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The OSCE and the Arms Trade Treaty: Complementarity and Lessons Learned

Introduction

The Arms Trade Treaty (ATT) is a legally binding agreement that provides internationally agreed standards for the regulation of the international arms trade. The United Nations (UN) process to negotiate the ATT began in 2006, and brought together UN member states, international and regional organizations, civil society, and arms industry representatives.¹ The process was expected to conclude in July 2012 at the UN Conference on the ATT, but the UN member states agreed to hold a Final Conference on the ATT in March 2013. Iran, Syria, and North Korea formally blocked the adoption of the ATT on the last day of the Final Conference, with several other states declaring that they would not vote in favour of adopting the ATT.²

Nevertheless, a treaty text was presented to the UN General Assembly on 2 April 2013 and adopted by 156 states, with three states opposing and 22 abstentions.³ The ATT opened for signature on 3 June 2013 and entered into force on 24 December 2014, ninety days after the fiftieth state deposited its instrument of ratification. The first Conference of States Parties (CSP) was held in Mexico from 24-27 August 2015. Three informal consultations were held in Mexico City (Mexico, 8-9 September 2014), Berlin (Germany, 27-28 November 2014) and Vienna (Austria, 20-21 April 2015) and two preparatory meetings were held in Port-of-Spain (Trinidad and Tobago, 23-24 February 2015) and Geneva (Switzerland, 6-8 July 2015) in advance of the first CSP. Four working groups were established at the first preparatory meeting in Port-of-Spain to consider issues relating to financing, the rules of procedure for CSP, the ATT Secretariat, and reporting templates.

Note: The author would like to thank Maria Brandstetter (Confidence- and Security-Building Measures Officer in the Conflict Prevention Centre) for comments on an initial draft.

- 1 On the background to the UN process, see: Paul Holtom/Mark Bromley, *Arms trade treaty negotiations*, in: *SIPRI Yearbook 2013: Armaments, Disarmament and International Security*, Oxford 2013, pp. 423-431; Paul Holtom, *The Arms Trade Treaty*, in: *SIPRI Yearbook 2014: Armaments, Disarmament and International Security*, Oxford 2014, 2014, pp. 445-450; Sarah Parker, *Breaking new ground? The Arms Trade Treaty*, in: *Small Arms Survey 2014: Women and Guns*, Cambridge 2014, pp. 76-107.
- 2 Cf. Ray Acheson, *The failure of consensus*, in: *Arms Trade Treaty Monitor* 10/2013, pp. 1-2.
- 3 The original vote in the UN General Assembly on 2 April 2013 recorded 154 states in favour, three states against, and 23 abstentions. However, Angola changed its abstention to a vote in favour of the treaty text and Cape Verde decided to vote in favour rather than be marked as not present, cf. United Nations General Assembly, Sixty-seventh session, *71st plenary meeting, A/67/PV.71*, 2 April 2013, at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/PV.71.

OSCE participating States played an active role in the ATT negotiations, with Finland and the UK among the seven original co-sponsors of the General Assembly resolution of 2006 that started the UN process. Fifty-one OSCE participating States voted in favour of adopting the ATT in the UN General Assembly on 2 April 2013; two states abstained (Belarus and the Russian Federation); and four did not participate in the vote (Armenia, Tajikistan, Uzbekistan, and the Holy See).⁴ As Appendix 1 on pages 341-342 shows, as of 31 December 2015, forty-five of the fifty-seven OSCE participating States had signed the ATT and thirty-eight were States Parties.⁵ Half of the States Parties are thus OSCE participating States. Two OSCE participating States (Austria and Switzerland) sought to host the ATT Secretariat, with Geneva selected as the host city during the first CSP. The European Union (EU) and its member states have stressed that the OSCE can play an important role with regard to the universalization and implementation of the ATT.⁶ In a May 2015 statement to the OSCE Forum for Security Cooperation (FSC), the EU stated that the OSCE “can play an important role [...] in the promotion and the implementation of the Arms Trade Treaty (ATT) in the OSCE area [...] providing assistance to participating States, upon their request, in implementing the Treaty and bringing in line relevant ATT and OSCE norms in the field of arms transfers and export controls”.⁷

This contribution provides an overview of the complementarity between the ATT and several relevant OSCE instruments and tools aimed at regulating international arms transfers, combating the illicit arms trade, and increasing transparency in the international arms trade. The overall aim of the contribution is to address the question: “How can the OSCE and participating States contribute towards effective implementation of the ATT?” To this end, it examines several areas in which the OSCE experience can provide guidance and lessons learned for ATT implementation:

4 Cf. *ibid.*, pp. 12-13.

5 Cf. United Nations Office for Disarmament Affairs (UNODA), Disarmament Treaties Database, *Arms Trade Treaty*, at: <http://disarmament.un.org/treaties/t/att>.

