The UN Arms Trade Treaty: A Multilateral Trade and Security Treaty Not Regulated by International Trade Law?

The ATT and International Trade Law

Altamimi

Abdulmalik M. Altamimi

Every modern war threatens to involve half the world, bring disaster to world economy, and blot out civilization. The question is urgent then: What will be done about the armaments industry?

engelbrecht and hanighen, *Merchants of Death* (1934)[[1]](#footnote-1)

1 Introduction

Regulation of the international arms trade was promulgated following the Second World War, in particular for the preservation of international peace and security. The drafters of the 1945 United Nations (UN) Charter were aware of the risks posed by an unregulated arms industry. This led them to instruct the UN Security Council and the Military Staff Committee under Article 26 to establish a system for the regulation of armaments to ensure ‘the least diversion of armaments of the world’s human and economic resources’.[[2]](#footnote-2) However, during subsequent decades, the conduct of arms exporting States tended to be primarily governed by nonbinding rules.[[3]](#footnote-3) This issue was addressed in December 2014, when the UN Arms Trade Treaty (att) entered into force as a legally binding instrument, fulfilling the definition of an international agreement governed by public international law, being purported to regulate the conventional arms trade’s “transfer” activities of ‘export, import, transit, trans-shipment, and brokering’.[[4]](#footnote-4) A number of scholars have previously examined the relationship between “linkages issues” and international trade law, including in relation to the World Trade Organisation (wto) and environmental protection, along with health policies and labour relations.[[5]](#footnote-5) The focus has generally been placed on wto, due to it being regarded as the principal organ and arbiter of international trade law. While these issues vary by degree in their legal relation to the law and practice of wto, an area with one of the strongest linkages is the conventional arms trade, i.e. that dealing in armaments other than nuclear weapons.[[6]](#footnote-6) However, this aspect has been seldom the subject of such close examination.

The origin of att in public international law is clearly manifest in its text, which includes repeated citing of the UN Charter in the preamble, along with international human rights law, and international humanitarian law.[[7]](#footnote-7) Moreover, att prescribes a number of international procedures for the peaceful settlement of pertinent disputes.[[8]](#footnote-8) However, the relationship between the att (which is substantively and procedurally a trade and security regulating treaty) and international trade law remains unclear, particularly as the att alludes neither to the wto law, nor the core obligations of international trade law. However, the att does (albeit briefly and indirectly) refer to the principle of non-discrimination when maintaining that the treaty should be implemented in “non-discriminatory manner”.[[9]](#footnote-9) Despite regulation of the conventional arms trade being recognised as vital for international trade, peace and security, pertinent studies of the legal and international relations aspects have been “surprisingly limited”.[[10]](#footnote-10) This chapter therefore contends that the absence of international trade obligations from the att presents a number of issues in urgent need of examination, i.e. if an att exporting State Party has determined that ‘there is an overriding risk of any of the negative consequences’ of authorising export of conventional arms; (i.e. undermining peace and security), such a State ‘shall not authorize this export’.[[11]](#footnote-11)

Nonetheless, should an att State Party, which is also a wto Member State, refuse this authorisation, its conduct would be considered as follows. Firstly, it would violate Article xi:1 of the wto General Agreement on Tariffs and Trade (gatt).[[12]](#footnote-12) Secondly, it would violate the att preambular principle of acting in accordance with ‘the responsibility of all States, in accordance with their international obligations, to effectively regulate the international trade in conventional arms’.[[13]](#footnote-13) Thirdly, it would raise a conflict of obligation, particularly since differing international rules apply to the conventional arms trade; for instance, Article 6:2 of the att: ‘a State Party shall not authorize any transfer of conventional arms … if the transfer would violate its relevant international obligations under international agreements to which it is a Party’. This primarily refers to *jus ad bellum* and *jus in bello* rules, although (as stated above) export restrictions would violate the core international trade law obligations of wto/att states.

An equitable conflict appears in the relationship between wto national security exceptions and att, primarily due to its remaining undecided whether the security exceptions under gatt Article xxi:b apply to all trade in conventional arms during times of war and peace. Thus, it is crucial to explore the applicability of gatt Article xxi:b to the international trade in conventional arms, as arms traded on the illicit market have generally been legally traded during times of relative peace, before being diverted and exploited for use in conflicts as they arise.[[14]](#footnote-14) Conventional arms (i.e. ammunitions, parts, and components) represent an international industry worth several billions of US dollars and, as such, are freely traded between States and merchants. This raises the issue of how these could be completely exempted from wto law, due to their potential for being used for legitimate security purposes, or illegally traded on illicit markets,[[15]](#footnote-15) i.e. how can tradeable and legally permitted goods be exempted from international trade law?

Additionally, it remains overlooked that the international arms trade covers not only the end products (i.e. rifles or aircrafts), but also their components and parts, which can involve several wto Members who are both att States and non-States Parties. Prior to the establishment of att, a number of scholars considered all trade in conventional arms to be excluded from wto law at all times. However, their argument remained unfounded, as it was based solely in consideration of gatt Article xxi, but without examining att, along with pertinent wto’s rules and disputes, and att and wto law relationships to public international law.[[16]](#footnote-16) These open questions have the potential to cause jurisdictional and enforcement issues, despite att maintaining that ‘the implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing or future international agreements’.[[17]](#footnote-17) This chapter does not argue for the inclusion of conventional arms trade in wto law, but rather that att reforms should add international trade law rules and principles to the treaty, as well as utilising wto best legal practices for effective enforcement. For example, wto rules and mechanisms can regulate State subsidisation, and the proliferation of conventional arms in a highly effective manner.

According to the att timeline, 2021 is the starting year for any interested State Party to propose amendments to this treaty.[[18]](#footnote-18) This indicates that scholarly evaluation of att it is now timely, in order to assist with such proposals. Therefore, this chapter undertakes: firstly, a critical overview of att, secondly, an in-depth examination of att and its relationship with international trade law, by listing its findings and recommendations. In addition, practitioners will find recommendations for reforming the att to assist States Parties in administering their arms export control systems.

