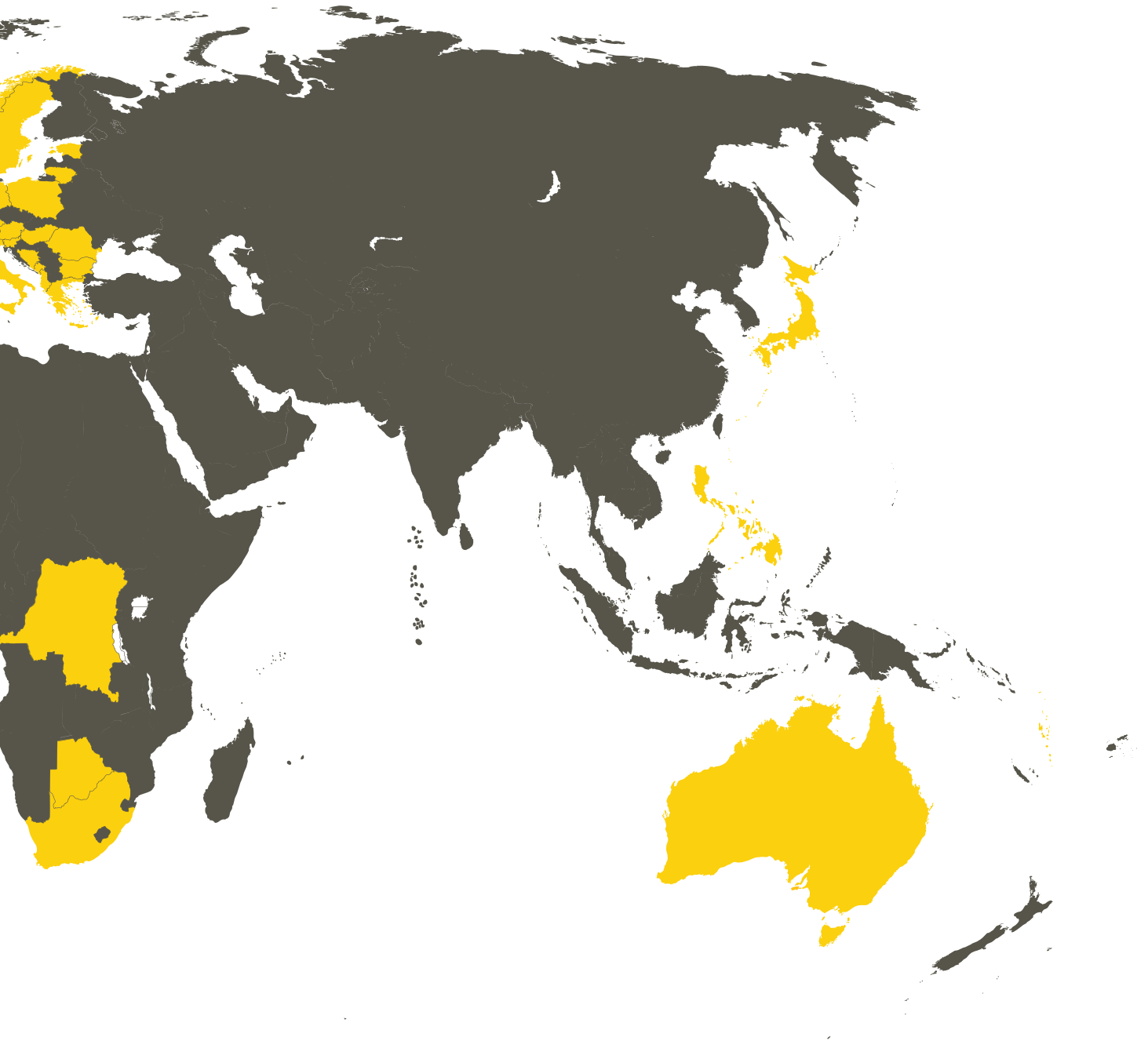
*Australia, Kiribati, Vanuatu



EUROPE

*Albania, *Austria, *Bosnia and Herzegovina, *Bulgaria, *Denmark, *Estonia, *France, *Germany, Greece, *Hungary, *Ireland, *Italy, Lithuania, *Luxembourg, *Montenegro, Netherlands, *Norway, Poland, *Portugal, *Romania, *Slovenia, *Sweden, Switzerland, *United Kingdom