6 Cf. European Union, *OSCE Forum for Security Co-operation Nr 727, Vienna, 18 September 2013, EU Statement on the Arms Trade Treaty*, FSC.DEL/147/13, 18 September 2013; Statement by the Delegation of Germany in: OSCE Forum for Security Co-operation, *720th plenary meeting of the Forum*, FSC.JOUR/726, 5 June 2013; European Union, *OSCE Forum for Security Co-operation Nr 741 Vienna, 18 December 2013, EU Statement on the Arms Trade Treaty*, FSC.DEL/203/13, 18 December 2013; OSCE Forum for Security Co-operation, *EU Statement on the Forthcoming Entry into Force of the Arms Trade Treaty*, FSC.DEL/163/14, 1 October 2014; OSCE Forum for Security Co-operation, *767th plenary meeting of the Forum*, FSC.JOUR/773, 22 October 2014; European Union, *OSCE Forum for Security Co-operation Nr 788 Vienna, 13 May 2015, EU Statement on Small Arms and Light Weapons and Stockpiles of Conventional Ammunition*, FSC.DEL/89/15, 13 May 2015; European Union, *OSCE Forum for Security Co-operation Nr 790, Vienna, 27 May 2015, EU Statement on Conventional Arms Transfers*, FSC.DEL/105/15, 28 May 2015.

7 European Union, *EU Statement on Conventional Arms Transfers*, cited above (Note 6), pp. 1-2.

- instruments and guidelines to develop good practices for controlling and regulating international arms transfers (including small arms and light weapons (SALW), ammunition/munitions, and related parts and components);
- criteria for risk assessment before authorizing arms exports;
- a mechanism for exchanging information on transfer control policies, practices, and procedures;
- a mechanism for reporting on international arms transfers; and
- international assistance.

The contribution concludes by focusing on three areas in which it is expected that the OSCE could promote the ATT and support its implementation.

The Arms Trade Treaty

The ATT aims to prevent the illicit arms trade in order to contribute to peace, security, and stability; reduce human suffering; and promote co-operation, transparency, and responsible action in the arms trade.⁸ It contains obligations for States Parties to implement at the national and international levels. At the national level, the ATT obliges States Parties to establish and maintain an effective national system to control exports and regulate imports, transit/transshipment, and brokering activities relating to the eight categories of conventional arms covered by the ATT:

- a. battle tanks;
- b. armoured combat vehicles;
- c. large-calibre artillery systems;
- d. combat aircraft;
- e. attack helicopters;
- f. warships;
- g. missiles and missile launchers; and
- h. small arms and light weapons.

In addition, the system seeks to control exports of related ammunition and of parts and components that are used for assembling conventional arms covered by the treaty. The treaty provides some guidance on the key elements for a national system such as:⁹

8 Cf. United Nations, *The Arms Trade Treaty*, Article 1 (hereinafter: ATT), full treaty text in: United Nations of Disarmament Affairs (UNODA), at: <http://www.un.org/disarmament/ATT>.

9 Adapted from: Paul Holtom/Mark Bromley, Next Steps for the Arms Trade Treaty: Securing Early Entry into Force, in: *Arms Control Today*, June 2013, p. 10.

- competent national authorities responsible for maintaining the system;¹⁰
- a national control list that covers at a minimum the eight categories of conventional arms, ammunition/munitions, and parts and components identified in the treaty;¹¹
- national records for each export authorization or delivery of conventional arms for at least ten years (and preferably also records on arms imports and transit/transshipment authorizations);¹²
- appropriate measures to enforce national laws and regulations to implement the treaty.¹³

The designated competent authorities will be required to perform the following actions to implement the treaty at the national level:

- prohibit 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;¹⁴
- review applications for exports of the eight categories of conventional arms covered by the treaty and conduct a national assessment on the risk that the exported arms could have negative consequences for peace, security, and human rights. A State Party shall deny 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. States Parties also are obliged to take 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;¹⁵
- take measures to regulate imports, transit/transshipment (where necessary and feasible), and brokering taking place under its jurisdiction;¹⁶
- take measures, including risk assessments, mitigation measures, cooperation, and information sharing, to prevent the diversion of conven-