2 The Arms Trade Treaty and International Trade Law

This section examines whether international trade rules have been regarded as binding parameters for a potential multilateral arms trade treaty. It has been generally acknowledged that prior to the adoption of the att by the UN General Assembly in April 2013, there was a considerably greater number of binding international rules regulating trade in fruits than in conventional arms.[[19]](#footnote-19) The UN-led negotiations for creating att date back to December 2006, when a draft resolution entitled ‘Toward an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms’ (the 2006 Resolution) was adopted by the General Assembly (by a vote of 153 in favour to one against, this being the United States (US)).[[20]](#footnote-20) The 2006 Resolution recognised the right of all States to trade and retain conventional arms for self-defence and security purposes, alongside the role played by Non-governmental Organisations (ngo s) and civil society to enhance cooperation and transparency ‘in the field of responsible arms trade’.[[21]](#footnote-21) It also highlighted in relation to the conventional arms trade ‘the growing support across all regions for concluding a legally binding instrument, negotiated on a non-discriminatory, transparent and multilateral basis, to establish common international standards’.[[22]](#footnote-22)

The 2006 Resolution further requested that the UN Secretary-General seek additional consultations, as well as establish a group of governmental experts to draft a legally binding instrument.[[23]](#footnote-23) The Group of Governmental Experts (the Experts) submitted a report to the UN Secretary-General in mid-2008 concerning “the feasibility, scope, and draft parameters” for a potential arms trade treaty, which observed that ‘global arms production and trade constituted a significant contribution to the economy and employment in a number of countries [and] trade in arms had become globalized and more competitive’.[[24]](#footnote-24) However, the Experts also noted that the conventional arms trade has ‘caused immense human suffering and political instability in different parts of the world [and] that combating illicit trade and unlawful transfers to non-State actors must be adequately addressed’.[[25]](#footnote-25) Furthermore, when it came to the treaty draft’s parameters: ‘experts agreed that principles enshrined in the UN Charter would be central to any potential arms trade treaty’ and that other parameters would include international human rights law, international humanitarian law, and the 1996 UN Disarmament Commission Guidelines for International Arms Transfers.[[26]](#footnote-26)

The Experts recalled the key principles of the UN Disarmament Commission Guidelines including, ‘ensuring that the level of armaments is commensurate with [States’] legitimate self-defence and security requirements, including their ability to participate in UN peacekeeping operations’.[[27]](#footnote-27) Additionally, they stated that such a treaty could, if ‘non-discriminatory and resistant to political misuse’, both prove feasible and remain within the parameters of the UN Charter.[[28]](#footnote-28) The Experts concluded by stating the need to undertake further consideration of two issues, i.e. ‘that there were different motivations for conventional arms production and acquisition, and that weapons being traded on the illicit markets most often started out as legally traded weapons’.[[29]](#footnote-29) They also pointed out that ‘to prevent diversion of conventional arms … all States [should] ensure that their national systems and internal controls are at the highest possible standards’.[[30]](#footnote-30)

The issues highlighted by the Experts were subsequently addressed by an Open-ended Working Group, established by a General Assembly resolution in late 2008.[[31]](#footnote-31) The Group stated that, following the Experts’ report, a number of further elements should be considered for ‘establishing common international standards for the import, export and transfer of conventional arms which would provide a balance giving benefit to all’. In addition, the principles of the UN Charter and ‘other existing international obligations’ should remain ‘at the centre of such considerations’.[[32]](#footnote-32) Between 2010 and 2013, these constitutive elements were envisaged, presented and debated by the UN Member States at four Preparatory Committees, and two Conferences in 2012 and 2013.[[33]](#footnote-33) Interestingly, the US and Russia (who had been considered accountable for the failure of 2012 conference to reach a consensus on a final treaty) participated in all of the committees and conferences.[[34]](#footnote-34)

2.1 The Scope and Parameters of the Arms Trade Treaty

‘The Compilation of Views on the Elements of an Arms Trade Treaty’ for the UN Conference on the att of 2012 constitutes a significant UN document relating to the att negotiation, one that demonstrates the concerns of a number of Member States when it comes to the implications of international trade law.[[35]](#footnote-35) The conference commenced with the then-UN Secretary-General Ban Ki-moon, stating that the absence of any treaty dealing with conventional arms was ‘a disgrace’.[[36]](#footnote-36) The UN Member States interested in creating an att submitted detailed views concerning the proposed principles, objectives, parameters, scope, and implementation. For example, in relation to scope, Bulgaria noted that att should not regulate the licensing of either production or manufacture, because it is already ‘subject to regulation under international trade law and, as such, within the purview of bilateral or multilateral trade agreements and/or contracts’.[[37]](#footnote-37)

This led to many Member States including Ecuador expressing the view that ‘the criteria that States must consider in deciding whether a transfer should be authorised must be objective, transparent, consistent, predictable and non-discriminatory’.[[38]](#footnote-38) For these States in particular, the criteria or parameters of the treaty need to be guided by the principles of non-discrimination and transparency.[[39]](#footnote-39) In addition, other States expressed similar views concerning the issue of implementation, i.e. that an att should be implemented in a non-discriminatory manner.[[40]](#footnote-40) Furthermore, Guatemala suggested the establishment of mechanisms for compliance assistance, information exchange, and annual reporting, in order to ensure effective and transparent implementation.[[41]](#footnote-41) Finally, States also highlighted that it should be stated in both parameters and implementation that national control systems for the authorising and licensing of transfers of arms must be consistent, predictable and transparent.[[42]](#footnote-42)

Despite the 2012 att Conference being unable to reach a consensus as a result of objections from a number of Member States, the States established a process whereby the failure to reach consensus could be circumvented by a UN General Assembly resolution. The General Assembly adopted a resolution to this effect in January 2013, which mandated that a conference be convened in March 2013.[[43]](#footnote-43) With the exception of New Zealand, the participants of the 2013 conference did not consider international trade law to be of concern, due to the draft treaty being almost ready for adoption. However, New Zealand objected to the insertion of the phrase “under its jurisdiction” in att Article 7 on Export and Article 8 on Import, by stating that this phrase introduced:

[A] confusing element – or potentially a jurisdictional gap – into the text. If a country is not controlling the physical exports or imports of items from its territory – then who is, and who is it that would be responsible for ensuring compliance with the provisions of the att? I note that in the wto context … references to “imports” or “exports” are not qualified by any reference to “under the [Contracting Parties] jurisdiction” (e.g. see gatt 1994 Articles, i, ii, iii or viii) … It is not clear to me, Mr President, why the att should need a different regime for exports and imports than is applied, for example, in the wto … States must not be able to opt out from their obligations under the att.[[44]](#footnote-44)