**States that have ratified the ATT*

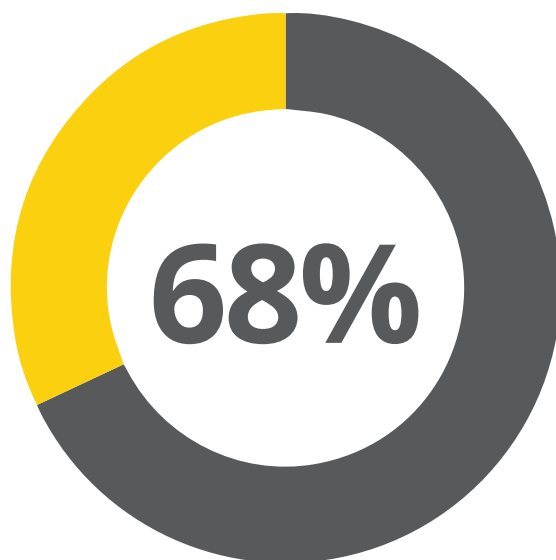




National Control Lists

Article 5.2 obliges each State Party to establish and maintain a national control list, with Article 5.3 encouraging States Parties to “apply the provisions of this Treaty to the broadest range of conventional arms” with national definitions of conventional arms consistent, at a minimum, with the descriptions used in UN instruments. Completed ATT-BAP Surveys reveal that around three-quarters of respondents have national control lists that cover small arms and light weapons (SALW), ammunition/munitions and parts and components, while just over two-thirds of respondents include the first seven categories of conventional arms included in Article 2.1 and provide definitions of the designated controlled items.

Article 5.4 obliges all States Parties to provide their national control list to the Secretariat and States Parties, pursuant to national laws. It also encourages States Parties to make these documents publicly available. Thirty States informed ATT-BAP that their national controls lists are publicly available, with 27 States providing information or a web-link to the national control list.



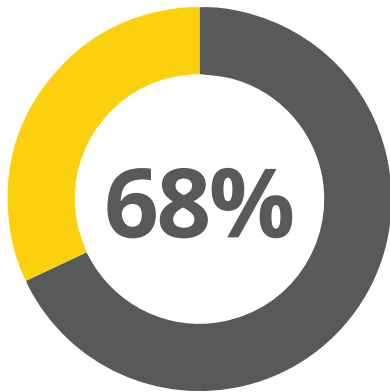
% OF COUNTRIES
THAT REPLIED YES

**Are the controlled
items defined?
(Article 5.3)**

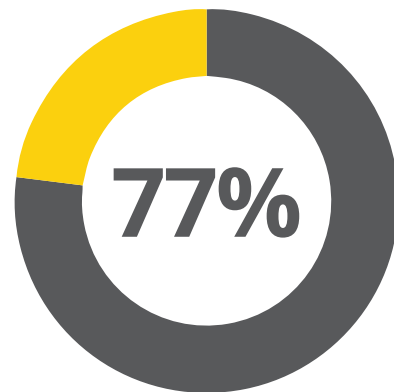
photo: Cpl Ross Fernie RLC, Defence Imagery, via Wikimedia Commons

% OF COUNTRIES THAT REPLIED YES

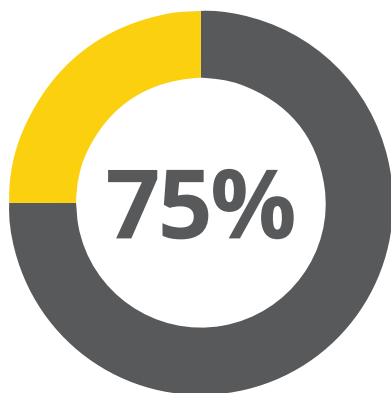
Does your national control list cover the following?