10 Cf. ATT, cited above (Note 8) Article 5.5.

11 Cf. *ibid.*, Articles 2.1, 3, 4, and 5.3.

12 Cf. *ibid.*, Article 12.

13 Cf. *ibid.*, Article 14.

14 Cf. *ibid.*, Article 6.

15 Cf. *ibid.*, Article 7.

16 Cf. *ibid.*, Articles 8, 9, and 10.

tional arms to the illicit market or for unauthorized end use and end users.¹⁷

At the international level, States Parties are expected to engage in international co-operation and seek international assistance, where necessary, to implement their national systems.¹⁸ In addition, States Parties are encouraged to provide international assistance to enable other States Parties to implement the ATT and fulfil their obligations.¹⁹ Article 13 of the ATT, entitled “Reporting”, most clearly relates to one of the ATT’s declared purposes of promoting transparency in the international arms trade, obliging States parties to make available:

- an initial, one-off report on measures undertaken to implement the treaty, including national laws, regulations, and administrative measures; and
- an annual report on authorized or actual exports and imports of conventional arms.

States Parties are also encouraged to share information on good practices in combating diversion.²⁰ The ATT provides an indicative list of elements for the one-off report, and States Parties can utilize the annual reports on imports and exports of seven categories of conventional arms, and background information on international transfers of SALW that are submitted annually to the UN Register of Conventional Arms (UNROCA). In addition, a working group was established to develop templates for the initial one-off report and annual report on arms exports and imports. The provisional templates were presented at the first CSP in Mexico in August 2015, but were not adopted by the CSP.

The ATT does not provide detailed descriptions and definitions for these key elements because States Parties can take different approaches to fulfilling their ATT obligations. However, many of the key elements of the ATT already appear in existing international and regional instruments relating to transfers of conventional arms, including SALW. For OSCE participating States, which have acquired two decades of experience in the field of regulating international arms transfers and addressing the illicit arms trade, there are many familiar elements in the ATT. It therefore seems logical that OSCE instruments and experience will be of great value for those states seeking to effectively implement the ATT.

17 Cf. *ibid.*, Article 11.

18 Cf. *ibid.*, Articles 15 and 16.

19 Cf. *ibid.*, Article 16.

20 Cf. *ibid.*, Articles 11.6 and 13.2.

Instruments and Guidelines to Develop Good Practices for Controlling and Regulating International Arms Transfers

The OSCE has adopted several instruments that contribute to the implementation of the key UN processes relating to responsible transfers of conventional arms, in particular the UNROCA, the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNPoA), and the UN Exchange of National Legislation on Transfer of Arms, Military Equipment and Dual-use Goods and Technology.²¹ Since the adoption of the Document on Small Arms and Light Weapons (SALW Document) on 24 November 2000, the OSCE has focused predominantly on instruments and guidelines to strengthen SALW transfer controls and address the illicit SALW trade.²² Although adopted before the UNPoA, the SALW Document complements the UN instrument as it “sets forth norms, principles and measures to address the threat posed to the international community by the excessive and destabilizing accumulation and uncontrolled spread of SALW”.²³

The SALW Document has been supplemented by a series of best practice guides to assist with its implementation, and a series of principles, elements, and best practice guidelines for measures to strengthen national transfer control systems and address diversion and trafficking. In June 2012, the SALW Document was reissued with the following FSC Decisions on arms transfer controls and trafficking attached as annexes:

- FSC Decision No. 5/04, Standard Elements of End-User Certificates and Verification Procedures for SALW Exports;
- FSC Decision No. 8/04, OSCE Principles on the Control of Brokering in Small Arms and Light Weapons;
- FSC Decision No. 5/08, Updating the OSCE Principles for Export Controls of Man-Portable Air Defence Systems (MANPADS);

21 Cf. United Nations, *Report of the Disarmament Commission, General Assembly Official Records, Fifty-first Session, Supplement No. 42, (A/51/42)*, 22 May 1996, Annex 1, Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991; The UN Exchange of “National Legislation on Transfer of Arms, Military Equipment and Dual-use Goods and Technology” was established by UN General Assembly resolution 57/66 of 22 November 2002 and adopted subsequently by UN General Assembly resolutions 58/42 of 8 December 2003; 59/66 of 3 December 2004; 60/69 of 8 December 2005; 62/26 of 5 December 2007; 64/40 of 2 December 2009; 66/41 of 2 December 2011; and 68/40 of 5 December 2013.

22 Cf. Organization for Security and Co-operation in Europe, *OSCE Document on Small Arms and Light Weapons*, FSC.DOC/1/00 adopted on 24 November 2000.