This indicates that New Zealand based its question on the valid presumption that: A) the applicable law to the att/wto States’ regulations of all exported and imported goods is the wto law, and b) this law is not qualified by any references to the wto Member States’ own jurisdictions, because of wto rules, including gatt Article x on the publication and administration of trade regulations.[[45]](#footnote-45) However, the 2013 negotiations retained a number of different opinions relating to the overall scope and parameters of att. Thus, the US strongly argued that att ‘is not an arms control treaty, not a disarmament treaty-, it is a trade treaty regulating a legitimate activity’.[[46]](#footnote-46) Furthermore, in relation to the question of parameters, Ghana noted in a statement delivered on behalf of 103 States that ‘the text still needs to better reflect existing international legal norms and standards’.[[47]](#footnote-47)

However, two Members States (i.e. Cuba, and Kuwait on behalf of the Arab group) submitted statements expressing disappointment with the final draft. Cuba contended that the end-product was ‘an unbalanced text that favours arms-exporting States, which are granted privileges detrimental to the legitimate interests of other States, including on defence and national security issues’.[[48]](#footnote-48) Kuwait, on the other hand, expressed regret that the Arab States’ proposals were overlooked, as they included ‘the need to develop a mechanism for the settlement of disputes arising from a denial of permission to transport or export arms, by which importing States could have guarantees that the application of the treaty would not be politicised’.[[49]](#footnote-49) However, some of the above suggestions and proposals were eventually included in the final draft, and on 2 April 2013 the General Assembly adopted the att by an overwhelming majority of 154 States in favour.[[50]](#footnote-50) As of October 2021, there have been 110 att States Parties in existence.

2.2 Lessons Learned from the Negotiations of the Arms Trade Treaty

The att negotiations revealed three important aspects of the origin of international trade law, alongside its principles, and implications for this treaty, as discussed below. Firstly, States were guided by the spirit and principles of international trade law, most notably non-discrimination and transparency.[[51]](#footnote-51) The att negotiators (comprised of States’ representatives, international and regional organisations, and ngo s) were aware that the prioritisation of economic interests over security, created an unbalanced arms trade threatening security and stability, both nationally and internationally.[[52]](#footnote-52) However, the negotiators did not fully elaborate on the broad conception of security to highlight the connection between human security and economic security, particularly as weakness or loss of the latter, results in the former becoming unattainable.[[53]](#footnote-53) Some of att negotiators declared that the balance of the conventional arms trade had been realised in the evolving concept of an arms trade, which commenced as a ‘responsible arms trade’, for legitimate purposes (i.e. the UN peacekeeping operations), alongside the att term of ‘legitimate trade for peaceful purposes’.[[54]](#footnote-54)

Nonetheless, Stavrianakis subsequently claimed that ‘rather than signalling the victory of human security, the att is better understood as facilitating the mobilisation of legitimacy for contemporary liberal forms of war fighting and war preparation’.[[55]](#footnote-55) This was primarily due to the arms exporting States championing att and justifying ‘their arms export practices in terms of morality, responsibility and legitimacy’, including explaining these practices ‘by reference to [their] national regulatory regimes that exceed the standards set out in the att’.[[56]](#footnote-56) Stavrianakis argued that this resulted in ‘these justifications and regimes serv(ing) to shield [arms exporting States’] weapons transfers and use from scrutiny and accountability’.[[57]](#footnote-57) Therefore, the end-product consisted of an unbalanced trade treaty, one favouring arms exporters and therefore inadequate for the purposes of protecting international peace and security.

Secondly, the att refers (albeit indirectly and briefly) to international trade law because it stipulates under Article 2:2 that ‘for the purpose of this treaty’ the so called “transfer” of conventional arms activities is comprised of: ‘export, import, transit, trans-shipment and brokering’.[[58]](#footnote-58) This forms an explicit reference to the fact, for the transparent and effective implementation of att, these transfer activities require invoking the rules and procedures of international trade. Thirdly, a number of negotiating developing States expressed dissatisfaction with the fact that, despite att being purported to fairly regulate the conventional arms trade (in order to preserve international peace and security) its final draft is unfavourable to their trade and security needs, including the assistance required to implement this treaty.[[59]](#footnote-59) This clear expression of discontent also invokes the two key international trade rules of the Most-Favoured-Nation and National Treatment, founded on the principle of non-discrimination, i.e. that States must not discriminate between their trading partners, nor discriminate between imported and domestically produced goods with respect to internal taxation or other regulatory measures, respectively.[[60]](#footnote-60)

These rules are essential for the establishment of a level playing field as a policy goal for the competing interests of traders, particularly as they are regularly invoked by all trading States.[[61]](#footnote-61) However, att does not specify these basic rules of international trade in order to effectively uphold the principle of non-discrimination and so protect State Party national security. Furthermore, unlike the wto, the att has no legal standard for non-discrimination that takes into account the intent, effect, and comparability of any tradable armaments at issue.[[62]](#footnote-62) Overall, the international trade law principles of non-discrimination and transparency have been regarded as binding parameters for a potential multilateral arms trade treaty. The following section further examines the relationship between the att and international trade law.

3 The Arms Trade Treaty and the World Trade Organisation Law

The att is first and foremost a trade regulating treaty one that can be viewed as sharing similar principles and practices with the wto. Therefore, similar to a typical multilateral or bilateral trade treaty, the att contains a number of articles on trade law principles rules and procedures, including export, import, and compliance reporting.[[63]](#footnote-63) The att dual object is to ‘establish the highest possible common international standards for regulating, or improving, the regulation of the international trade in conventional arms [and] prevent and eradicate the illicit trade in conventional arms and prevent their diversion’. In addition, its implementation process is primarily a cooperative enforcement method of compliance review undertaken by States Parties.[[64]](#footnote-64) Moreover, att maintains that this serves the purpose of *inter alia,* i.e. ‘promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms’.[[65]](#footnote-65) However, if a dispute arises between States Parties concerning the interpretation or application of att, they are permitted to select the coercive enforcement method of judicial settlement,[[66]](#footnote-66) while States Parties can also settle their disputes by any alternative dispute resolution method, i.e. negotiations and arbitration.[[67]](#footnote-67)