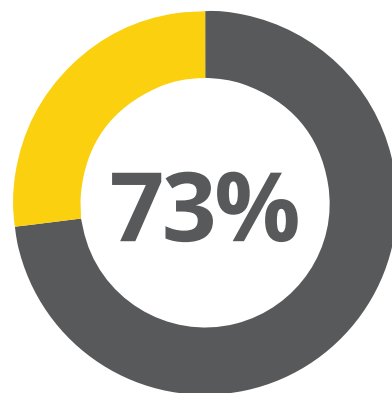
7 CATEGORIES OF
CONVENTIONAL ARMS



SMALL ARMS AND
LIGHT WEAPONS



AMMUNITION/
MUNITIONS



PARTS AND
COMPONENTS

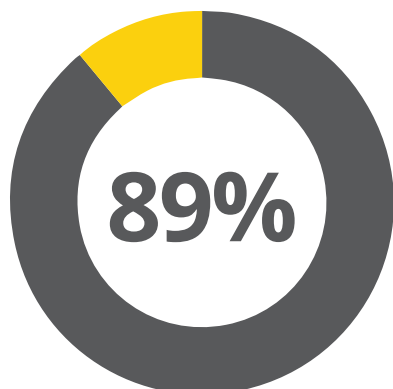


Exports and Imports

Thirty-nine States have established arms import and export regulations within their national legislation. Thirty-three States noted that their governments take measures to ensure that all export authorizations are detailed and issued prior to export as part of this regulation. A majority of these respondents identified the issuing of export licenses as one such measure, with many States noting that unlicensed exports of military goods constitute a criminal offense. Additionally, 36 survey respondents identified government agencies involved in the authorization process – such as Ministries of Economic Affairs, Interior, Defense, and Foreign Affairs. Twenty-eight States also indicated circumstances in which there is a license requirement for arms imports.

% OF COUNTRIES THAT REPLIED YES

Is the control of arms exports established in national legislation? (Article 5.5)



% OF COUNTRIES THAT REPLIED YES

Is the regulation of arms imports established in national legislation? (Article 8.2)

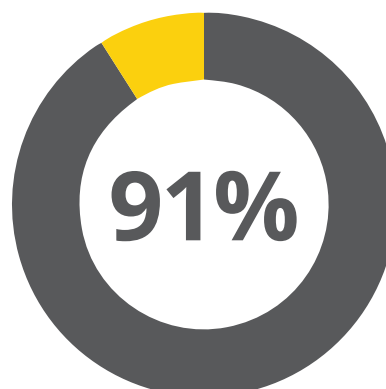
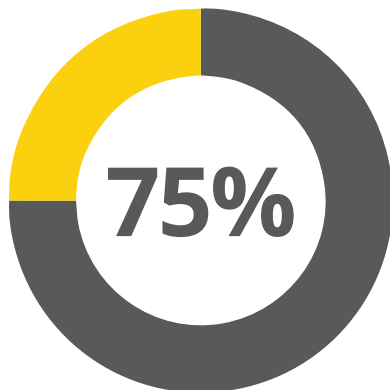


photo: UK Ministry of Defence/defenseimages via Flickr

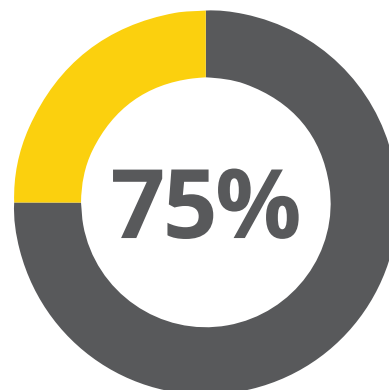


Thirty-three States have measures in place to ensure that appropriate and relevant information is available to exporting States as part of their export assessment process. Several of these States reported that they provide import certificates and end-user certificates/assurances if requested.

% OF COUNTRIES THAT REPLIED YES
Does your State take measures to ensure that all authorizations are detailed and issued prior to export? (Article 7.5)



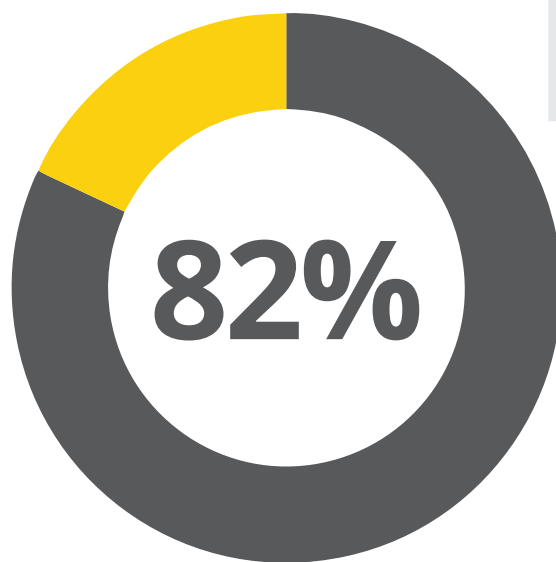
% OF COUNTRIES THAT REPLIED YES
Does your State have measures in place to ensure that appropriate and relevant information is available to exporting States as part of their export assessment process? (Articles 8.1 and 11.3)