23 FSC Chairperson’s Progress Report to the Twenty-First Meeting of the Ministerial Council on the Continuing Implementation of the OSCE Document on Small Arms and Light Weapons (Annex 3 to MC.GAL/2/14 of 1 December 2014), in: Organization for Security and Co-operation in Europe, *Basel 2014, Twenty-First Meeting of the Ministerial Council 4 and 5 December 2014*, MC21EW89, pp 104-125, p. 105.

- FSC Decision No. 11/08, Introducing Best Practices to Prevent Destabilizing Transfers of Small Arms and Light Weapons through Air Transport and on an Associated Questionnaire; and
- FSC Decision No. 15/02, Expert Advice on Implementation of Section V of the SALW Document.²⁴

OSCE participating States have therefore developed a range of instruments and guidance tools that can also support the implementation of the ATT and help to operationalize some of its more ambiguous provisions. In several cases, these draw on initiatives undertaken in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. At the same time, it has also been recommended that a comprehensive review of the 2003 best practice guidelines “might be necessary” given the new FSC decisions that have been adopted since 2003, as well as developments at the global level, in particular the ATT.²⁵

Criteria for Risk Assessment before Authorizing Arms Exports

The OSCE Principles Governing Conventional Arms Transfers (Principles), adopted on 25 November 1993, represent one of the first internationally agreed sets of criteria to be used in risk assessments conducted before authorizing an export of conventional arms.²⁶ The Principles were utilized as the basis for the “common export criteria” contained in the SALW Document, albeit with some revisions and additions.²⁷

The Principles and common export criteria consist of two tiers. The first is to be taken into account when considering whether to authorize or deny an arms export and focus on the recipient country’s international standing (i.e. respect for human rights, use of force, non-proliferation) and whether the arms are in line with the proposed recipient’s legitimate needs and capabilities.²⁸ The second tier criteria require participating States to avoid authoriz-

24 Organization for Security and Co-operation in Europe, *OSCE Document on Small Arms and Light Weapons*, FSC.DOC/1/00/Rev.1, adopted on 20 June 2012.

25 Organization for Security and Co-operation in Europe, FSC Chairperson’s Progress Report on the Continuing Implementation of the OSCE Document on Small Arms and Light Weapons, Annex 3 to Organization for Security and Co-operation in Europe, Ministerial Council, Kyiv 2013, *Letter from the Chairperson of the Forum for Security Co-operation to the Minister for Foreign Affairs of Ukraine, Chairperson of the Twentieth Meeting of the Ministerial Council*, MC.GAL/2/13, 29 November 2013, p. 20 Attachment A: Conclusions of the SALW mapping study for possible follow-up work.

26 Cf. Joanna van Vliet, Principles Governing Conventional Arms Transfers, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 1995/96*, Baden-Baden 1997, pp. 265-272, here: pp. 266-67.

27 Cf. *Document on Small Arms and Light Weapons*, cited above (Note 22), Section III, Article A.2.

28 Cf. Organization for Security and Co-operation in Europe, *Principles Governing Conventional Arms Transfers*, DOC.FSC/3/96, 25 November 1993, Article 4a.

ing a transfer if there is a risk of the arms being used to violate or suppress human rights or for other forms of repression, to threaten or attack other states, to support or encourage terrorism, to facilitate organized crime, or to be diverted for such uses.²⁹

There are several elements common to both the OSCE Principles and common export criteria and Articles 6 and 7 of the ATT. For example, Article 6 of the ATT prohibits the transfer of conventional arms if the transfer would violate UN arms embargoes or international agreements relating to arms transfers and trafficking, and the same obligation is contained in the OSCE Principles and the SALW Document's common export criteria.³⁰ However, the structure and contents of the ATT's Articles 6 and 7 do not match perfectly with the two tiers of the OSCE Principles and common export criteria. Further, the risk assessment process outlined in the ATT contains "mitigation measures" that are not included in the OSCE documents. It has been proposed that the OSCE considers reviewing the Principles and common export criteria in light of Articles 6 and 7 of the ATT.³¹

Mechanism for Exchanging Information on Export Control Policies, Practices, and Procedures

The OSCE participating States have considerable experience of an intergovernmental mechanism for exchanging information on their national transfer control systems. The FSC adopted Decision No. 20/95, Questionnaire on Conventional Arms Transfers, in November 1995 as a one-off information exchange between participating States on national policy, practices, and procedures for the export of conventional arms and related technology.³² The SALW Document also established a mechanism for a one-off intergovernmental information exchange on "relevant national legislation and current practice on export policy, procedures, documentation and on control over international brokering in small arms".³³ The rationale for the exchange was to "spread awareness of 'best practice' in these areas".³⁴ Fifty-six of the 57 participating States have provided information on their SALW transfer control systems, and continue to provide updates.³⁵ The OSCE approach used for

29 Cf. *ibid.*, Article 4b.

30 Cf. ATT, cited above (Note 8), Article 6(1) and 6(2); *Principles Governing Conventional Arms Transfers*, cited above (Note 28), Article 4(a.iii); *OSCE Document on Small Arms and Light Weapons*, cited above (Note 22), Section III, A2(b)iv.