It is notable that the att settlement procedures have not yet been invoked, thus raising questions relating to their viability, as well as the legal capacities of States Parties.[[68]](#footnote-68) The att key articles (particularly 6 and 7 on Prohibition and Export, and Article 11 on Diversion, and differing enforcement procedures) draw to varying degrees on international trade law. The principle of non-discrimination concerning export and import requirements, and rules on subsidisation and dumping apply to all internationally traded goods, including conventional arms.[[69]](#footnote-69) For example, Tocoian found that ‘a 10% increase in military spending leads to an increase in exports of arms and ammunition between 5% and 10%’.[[70]](#footnote-70) In legal trade terms, this increase is a form of subsidy, one that can cause dumping of arms on the international markets, and thus ultimately their diversion to illicit markets.[[71]](#footnote-71) The proliferation of conventional arms is generally sustained by a belief that higher defence spending equals increased security.[[72]](#footnote-72) For example, the Stockholm International Peace Research Institute (sipri) noted total global military expenditure rose to $1981 billion in 2020, with the US being the largest military spender.[[73]](#footnote-73)

Furthermore, the conventional arms trade not only covers the finished products, but also their components parts, which can involve a number of wto/att state parties. This is illustrated by a recent German embargo on arms exports destined for Saudi Arabia, in which Germany (an att State Party) justified its export restrictions on aircrafts’ components because of the Yemeni civil war. However, this ban impacted on the manufacturing of these aircrafts in the United Kingdom (also an att State Party), which consequently disputed its legality because it allegedly endangered the security interests of the European Union, as well as Saudi Arabia, the aircrafts’ recipient and att non-State Party.[[74]](#footnote-74)

Additionally, the att States Parties are required to observe the att preambular principle that States are ‘determined to act in accordance with … the responsibility of all States, in accordance with their international obligations’.[[75]](#footnote-75) This principle, att Article 9 on regulating conventional arms trade ‘in accordance with relevant international law’, and Article 16:2 on seeking assistance from *inter alia* international organisations, require the att to draw on the best international legal practices for regulating international trade in conventional arms. Moreover, the principle of systemic integration (as expressed under Article 31:3(c) of the Vienna Convention on the Law of Treaties (vclt)) applies to the interpretation of att, namely that ‘there shall be taken into account … any relevant rules of international law applicable in the relations between the parties’.[[76]](#footnote-76)

However, Casey-Maslen argued that, despite the clarity of the wording of att Article 2(2) in relation to the trade “transfer” activities, ‘the precise scope of the term ‘trade’ was deliberately left ambiguous in the att’.[[77]](#footnote-77) He also claimed that, although the export and import of conventional arms falls within the scope of wto law, it is regrettable to see ‘the absence of any reference to trade agreements, the wto or the principles of trade law’ in att.[[78]](#footnote-78) Nonetheless, the att and wto law share a similar purpose of establishing a fair competition between exporters and importers, as well as creating a stable and predictable multilateral trading system.[[79]](#footnote-79) This system has been sustained by the reciprocal and non-discriminatory interactions between consenting states since the creation of the wto’s predecessor, the gatt in 1948. Nonetheless, in response to the common unilateral nature of arms trade, the att does not contain any reciprocal obligation.

Furthermore, att and wto also share a similar process of enforcement, primarily undertaken through an obligation of conformity. Carmody, in reference to procedural fairness noted that ‘wto law is not a body of law that places direct emphasis on fairness. Instead, its most immediate concern is the ‘equality of competitive conditions’. This concern is tied to the general orientation of wto law as an order of obligations,[[80]](#footnote-80) as manifested in the obligation of conformity, which stipulates that a wto Member State shall ensure the conformity of its laws with its obligations under wto law (wto Agreement Article (xvi:4), along with wto Dispute Settlement Understanding Articles (19:1) (22:1) and (22:8)).[[81]](#footnote-81)

However, the argument for excluding the conventional arms trade from international trade law is twofold: A) the wto national security exceptions apply to all forms of trade in conventional arms at all times, and b) the att has created a self-contained regime that is separate from other international legal systems. Deciphering the first basis requires starting with the second general aspect, namely whether the att has created a self-contained regime separate from general international law, and therefore is, in essence, a *lex specialis* arms control regime with its own *sui generis* law.[[82]](#footnote-82) Although the att references two international trade law principles, along with international humanitarian and human rights obligations (thus making it a unique international legal system) no author has claimed that it has, to date, become a self-contained regime, because it is well-entrenched in public international law.[[83]](#footnote-83)

In terms of trade and security rules and enforcement procedures, the att is a by-product of international law-making, and can be best regarded as a soft legal regime influenced by hard law, informal rules, and international standards for controlling the conventional arms trade.[[84]](#footnote-84) Furthermore, when for analytical purposes, the self-contained concept was applied to the wto system, scholars found wto had not been ‘decoupled’ from the secondary rules of general international law of state responsibility.[[85]](#footnote-85) By analogy (and considering its strong emphasis on State responsibility) the att cannot be either interpreted, or effectively implemented, in the absence of the international primary and secondary rules of obligations stemming from the treaty obligations, as well as the legal consequences of breaching those obligations.[[86]](#footnote-86) For example, the att obligation forbidding a State Party from authorising the transfer of arms to any other State Party employing such weapons to commit genocide, is derived from the UN Genocide Convention. According to Clapham, if this obligation is breached, then exporting State Party is considered complicit in this crime, and (like the recipient State) liable for reparation.[[87]](#footnote-87) In this case, both international primary and secondary rules of obligations are interlinked, due to being derived from an identical international source of law.

3.1 The att and the wto National Security Exceptions

Proponents of the exemption of the conventional arms trade from wto law reason that (regardless of its primary purpose of regulating essentially trade ‘transfer’ activities) att consists of a security treaty.[[88]](#footnote-88) This infers that it forms a unique system, incapable of being connected to other international or regional legal systems, i.e. the wto or regional trade agreements. It remains to be seen whether a conflict of jurisdiction will be caused by att Articles 15, 16 and 26 on relationships with other international agreements, due to the States Parties seeking cooperation and assistance with implementation after breaches of international or regional trade obligations. Additionally, the general indifference to the trading of conventional arms without referencing the concepts of “conditional contraband” (i.e. trading arms for peaceful uses), and “absolute contraband” (i.e. banning armaments primarily used for war) has significantly weakened the proposal to exclude all conventional arms trade from the wto purview at all times.[[89]](#footnote-89)

It can thus be argued that the export and import of conventional arms can fall within the scope of the wto as a result of gatt Article xi:1 on the General Elimination of Quantitative Restrictions. This Article stipulates that:

No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any [Member State] … on the exportation or sale for export of any product destined for the territory of any other [Member State].[[90]](#footnote-90)

The wto Analytical Index listing of products excluded from the application of gatt Article xi:1 does not include conventional arms, inferring that the export or import prohibitions or restrictions on trading such arms would violate wto law.[[91]](#footnote-91) Nonetheless, the wto Analytical Index acknowledges that:

Since practically all Members maintain some form of quantitative restrictions (e.g. prohibitions or restrictions relating to nuclear material, narcotic drugs, weapons, etc.), [The wto Council for Trade in Goods’ Decision on Notification Procedures for Quantitative Restrictions] seeks to provide transparency on the policy reason that justifies them. Provisions under the gatt 1994 that may allow a Member to introduce or maintain a quantitative restriction include … Article xxi (security exceptions).[[92]](#footnote-92)

gatt Article xxi:b provides that a wto Member State cannot be prevented from taking any action that:

[I]t considers necessary for the protection of its essential security interests … (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; [or] (iii) taken in time of war or other emergency in international relations.[[93]](#footnote-93)

However, it is debatable whether these exceptions apply to all aspects of the conventional arms trade and at all times. Moreover, it remains undecided whether gatt Article xxi:c (which stipulates that the gatt does not prevent a State Party ‘from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security’), applies unconditionally to either the authorisation of conventional arms for peaceful purposes or restrictions for reason of security. It is thus argued that, when it comes to justiciability, gatt Article xxi:c proves less problematic than Article xxi:b. This is due to the ability of wto Member States to impose economic sanctions (including an arms embargo) in compliance with decisions of the UN Security Council.[[94]](#footnote-94) Furthermore, Casey-Maslen argued that exceptions to gatt Article xxi:b are inapplicable to the arms trade, particularly during times of peace and for non-military uses.[[95]](#footnote-95) He highlighted the wide discretion available for wto Member States and att States Parties to self-interpret their ‘essential security interests’ in order to breach their wto and att obligations, by stating:

While the scope of the terms ‘military establishment’ may be wide, it certainly does not encompass civilian trade and it is questionable whether it extends to exports for the purpose of law enforcement by police forces. Moreover, the att focuses on the adverse consequences in a recipient state (not the security interest in the exporting state); indeed, an exporting state might define its ‘essential security interest’ in a way that would benefit from a transfer, as Article 7(1) of the treaty seems to imply, notwithstanding the negative consequences for civilian populations in the recipient state. At the same time, gatt Article xxi gives broad discretion to a wto member to define what ‘it considers’ necessary to protect ‘its essential security interests’, and this could include export restrictions based on concerns for negative consequences in the recipient state which, indirectly, may affect also the security interests of the exporting state.[[96]](#footnote-96)

Casey-Maslen concluded by highlighting that even the exception contained within the preamble of the wto Technical Barriers to Trade Agreement (tbt) can be considered inapplicable to the international trade in conventional arms.[[97]](#footnote-97) The tbt preamble stipulates that it does not prevent a wto Member State from taking measures necessary for *inter alia* ‘the protection of human … life or health or for the prevention of deceptive practices’. However, Casey-Maslen maintained that this exception ‘governs the technical quality of the arms or ammunition being exported, as opposed to the decision whether or not to export arms to certain recipients’.[[98]](#footnote-98)

3.2 The State Subsidisation of the Arms Industry

The preceding points can be demonstrated by the 1997 Canada-Aircraft dispute, which illustrated the legal risk of having trade discrimination in disguise as a result of the disconnection between conventional arms trade and wto law*.* In this dispute,Brazil alleged that the Canadian government’s programme of subsidies to aerospace and defence corporations for the production of civilian aircrafts was “prohibited export subsidies” in breach of Article 3 of the Agreement on Subsidies and Countervailing Measures (scm).[[99]](#footnote-99) One of the corporations benefiting from this programme was Bombardier, which at the time provided military aviation services.[[100]](#footnote-100) However, the Panel ruled against Canada, finding that certain measures were inconsistent with Article 3 of the scm.[[101]](#footnote-101)

Following this ruling, Canada redesigned its programme to make it ‘wto-friendly’, in particular by announcing a $30 million subsidy programme for the same corporations, but this time for the production of new weapons, as permissible under gatt Article xxi.[[102]](#footnote-102) This dispute did not end with the Appellate Body (ab)’s ruling, which upheld the Panel’s findings, because Brazil filed three wto complaints against Canada for similar export subsidies to the civilian aircrafts industry (last one in 2017).[[103]](#footnote-103) Commenting on the 1997 dispute, Staples noted that ‘the wto gives exemplary protection to government actions that develop, arm and deploy armed forces and supply military establishment. Article xxi of the gatt allows government free reign for actions taken in the interest of national security … in this case, the [Canadian] government was forced down the path of a military economy’.[[104]](#footnote-104) Similarly, Feffer contended that the national security exception ‘channels money from the civilian to the military sector [and] protects countries’ subsidies for military production from international trade rules’.[[105]](#footnote-105) Nonetheless, developed States have generously subsidized their arms industries during times of economic stability and crisis, allegedly for the purpose of protecting their national security interests at home and abroad.[[106]](#footnote-106)

One concerning outcome has resulted from States’ arms procurement and subsidisation of the conventional arms industry in the name of national security: there has been uncontrollable proliferation of conventional arms which causes violence and criminality both domestically and internationally.[[107]](#footnote-107) For instance, the dumping of conventional arms has taken place in developing States, potentially causing a “blowback effect” to the arms exporting State, that is the importing State or non-State actors using these arms to target their designated enemies, including the arms exporting State.[[108]](#footnote-108) A well-documented example of such blowback concerns the US involvement in both Iraq and Afghanistan, following the collapse of their respective US-allied governments. In both cases, terrorist groups employed US-made armaments to wage a global war.[[109]](#footnote-109) The challenges inherent in regulating the subsidisation of arms exports thus exposes the flaws in att enforcement, as analysed below. The following section also examines how transparency should be firmly embedded within att mechanisms.