Transit and Transshipment

Thirty-six States declared that they have a national system for controlling transit and/or transshipment by land, while 32 control transit and/or transshipment by sea, and 28 control transit and/or transshipment by air. Thirty-two States provided the definition of transit and/or transshipment contained within their national legislation, or provided details on where such information can be found within their national laws and regulations.



% OF COUNTRIES THAT REPLIED YES

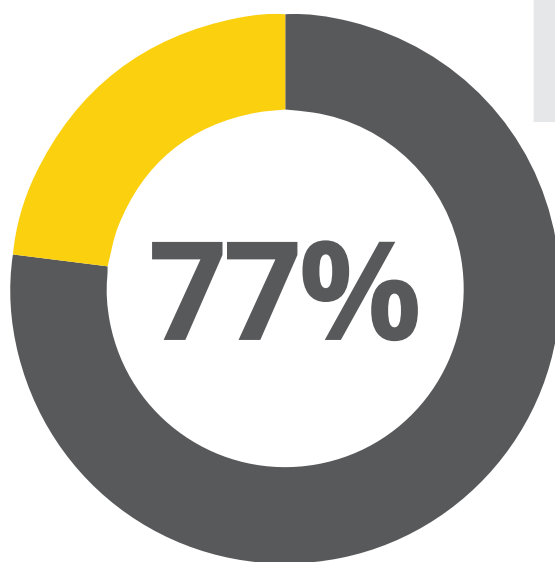
Is the regulation of transit and/or transshipment established in national legislation? (Article 9)

photo: The Israel Project/theisraelproject via Flickr



Brokering

Thirty-four States take measures to regulate brokering, utilizing a variety of approaches. Thirty-three have national laws governing registration and licensing of brokers, some of which are based on standards developed at the regional level. Measures generally take the form of a two-stage process of prior registration for those seeking to undertake brokering activities and then applying for licenses for particular transactions or sets of transactions. In some cases brokers do not need to register but must apply for and receive a license that permits them to broker particular transactions.



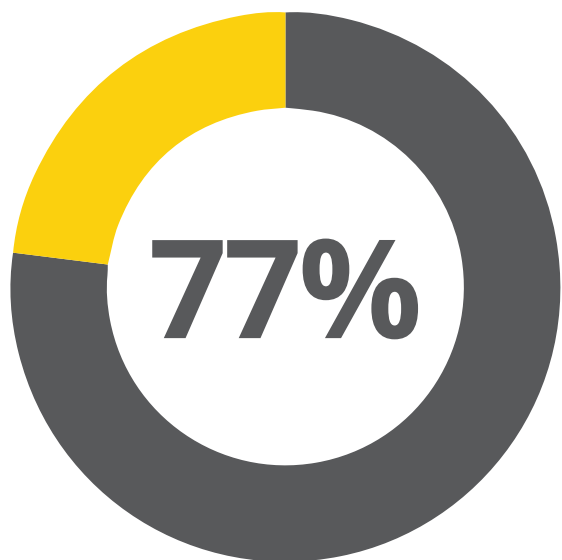
% OF COUNTRIES THAT REPLIED YES

Does your State take measures to regulate brokering taking place under your jurisdiction? (Article 10)



Prohibitions

Thirty-three States reported that they prohibit transfers of conventional arms if the transfer would violate obligations under measures adopted by the UN Security Council acting under Chapter VII, in particular arms embargoes. Thirty-one States prohibit transfers of conventional arms if the transfer would violate relevant international obligations under international agreements to which the State is a party; 28 of these States provided information on the international agreements that they considered relevant in this regard. Thirty States reported that they prohibit transfers of conventional arms if they have knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Convention of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes defined by international agreements to which the State is a party; 21 of these States provided references to the relevant international agreements to which the State is a party. Several States reported that they were unsure of the relevant international agreements that applied with regard to prohibitions.