31 FSC Chairperson's Progress Report, cited above (Note 25), p. 20.

32 Cf. Organization for Security and Co-operation in Europe, Forum for Security Co-operation, *Decision No. 20/95*, FSC.DEC/20/95, 29 November 1995.

33 *Document on Small Arms and Light Weapons*, cited above (Note 22), Section III, F(2).

34 *Ibid.*

35 Cf. FSC Chairperson's Progress Report to the Twenty-First Meeting of the Ministerial Council on the Continuing Implementation of the OSCE Document on Small Arms and Light Weapons, cited above (Note 23), pp. 119-120.

the questionnaire and the SALW Document is comparable to the approach contained in ATT Article 13.1, which requests States Parties to provide a “one-off” report, which can, however, be updated when required. Considering the comparatively high rate of reporting, OSCE experience in securing high returns in information exchanges merits further study and consideration.

OSCE participating States have also been requested to provide additional information in ad hoc information exchanges on regulations concerning SALW brokering activities and national practices to prevent the spread of SALW through illicit air transport, as well as samples of their national end-user certificate and/or other pertinent documents.³⁶ As with the exchange under the SALW Document, the exchange of information is intended to share examples of “best practice” and has enjoyed high levels of participation and regular updates.³⁷ One could envisage such an approach having potential benefits for exchanges of information between ATT States Parties on measures to address diversion.³⁸

Mechanism for Reporting on International Arms Transfers

The OSCE has adopted several instruments that contribute to the implementation of the key UN processes relating to increasing transparency in the international arms trade. For example, the FSC adopted Decision No. 13/97, Further Transparency in Arms Transfers, on 16 July 1997, under which OSCE participating States exchange annual reports on their imports and exports of conventional arms using UNROCA descriptions for seven categories of conventional arms and reporting templates.³⁹ Subsequent FSC decisions have aligned the OSCE reports on conventional arms transfers with UNROCA deadlines and category descriptions, while also encouraging participating States to provide background information on SALW transfers to

36 Cf. Organization for Security and Co-operation in Europe, Forum for Security Co-operation, *Decision No. 11/07, An Information Exchange with Regard to OSCE Principles on the Control of Brokering in Small Arms and Light Weapons*, FSC.DEC/11/07, 17 October 2007; Organization for Security and Co-operation in Europe, Forum for Security Co-operation, *Decision No. 11/08, Introducing Best Practises to Prevent Destabilizing Transfers of Small Arms and Light Weapons through Air Transport and on an Associated Questionnaire*, 5 November 2008; Organization for Security and Co-operation in Europe, Forum for Security Co-operation, *Decision No. 12/08, Information Exchange with Regard to Sample Formats of End-User Certificates and Relevant Verification Procedures*, FSC.DEC/12/08, 12 November 2008.

37 Cf. FSC Chairperson’s Progress Report to the Twenty-First Meeting of the Ministerial Council on the Continuing Implementation of the OSCE Document on Small Arms and Light Weapons, cited above (Note 23), pp. 119-120.

38 Cf. ATT, cited above (Note 8), Articles 11.6 and 13.2.

39 Cf. Organization for Security and Co-operation in Europe, Forum for Security Co-operation, *FSC Decision No. 13/97, Further Transparency in Arms Transfers*, FSC.DEC/13/97, 16 July 1997.

UNROCA.⁴⁰ OSCE participating States can use the same annual report to fulfil their ATT annual reporting obligation.

OSCE participating States already collect and exchange some information on SALW transfers, because the SALW Document established an annual intergovernmental exchange of information on SALW transferred between OSCE states.⁴¹ A standardized reporting form was annexed to the Document. It requests information on deliveries of five subcategories of small arms and eight subcategories of light weapons for the preceding calendar year, including the exporting or importing state, the number of items, the state of origin (if not the exporter), any intermediate location, and any additional information that the reporting state wishes to provide. The first information exchange took place in 2002, which consisted of data on transfers occurring in 2001. While the total number of states that participate in the exchange each year is made publicly available (see table 1), information on which states participate and the information they share is not made publicly available by the OSCE. A study carried out by the Stockholm International Peace Research Institute (SIPRI) in 2012-2013 found that several participating States exchange their UNROCA reports on international transfers of SALW with other participating States.