4 The Arms Trade Treaty Enforcement System

Due to its role in regulating the trade and security obligations of States Parties, the att requires a higher level of conformity than the wto. However, as illustrated by the following factors, it currently falls short of being a comprehensive multilateral trade and security treaty. Firstly, rather than setting down strictly binding provisions and timeframes, the att contains inadequate wording on enforcement and transparency; for example, Article 14 on enforcement reads ‘[E]ach State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty’. In addition, Article 19 on the dispute settlement procedures is too brief to assure compliance,[[110]](#footnote-110) including the need to foresee the common situation of States failing to agree on how to resolve disputes within a specific timeframe.[[111]](#footnote-111) This infers that att cannot be regarded as strictly binding, when some of its core obligations (i.e. on Implementation, Diversion and Reporting) contain recommendatory words i.e. States Parties being “encouraged” to act.[[112]](#footnote-112)

The weakness of att thus impacts on one of the key principles concerning the observance of treaties, i.e. the *pacta sunt servanda* (as set out under Article 26 of vclt) that ‘every treaty in force is binding upon the parties to it and must be performed by them in good faith’.[[113]](#footnote-113) In addition, as it stands, the att invites both good and bad faith performance, which poses considerable risks for an arms trade industry suffering from endemic corruption and secrecy.[[114]](#footnote-114) Secondly, the att States Parties have not yet invoked the key legal rules of international trade, nor their exceptions, primarily in response to the att ambiguity. The international rules on trade liberalisation are subject to a number of exceptions regulating the State’s inherent rights of freedom of trade and security, as specified under gatt Articles xiv, xx, and xxi, and supplemented by other wto Agreements and explicated by a number of wto Dispute Settlement Body (dsb) rulings and recommendations.[[115]](#footnote-115)

The only att guiding rules capable of being regarded as legitimate exceptions for States Parties to deviate from their trade obligations are: firstly, the preambular point that State Parties recognise ‘the legitimate political, security, economic and commercial interests of States in the international trade in conventional arms’.[[116]](#footnote-116) Secondly, this point being reiterated as a preambular principle in the treaty with an additional sentence specifying that respect for the legitimate interests of States includes their rights to ‘produce, export, import and transfer conventional arms’.[[117]](#footnote-117) Nonetheless, these preambular points and principles are inadequate exceptions potentially susceptible (particularly when it comes to arms exporting States) to misinterpretation and breaches.[[118]](#footnote-118)

Thirdly, the att lacks any appropriate mechanism to scrutinise a State Party’s arms export control system, or to penalise such a State for breaching its international legal obligations. att Article 7(2) gives arms exporting and importing State Parties the right to adopt their own “risk mitigating programmes”.However, it should be acknowledged that this right has been abused by arms exporting States, and many importing States lack the capacity to implement this programme.[[119]](#footnote-119) For instance, a number of arms importing States have failed to uphold their arms end-user agreements, as a result of the lack of capacity, causing the diversion of arms to illicit markets.[[120]](#footnote-120)

Fourthly, the att suffers from a lack of available legal remedies for non-att State Parties (Third States) and non-State actors impacted by this treaty implementation, or the lack thereof.[[121]](#footnote-121) This is evident in att Articles 6 and 7 concerning Prohibitions and Export, as well as Articles 5 (Implementation), 14 (Enforcement), and 19 (Dispute Settlement) which provide rules for att States Parties only. Thus, if a third State arms exporter or importer, or ngo representing the legitimate rights and interests of traders or civilians, have been affected by an att State Party’s misinterpretation or mis-implementation, they can only seek enforcement, protection, or recovery of rights through the offending att State Party. This represents a significant obstacle for both att and all its stakeholders.[[122]](#footnote-122)

4.1 The att Function of Cooperative Enforcement

In terms of legal practice, the att held six Conferences of States Parties (csp s) between 2015 and 2020, and (according to the att) csp functions include considering ‘amendments to this Treaty in accordance with Article 20 [six years after the entry into force of this Treaty, i.e. 2021] [and] issues arising from the interpretation of this Treaty’.[[123]](#footnote-123) The 2016 csp2 proved the most significant in terms of proposals for implementation and transparency with the States Parties establishing three standing Working Groups on: firstly, Treaty Universalisation (wgtu), secondly, Transparency and Reporting (wgtr), and thirdly, Effective Treaty Implementation (wgeti).[[124]](#footnote-124) These groups assist States Parties in implementing the att according to their respective mandates, while during csp4 “the wgeti Chair established three Sub-working groups to focus on specific areas of Treaty implementation”, i.e. att Article 5, Articles 6 and 7, and Article 11.[[125]](#footnote-125)

The csp2 was also important for establishing the att Voluntary Trust Fund (vtf) to ‘support national implementation of the Treaty and encourage all States Parties to contribute resources to the Fund’.[[126]](#footnote-126) The beneficiaries of vtf projects have been att States Parties, Signatory States and other States demonstrating a political commitment to acceding to the att.[[127]](#footnote-127) att treaty universalisation, along with the active and consistent participation of ngo s and civil society in the att six csp s, can be considered to have raised States’ awareness of the security implications of an unregulated arms trade industry. Furthermore, this enables a stronger argument to be made in favour of customary international law, as (according to Article 38 of the vclt) international custom ensures a rule in a treaty becomes binding on a third State;[[128]](#footnote-128) i.e. an att peremptory norm against genocide is binding on third States, due to it constituting a customary rule of international law.[[129]](#footnote-129) This permits att to support third parties in directly protecting their rights under the jurisdiction of an offending State Party, to hold it accountable to its treaty obligations.[[130]](#footnote-130)

Nevertheless, att is rendered ineffective by the lack of specified legal remedies in the treaty, readily invoked by affected State and non-State actors and enforced by its mechanisms, because, *inter alia*, States Parties’ cooperation in enforcing third parties rights cannot be legally guaranteed in the absence of obligatory rules and a judicial or quasi-judicial enforcement body.[[131]](#footnote-131) Thus, a treaty primarily founded on soft law obligations, is incapable of supporting its States Parties (let alone third parties) to enforce their rights and obligations.[[132]](#footnote-132) Commenting on the att, Holden noted that:

The weakness of the Arms Trade Treaty … is a further commentary on how States around the world, in particular those that are the biggest arms producers, so effectively manipulate the international regulatory environment in the interests of arms manufacturers rather than global citizens. Perhaps it is the beginning of a bigger debate, and the treaty can be radically revised over time. But as it stands, it will do little to limit the worst parts of the arms trade.[[133]](#footnote-133)

However, although wto suffers from the identical issues concerning third parties, its binding rules provide effective remedies for Member States representing the legitimate interests of their traders, while the wto dsb has offered security and predictability bymonitoring and securing compliance.[[134]](#footnote-134) Moreover, the wto has made some progress in the effective management of trade risks; for example, by assisting Member States regulating factors associated with non-communicable diseases.[[135]](#footnote-135) The wto experience in general can be considered highly instructive for both att law and practice. In brief, international arms control and the wto law are two academic fields divided by a common subject: The study of international trade law. The wto enforcement mechanisms are explicated below to demonstrate the similarities between att and wto, as well as the mutually beneficial cross-fertilisation between the two systems for the upcoming att reform.