% OF COUNTRIES THAT REPLIED YES

Does your State prohibit transfers of conventional arms? (Article 6)

photo: US Pacific Fleet/compactfit via Flickr



Risk Assessment

Nearly three-quarters of respondents declared that they always conduct a risk assessment prior to authorizing an arms export, with 32 States doing so for all of the risks identified in Article 7 and the risk of diversion in Article 11 (See Table 1). Thirty-one States declared that they applied a test of whether the export would contribute to or undermine security, with 31 States stating that they take the risk of gender-based violence into account before authorizing an export. Several States included information on additional criteria stemming from regional agreements on arms exports or national policies on arms export controls, such as:

- The recipient State's position on non-proliferation issues in general;
- The implications of the export for regional security;
- The goals and principles of the exporting State's foreign policy;
- Record of the end-user or recipient State with regard to end-user assurances;
- The export is a follow-on delivery for previously delivered systems – i.e. spare parts, components or consumables for a weapon system that had been delivered to the recipient several years earlier; and
- The export is compatible with the technical and economic capacity of the recipient country, taking into account the desirability that States should meet their legitimate security and defense needs with the least diversion of human and economic resources for armaments.

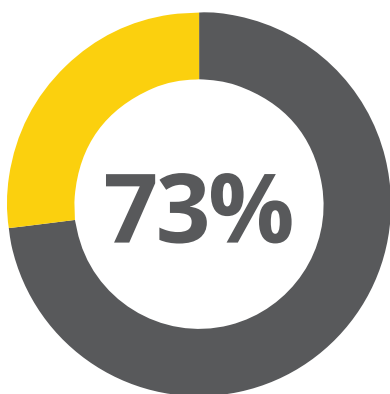


Several States emphasized the importance of robust risk assessments before authorization rather than employing risk mitigation measures. However, several of the States that consider risk mitigation measures explained that this is not a common feature of their transfer control system and in some cases is a separate process. States identified a number of risk mitigation measures they employ as part of their authorization process, including:

- End-user assurances;
- Additional checks on entities involved in the export;
- Additional checks through diplomatic channels;
- Additional checks via the exporting State's embassy in the recipient State;
- Measures to ensure safe and secure transportation of conventional arms; and
- Conditions in contracts, such as requiring the destruction of small arms that are replaced by new deliveries (“new for old”).

% OF COUNTRIES THAT REPLIED YES

Does your State always conduct a risk assessment prior to authorization of an arms export? (Article 7.1)



% OF COUNTRIES THAT REPLIED YES

Does your State consider risk mitigation measures as part of its authorization process? (Article 7.2)

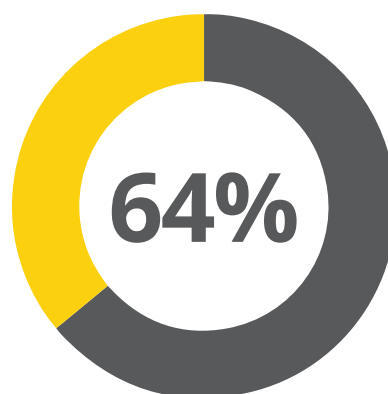


photo: Sergey Vladimirov/vlsergey via Flickr



TABLE 1: Does your State require that the following criteria are included in your national assessment prior to granting an export authorization:	# of States
Whether the arms would contribute to or undermine peace and security?	32
Whether the arms could be used to commit or facilitate a serious violation of international humanitarian law?	33
Whether the arms could be used to commit or facilitate a serious violation of international human rights law?	33
Whether the arms could be used to commit or facilitate an act constituting an offense under international conventions or protocols relating to terrorism to which your State is a party?	33
Whether the arms could be used to commit or facilitate an act constituting an offense under international conventions or protocols relating to transnational organized crime to which your State is a party?	33
Risk of diversion?	33
Acts of gender-based violence?	31

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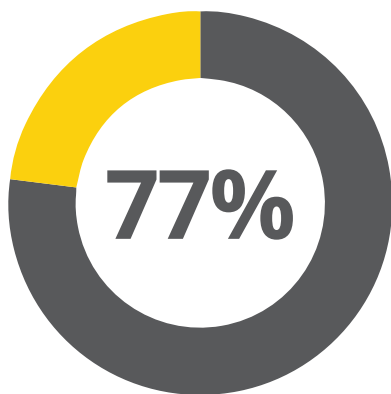
Diversions

Thirty-four States indicated that they take measures to mitigate the risk of diversion. To mitigate diversion, States utilize a variety of measures, primarily end-use certificates and risk assessment procedures before authorizing an export license. A number of States also require transit licenses, import licenses, and documentation on the means of transport. When diversion is detected or suspected, States utilize a variety of tools to stop the potential flow of weapons, such as:

- Revoking transfer licenses;
- Initiating criminal investigations;
- Undertaking customs checks;
- Levying fines or administering other penalties; and
- Seizing diverted goods.