International Assistance

The OSCE Conflict Prevention Centre (CPC) has organized numerous workshops, seminars, and training events to explore measures to support implementation of the OSCE SALW Document and address SALW trafficking more generally. For example, in May 2014 the OSCE, in collaboration with the UN and Interpol, organized an Expert Workshop on Tracing Illicit SALW.⁴² It also contributes to events organized by the UN and other international organizations, export control regimes, and regional organizations and non-governmental organizations.

40 Cf. Organization for Security and Co-operation in Europe, Forum for Security Co-operation, *Decision No. 8/98, Changes in the Deadline for the Exchange of Information on Conventional Arms and Equipment Transfers*, FSC.DEC 8/98, 4 November 1998; Organization for Security and Co-operation in Europe, Forum for Security Co-operation, *Decision No. 8/08, Updating the Reporting Categories of Weapon and Equipment Systems Subject to the Information Exchange on Conventional Arms Transfers*, FSC.DEC/8/08, 16 July 2008.

41 Cf. *OSCE Document on Small Arms and Light Weapons*, cited above (Note 22).

42 Cf. FSC Chairperson's Progress Report to the Twenty-First Meeting of the Ministerial Council on the Continuing Implementation of the OSCE Document on Small Arms and Light Weapons, cited above (Note 23), p. 110.

Table 1: Annual responses to the OSCE information exchange on imports and exports of SALW⁴³

| Year | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|------------|------------|------------|------------|------------|------------|------------|
| OSCE participating states involved in SALW exports and imports exchange | 45 (55) | 47 (55) | 50 (55) | 48 (55) | 46 (55) | 42 (56) | 48 (56) |
| Year | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | |
| OSCE participating states involved in SALW exports and imports exchange | 48 (56) | 48 (56) | 44 (56) | 40 (56) | 41 (57) | 40 (57) | |

In 2011, Moldova requested assistance to update its export control legislation. In response, the OSCE began to provide Moldova with support in this regard in collaboration with the EU outreach and assistance project.⁴⁴ Potential for collaboration with the United States' Export Control and Related Border Security Program (EXBS) has also been explored.⁴⁵ The OSCE has offered to provide assistance to other interested participating States in reviewing and updating export control legislation.⁴⁶ Of interest for ATT implementation is the fact that the OSCE seeks to collaborate with a variety of relevant partners to provide assistance in this area, and has also developed mechanisms for facilitating assistance that could be of interest to the ATT Secretariat.

43 Figures in brackets denote the total number of participating States. Source: Correspondence with OSCE official, 7 January 2015.

44 Cf. Organization for Security and Co-operation in Europe, *FSC Chairperson's Progress Report to the Nineteenth Meeting of the Ministerial Council. The Continuing Implementation of the OSCE Document on Small Arms and Light Weapons*, MC.GAL/5/12, 27 November 2012, pp. 8-9.

45 Cf. FSC Chairperson's Progress Report on the Continuing Implementation of the OSCE Document on Small Arms and Light Weapons, cited above (Note 25), p. 12.

46 Cf. *ibid.*

Opportunities and Challenges for the OSCE to Support Implementation of the Arms Trade Treaty

There are several areas in which one would assume, based upon the experience of the past twenty years, that the OSCE could contribute to the implementation of the ATT. Three areas are highlighted below that demonstrate some of the potential opportunities and challenges posed by the ATT for OSCE efforts to strengthen transfer controls and address the illicit arms trade:

- universalization of the ATT;
- information exchange leading to best practice guidance and tools for effective implementation; and
- addressing concerns with information exchange and reporting burdens.

Universalization of the ATT

As noted in the introduction, several participating States have stressed that the OSCE can help to universalize the treaty. For example, shortly after the ATT opened for signature in June 2013, Germany proposed that the FSC could “send an important signal through a joint declaration by all participating States on the signing and entry into force of the Treaty”.⁴⁷ The FSC has not made such a declaration. This is because, while some of the participating States are among the staunchest advocates for the treaty, several are sceptical of the initiative. For example, in May 2015, Mikhail Ulyanov, head of the arms control department in the Russian ministry of foreign affairs, declared that Russia is not going to sign the ATT because it does not “see reasons to join” and was sceptical of the potential impact of the ATT.⁴⁸ Canada has also not signed the ATT, and a Canadian government official has explained that “signing the Arms Trade Treaty would not improve upon how we assess exports of military items.”⁴⁹ Several states in Eastern Europe and Central Asia have also not signed nor ratified the ATT. Therefore, in contrast to other UN instruments in this area, it will be difficult for the OSCE to play a role in universalizing the ATT. It can however support implementation and provide inspiration and models for implementation of the treaty at the international level.