4.2 The att and the wto Enforcement Mechanisms

This subsection compares att and wto enforcement mechanisms, in order to highlight the strengths and weaknesses of both multilateral trading systems. The att and wto share the same original purpose of regulating the international trade of merchandised goods, but differ markedly in terms of compliance and enforcement. The att primary enforcement mechanisms are stipulated briefly in Article 14 on enforcement and Article 19 on dispute settlement. However, the att is mainly enforced by cooperative enforcement mechanisms, by means of reporting, and voluntary consultations between States Parties, being influenced by the incentive to comply as a result of the potential reputational costs to the State.[[136]](#footnote-136) Erickson; for instance, argued that, even during and following the att negotiation, ‘States’ varied concerns for compliance can be traced primarily to the threat of reputational damage from “irresponsible” arms transfers in domestic politics’.[[137]](#footnote-137)

In addition, Erickson pointed out that ‘concern for international reputation may pressure States to commit to new policies, but without international accountability mechanisms, those policies’ ability to inspire compliance may be limited’.[[138]](#footnote-138) These policies include risk mitigating programmes; for example, a system for licencing arms exports and end-user agreements, but without international legal accountability, they lack efficacy.[[139]](#footnote-139) Furthermore, sipri reported in 2021 that the att’s enforcement problems have persisted namely ‘shortfalls in compliance with mandatory reporting and a decline in the number of publicly available reports’.[[140]](#footnote-140) Nevertheless, unlike att, the wto contains both a designated compliance body, (i.e. dsb) and an implementation review mechanism, the Trade Policy Review Body (tprb).[[141]](#footnote-141) The sole objective of these wto mechanisms is to deter non-compliance generally arising from either ‘norm ambiguities’ and/or ‘capacity limitations’.[[142]](#footnote-142)

The wto dsb consists of representatives from all Member States’ governments and has authority to *inter alia* ‘adopt panel, ab and arbitration reports, [and] maintain surveillance over the implementation of recommendations and rulings contained in such reports’.[[143]](#footnote-143) The wto dispute settlement process is formed of three main stages: ‘(i) consultation between the parties; (ii) adjudication by panel, and if applicable, by the ab; and (iii) the implementation of ruling, which include the possibility of countermeasures in the event of failure by the losing party to implement the ruling’.[[144]](#footnote-144) All are subject to separate timeframes, and permit and encourage amicable settlements.[[145]](#footnote-145)

The legal motive for the initiation of consultation is that once a State has anticipated, that ‘a decision or a proposed course of action’ may harm its rights and obligations. Thus consultation can prove ‘a way of heading off a dispute’, by engaging in dialogue with the offending State, so as to find a mutual solution.[[146]](#footnote-146) Furthermore, the wto also acknowledged that ‘a majority of disputes so far … have not proceeded beyond consultations, either because a satisfactory settlement was found, or because the complainant decided for other reasons not to pursue the matter further’.[[147]](#footnote-147) However, it is incorrect to assume that the existence of the wto dsb, and in particular the ab, makes it the sole arbiter of legality, rather than the wto as an institution, since it is primarily comprised of political organs for decision-making.[[148]](#footnote-148) This can be viewed as a caricature of legality, including its reductionist views of how and where to improve compliance, which miss the crucial point that dispute settlement forms only one element of interactional international law.[[149]](#footnote-149)

There are a number of bodies and organs that jointly exceed the dsb in importance (i.e. the tprb, various committees, working parties on accession, and working groups) all of whom play a pivotal role in maintaining compliance with wto obligations. According to paragraph A(i) of the wto Trade Policy Review Mechanism (tprm) (i.e. the tprb enforcement mechanism), the objectives of the review includes improving ‘adherence by all members to the wto rules, disciplines and commitments’.[[150]](#footnote-150) Moreover, the tprm likely impact is ‘to ‘shame’ Members into compliance and to support domestic opposition to trade policy and practices inconsistent with wto law’.[[151]](#footnote-151) Thus, the tprm is best regarded as ‘an implementation review mechanism’ performing a significant enforcement role complementing the work of the wto compliance body of dsb.[[152]](#footnote-152) Overall, the wto can be viewed, in terms of enforcement, as more advanced than the att, not only as a result of the former’s rich legal history and jurisprudence, but also for its strict rules and procedures for Member States legal interactions and enforcement.

5 Findings and Recommendations for Reforming the Arms Trade Treaty

The textual defects and inadequate enforcement procedures of att ensures that it remains incomparable to the wto, and hence is in need of reform, as discussed below. Firstly, the att needs to establish a clear connection between the trade and security impact of an unregulated conventional arms industry, as well as any diversion of arms to the illicit markets. As alluded to earlier, the subsidisation of the arms industry in the name of national security is one of the main causes of the diversion of arms to poorly regulated developing countries. The aforementioned “blowback effect” to an arms-exporting State clearly highlights the risk of disconnecting conventional arms trade from security, and the weakness of the argument focusing on sovereignty. The att treaty and system should thus assist States in realising the risks associated with an unregulated arms industry, as well as utilising the best international legal practices for the effective management of these risks.

Secondly, the main legal and political incentives for States to seek international adjudication is to ensure compliance with international legal obligations, as well as manage domestic politics and defend their interests.[[153]](#footnote-153) However, the att voluntary dispute settlement system lacks these crucial incentives, resulting in States Parties trading arms with neither transparency nor accountability, thus misinterpreting and mis-implementing the att and jeopardising the security interests of non-State parties. Thirdly, despite the positive compliance of the State’s international reputation, the att cannot rely solely on cooperative enforcement through reporting and consultation, without the coercive enforcement mechanism of a standing dsb with a strict timeframe, as well as the surveillance and monitoring of implementation. Fourthly, the att should adopt an interactional legal process, in particular by establishing compulsory diplomatic and quasi-judicial enforcement mechanisms, alongside councils for States Parties’ continuous regulated interactions in relation to interpretation, implementation and transparency.[[154]](#footnote-154)

The att remains pertinent during times of relative peace or conflict; inferring that its States Parties need to maintain their legal interaction in order to ensure optimal compliance with att obligations. In addition, the att and wto’s focus on the obligation of conformity can be read as the construction of ‘an interactional theory of compliance’, as a result of att/wto States engagements in the legal process of determining the obligation to comply through cooperative enforcement, so demonstrating that compliance is a ‘dialectal process in a continuum’.[[155]](#footnote-155) Thus, the wto regulatory system should be adopted for managing international trade in conventional arms, due to the following three reason: first, the att, albeit its ambiguity, does not explicitly exclude wto law, hence the direct and indirect references to the wto law and its core international trade principles by att negotiating States. Second, the att “transfer” trade activities, principles of non-discrimination and transparency, and enforcement through the obligation of conformity, ensures wto constitutes the most pertinent archetypal system for the att reform. Finally, the att and the wto shared issues of subsidisation and dumping of goods, require rules and mechanisms such as those of the wto’s, for effectively regulating the conventional arms trade.