Governments also exchange information with affected States, as well as with international intelligence agencies, to prevent future diversion.

% OF COUNTRIES THAT REPLIED YES
Does your State take preventative measures to mitigate the risk of diversion? (Article 11.2)



% OF COUNTRIES THAT REPLIED YES
Does your State take appropriate measures when it detects a diversion of transferred conventional arms?

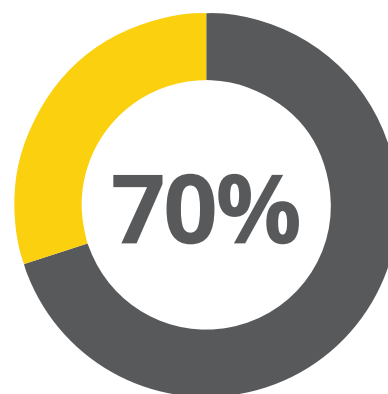


photo: Keary O/barjack via Flickr



Enforcement

States take a variety of measures to enforce their national control systems governing the transfer of conventional weapons and to implement the ATT's provisions. Among the most common measures are fines, criminal proceedings, and penalties, including prison. However, governments may confiscate arms, revoke or suspend licenses, or deny future licenses when a violation of laws and regulations is detected. In order to prevent violations, States conduct outreach activities to the public and industry in order to enhance awareness about legal standards and frameworks. Governments have also undertaken inter-agency cooperation measures in order to facilitate national enforcement.



Record Keeping

Record keeping is required in accordance with Article 13.3. Three-quarters of respondents maintain records of arms export authorizations, while just under two-thirds of respondents maintain records of actual arms exports. Just over three-quarters of respondents maintain records of arms imports.