47 Organization for Security and Co-operation in Europe, Forum for Security Co-operation, 720th Plenary Meeting, *Statement by the Delegation of Germany*, FSC.JOUR/726, 5 June 2013.

48 *Russia not to join international Arms Trade Treaty*, TASS, 17 May 2015, at: <http://tass.ru/en/russia/795143>.

49 Cited in: David Pugliese, Harper government says there is no need to sign arms control treaty because Canada’s export controls are the strongest, in: *Ottawa Citizen*, 24 December 2014, at: <http://ottawacitizen.com/news/national/defence-watch/harper-government-says-there-is-no-need-to-sign-arms-control-treaty-because-canadas-export-controls-are-the-strongest>.

Information Exchange Leading to Best Practice Guidance and Tools for Effective Implementation

One of the key challenges posed by the ATT for States Parties is translating the treaty's "constructive ambiguity" into law, policy, and practice. The OSCE has acquired considerable experience with a step-by-step approach for addressing such challenges in the implementation of the SALW Document. Its experience could serve to inform other regional organizations and groups of states on good practices that could be used in implementing the ATT, or to inspire comparable exercises. A good example is the OSCE's approach to seeking to establish common standards and understandings for end user certificates (EUC). First, a best practice guide on export controls was developed by national licensing officials from participating States, which contained recommended elements for EUC and their verification.⁵⁰ Based on this list of EUC elements, participating States adopted a politically binding decision outlining standard elements of end user certificate and verification procedures for SALW exports.⁵¹ In order to assess the implementation of the decision, states then exchanged information on their national systems and samples of EUC and related documentation.⁵² The next stage was to develop an informal EUC template based on the adopted elements, the best practices guide, and a review of participating States' existing practices, policies, and documentation.⁵³

Addressing Concerns with Information Exchange and Reporting Burdens

OSCE information exchanges on transfer control systems and transfers enjoy fairly good levels of participation. Several factors could help to explain this. First, attention is paid towards ensuring that the database containing national points of contact is up to date, not only to facilitate the exchange of information, but also for co-operation and co-ordination of assistance projects.⁵⁴ Second, and perhaps most importantly, there is "extensive use of the FSC Chairperson's Announcing and Reminding Mechanism" to help encourage participation via peer pressure.⁵⁵ Third, the CPC actively explores opportunities to

50 Cf. Organization for Security and Co-operation in Europe, Forum for Security Co-operation, *Decision No. 5/03, Best Practice Guides*, FSC.DEC/5/03, 18 May 2003.

51 Cf. Organization for Security and Co-operation in Europe, Forum for Security Co-operation, *Decision No. 5/04, Standard Elements of End-User Certificates and Verification Procedures for SALW Exports*, FSC.DEC/5/04, 17 November 2004.

52 Cf. OSCE FSC, *Decision No. 12/08*, cited above (Note 36).

53 Cf. Organization for Security and Co-operation in Europe, *Template for End User Certificates for Small Arms and Light Weapons*, 28 September 2011, at: <http://www.osce.org/fsc/83178>.

54 Cf. Organization for Security and Co-operation in Europe, Forum for Security Co-operation, *Decision No. 4/08: Points of contact on small arms and light weapons and stockpiles of conventional ammunition*, FSC.DEC/4/08, 7 May 2008.

55 FSC Chairperson's Progress Report on the Continuing Implementation of the OSCE Document on Small Arms and Light Weapons, cited above (Note 25), p. 10.

align OSCE commitments with other international reporting obligations and information exchanges. For instance, the OSCE and the UNODA are studying possibilities for further reducing the SALW reporting burden on States.⁵⁶ These are all useful lessons for the ATT Secretariat.

In addition, in June 2014 the OSCE adopted the “Voluntary guidelines for compiling national reports on SALW exports from/imports to other participating States during the previous calendar year” in order to “improve the utility and relevance of the information provided”.⁵⁷ The guidelines recommend that States share the methodologies used to compile their information.⁵⁸ The guidelines represent another concrete example of how OSCE experience in compiling national reports on arms transfers could benefit ATT States Parties seeking to fulfil their reporting obligations as outlined in Article 13 of the ATT.

56 Cf. FSC Chairperson’s Progress Report to the Twenty-First Meeting of the Ministerial Council on the Continuing Implementation of the OSCE Document on Small Arms and Light Weapons, cited above (Note 23), p. 109.

57 Organization for Security and Co-operation in Europe, Forum for Security Co-operation, *Decision No. 3/14, Voluntary Guidelines for Compiling National Reports on SALW Exports from/Imports to other Participating States during the Previous Calendar Year*, FSC.DEC/3/14, 4 June 2014.

58 Cf. *Ibid.*

Appendix 1: OSCE participating States and the ATT, December 2015⁵⁹

| OSCE participating State | Vote in General Assembly | Signature | Ratification/ Accession |
|--------------------------|--------------------------|-------------------|-------------------------|
| Albania | Yes | 3 June 2013 | 19 March 2014 |
| Andorra | Yes | 18 December 2014 | |
| Armenia | | | |
| Austria | Yes | 3 June 2013 | 3 June 2014 |
| Azerbaijan | Yes | | |
| Belarus | Abstain | | |
| Belgium | Yes | 3 June 2013 | 3 June 2014 |
| Bosnia and Herzegovina | Yes | 25 September 2013 | 25 September 2014 |
| Bulgaria | Yes | 2 July 2013 | 2 April 2014 |
| Canada | Yes | | |
| Croatia | Yes | 3 June 2013 | 2 April 2014 |
| Cyprus | Yes | 3 June 2013 | |
| Czech Republic | Yes | 3 June 2013 | 25 September 2014 |
| Denmark | Yes | 3 June 2014 | 2 April 2014 |
| Estonia | Yes | 3 June 2014 | 2 April 2014 |
| Finland | Yes | 3 June 2014 | 2 April 2014 |
| France | Yes | 3 June 2014 | 2 April 2014 |
| Georgia | Yes | 25 September 2013 | |
| Germany | Yes | 3 June 2013 | 2 April 2014 |
| Greece | Yes | 3 June 2013 | |
| Hungary | Yes | 3 June 2013 | 2 April 2014 |
| Iceland | Yes | 3 June 2013 | 2 July 2013 |
| Ireland | Yes | 3 June 2013 | 2 April 2014 |
| Italy | Yes | 3 June 2013 | 2 April 2014 |
| Kazakhstan | Yes | | |
| Kyrgyzstan | Yes | | |
| Latvia | Yes | 3 June 2013 | 2 April 2014 |
| Liechtenstein | Yes | 3 June 2013 | 16 December 2014 |
| Lithuania | Yes | 3 June 2013 | 18 December 2014 |
| Luxembourg | Yes | 3 June 2013 | 3 June 2014 |

59 Sources: ATT, cited above (Note 8); United Nations General Assembly, cited above (Note 3).

| | | | |
|---------------------------------|---------|-------------------|-------------------|
| Macedonia | Yes | 25 September 2013 | 6 March 2014 |
| Malta | Yes | 3 June 2013 | 2 April 2014 |
| Moldova | Yes | 10 September 2013 | 28 September 2015 |
| Monaco | Yes | | |
| Mongolia | Yes | 24 September 2013 | |
| Montenegro | Yes | 3 June 2013 | 18 August 2014 |
| Netherlands | Yes | 3 June 2013 | 18 December 2014 |
| Norway | Yes | 3 June 2013 | 12 February 2014 |
| Poland | Yes | 1 July 2013 | 17 December 2014 |
| Portugal | Yes | 3 June 2013 | 25 September 2014 |
| Romania | Yes | 3 June 2013 | 2 April 2014 |
| Russia | Abstain | | |
| San Marino | Yes | 19 December 2014 | 29 July 2015 |
| Serbia | Yes | 12 August 2013 | 5 December 2014 |
| Slovakia | Yes | 10 June 2013 | 2 April 2014 |
| Slovenia | Yes | 3 June 2013 | 2 April 2014 |
| Spain | Yes | 3 June 2013 | 2 April 2014 |
| Sweden | Yes | 3 June 2013 | 16 June 2014 |
| Switzerland | Yes | 3 June 2013 | 30 January 2015 |
| Tajikistan | | | |
| Turkey | Yes | 2 July 2013 | |
| Turkmenistan | Yes | | |
| Ukraine | Yes | 23 September 2014 | |
| United Kingdom | Yes | 3 June 2013 | 2 April 2014 |
| United States | Yes | 25 September 2013 | |
| Uzbekistan | | | |
| Vatican City* | | | |
| Total OSCE participating states | | 45 | 38 |
| Total UN member states | | 130 | 77 |

* Not a UN member state.