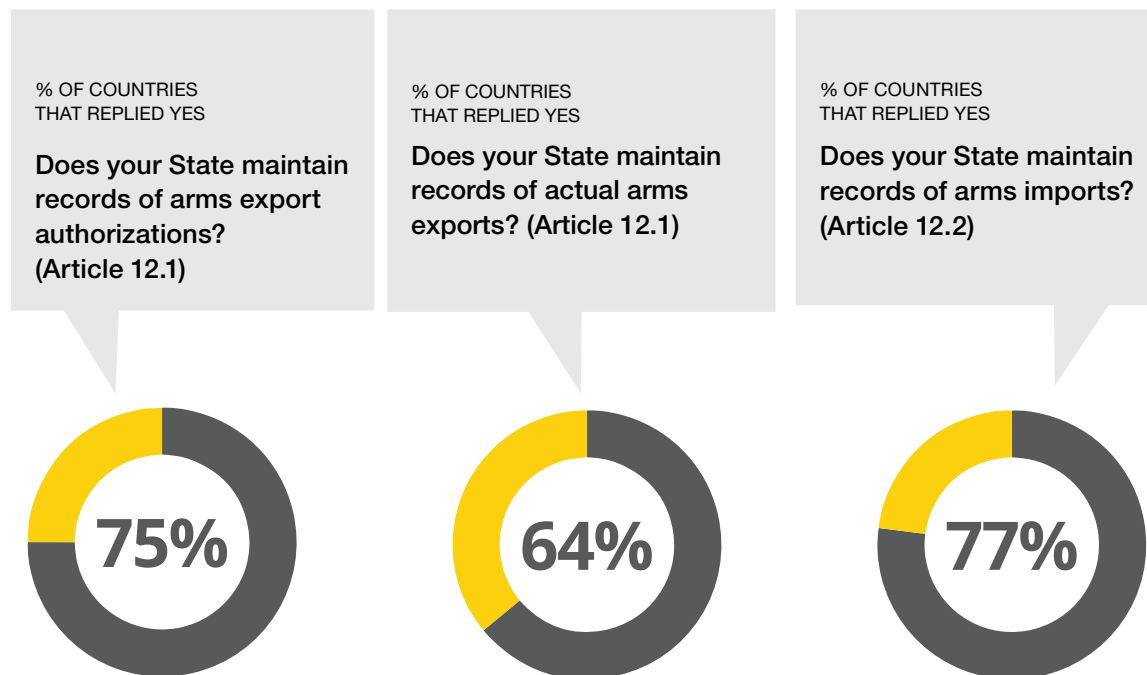


photo: Simon Longworth/simonlongworthphotography via Flickr

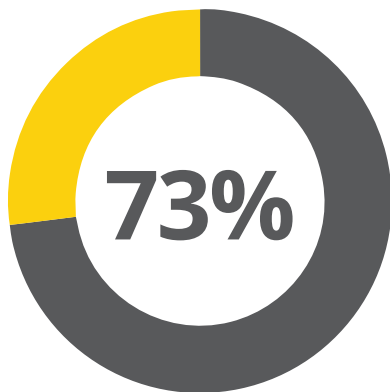


Transparency

Thirty-three States said they can report on measures taken to address the diversion of transferred conventional arms, although some indicated that national secrecy legislation may require some limitations on the information provided.

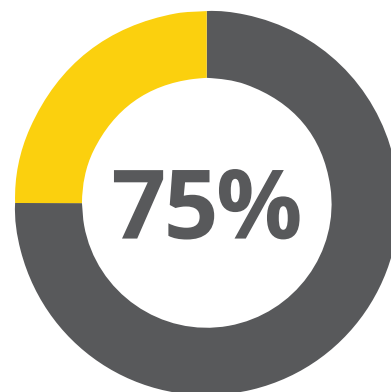
% OF COUNTRIES THAT REPLIED YES

Will your State provide an initial report within one year of entry into force on measures undertaken in order to implement the ATT? (Article 13.1)



% OF COUNTRIES THAT REPLIED YES

Can your State report on measures taken to address the diversion of transferred conventional arms? (Article 13.2)





Conclusion and Next Steps

The ATT-BAP Survey demonstrates the variety of approaches that States utilize to fulfill their ATT obligations. There is no one-size-fits-all approach to the ATT, but the completed surveys provide examples of good practices that can inspire and help guide States as they develop their own national control systems.

Not all States, including treaty ratifiers, have comprehensive systems in place to fulfill all of their ATT obligations. Thus, ATT-BAP provides a mechanism to illustrate areas in which States are seeking assistance and cooperation to fulfill such obligations. ATT-BAP will continue to develop tools to support these States.

The ATT-BAP Portal already contains a database function for quantitative analysis and comparison of national control systems and measures to address diversion. As the project continues to grow, the Portal will eventually match resources and needs by providing a forum for governments to highlight existing implementation assistance needs and to offer available resources and expertise to support capacity-building, legal and legislative assistance, and other measures to support effective treaty implementation. Thus, the ATT-BAP Portal will enhance donor coordination to ensure that gaps and resources are efficiently matched and to avoid duplication and waste.

photo: US Army/soldiersmediacenter via Flickr



As entry into force and the first Conference of States Parties approaches, States will soon turn their attention to completing their first implementation report as required under Article 13. Currently, no template for the first implementation report exists, and States have discussed using the ATT-BAP Survey as a model for their first implementation report. ATT-BAP will consult with governments to further develop an initial reporting template, as States could utilize their completed ATT-BAP Surveys as the basis for their initial report on measures to implement the ATT.

The ATT provides a foundation for States to build their own national control systems. States must first integrate ATT obligations into their national laws and regulations in order to effectively implement the treaty. ATT-BAP will continue to help States identify what they need to do to achieve this goal.

ATT-BAP has benefited from the generous support of a variety of partners. ATT-BAP has received funding from the Governments of the Netherlands, Norway, Switzerland, and the United Kingdom as well as from UNSCAR (the United Nations Trust Facility Supporting Cooperation on Arms Regulation). In addition, the project team has worked with a number of states, the UNODA and its regional centers, regional organizations (CARICOM, EU), Control Arms, and several other NGOs to develop the project to fit the needs of key stakeholders and promote and disseminate the ATT Baseline Assessment Survey and the Checklist.

For more information visit the Arms Trade Treaty – Baseline Assessment Project Portal at www.armstrade.info or contact us at ATT@stimson.org.

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Baseline Assessment Project