6 Conclusion

This chapter has examined the issues arising from the failure of a multilateral trade treaty such as the att to be regulated by the law and practice of international trade, or at least references wto. In addition, it has highlighted that the trade law deficit in att has led to major defects having a negative impact on the enforcement of international legal obligations of States Parties. Furthermore, it has considered how the att’s legal history, core obligations and mechanisms, along with its relationship to other international legal systems, demonstrate that it is firmly embedded in both the legal theory and practice of international trade law.

Nonetheless, the significance of trade law has gradually retreated as att (re)negotiations have progressed, resulting in arms exporting States subsequently being able to evade international accountability for breaching the att, due to their self-reliance, in particular when it comes to their own arms control systems. Moreover, some of these States have promoted a risky culture of “collective guilt”, in which none can be held legally responsible or complicit in crimes caused by an illegal transfer of conventional arms. Nonetheless, att lacks standing enforcement bodies to: firstly, ensure effective compliance and transparency, and secondly, enforce the trade law obligation of conformity within open forums for States legal interactions. This highlights the att need for reform, since it is neither strictly binding nor voluntary, but lacks implementation, and thus risks losing any international legal relevance.

This chapter concludes that att should learn from the wto dialectical process of enforcement through different legal interactions settings i.e. councils, dsb, and tprb. In addition, the att should create a cooperative enforcement mechanism for strategically managing and rectifying risks arising from treaty breaches. This mechanism should possess the authority to cooperate with the arms control departments of States Parties, in order to ensure breaches do not reoccur.

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100. Bombardier Inc, Press Release, ‘Bombardier Announces Sale of its Military Aviation Services Unit’ 10 June 2003 <https://bombardier.com/en/media/news/bombardier-announces-sale-its-military-aviation-services-unit> accessed 10 May 2021. [↑](#footnote-ref-100)
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105. John Feffer, ‘Globalization and Militarization’ (*Institute for Policy Studies*, 4 October 2005) < https://ips-dc.org/globalization\_militarization/> accessed 1 May 2021. See Tocoian (n 70). [↑](#footnote-ref-105)
106. For example, between 1996 and 2020 Lockheed Martin Corporation received $1.8 billion in subsidies from the US government. The corporation has benefited from the US patronage during times of economic crises too, for instance, in the first half of 2020 it received $1.1 billion because of the Covid-19 pandemic. Other corporations which benefited from the US financial support during this period include, Raytheon Technologies Corp. ($410 million), L3 Harris Technologies Inc. ($74 million) and Northrop Grumman Corp. ($70 million). See sipri (n 73); Good Jobs First, ‘Subsidy Tracker Partner Company Summary: Lockheed Martin’ (*Good Jobs First*, 2020) <https://subsidytracker.goodjobsfirst.org/parent/lockheed-martin>; Anthony Capaccio, ‘Lockheed, Boeing Got Half of 2.3 billion in Pentagon Virus Cash’ (*Bloomberg*, 22 July 2020) <www.bloomberg.com/news/articles/2020-07-22/lockheed-boeing-got-half-of-2-3-billion-in-pentagon-virus-cash > accessed 14 June 2021. [↑](#footnote-ref-106)
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108. See Stohl and Grillot (n 71); Holden (n 71). [↑](#footnote-ref-108)
109. Stohl and Grillot (71) 90, 100–102; Aisha Ahmad, *Jihad & Co.: Black Markets and Islamist Power* (oup 2017) 32–37, 148–150; Holden (n 71) 58–64. [↑](#footnote-ref-109)
110. See arts 5(4) and 14 of the att (n 4). [↑](#footnote-ref-110)
111. Article 19 maintains “1. States Parties shall consult and, by mutual consent, cooperate to pursue settlement of any dispute … through negotiations … 2. States Parties may pursue, by mutual consent, arbitration to settle any dispute between them …” see the att (n 4). [↑](#footnote-ref-111)
112. See arts 5(3–4); 7(7); 11(5–6); 12 (2–3); 13 (2); 15(2–6); 16(3) of the att (n 4). [↑](#footnote-ref-112)
113. Art 26 of the vclt (n 4). [↑](#footnote-ref-113)
114. Art 13:3 of the att permits States Parties without explanation to exclude from their annual reports any ‘commercially sensitive or national security information’, the att (n 4). See Yashuito Fukui, ‘The Arms Trade Treaty: Pursuit for the Effective Control of Arms Transfer’ (2015) Journal of Conflict and Security Law 301; Laurence Lustgarten, ‘The Arms Trade: A Critical Introduction’ in Lustgarten (n 10) 20–23; Holden (n 71) 135–152. [↑](#footnote-ref-114)
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119. Art 7(2) the att (n 4). Lustgarten (n 10) 94. [↑](#footnote-ref-119)
120. Tobias Vestner, ‘Prohibitions and Export Assessment: Tracking Implementation of the Arms Trade Treaty’ (2019) The Geneva Centre for Security Policy Research Paper <www.gcsp.ch/publications/prohibitions-and-export-assessment-tracking-implementation-arms-trade-treaty> accessed 30 April 2021. [↑](#footnote-ref-120)
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130. ibid. [↑](#footnote-ref-130)
131. Erickson (n 122) 152. [↑](#footnote-ref-131)
132. Holden (n 71) 80–81. [↑](#footnote-ref-132)
133. Holden (n 71) 81. [↑](#footnote-ref-133)
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136. See the att arts 13 on reporting and Articles 17:7, 15:3 and 19:1 on consultations. See Erickson (n 122); Rachel Brewster, ‘Unpacking the State’s Reputation’ (2009) Harvard International Law Journal 231; Dietrich Earnhart and Robert Glicksman, ‘Coercive vs. Cooperative Enforcement: Effect of Enforcement Approach on Environmental Management’ (2015) International Review of Law and Economics 135. [↑](#footnote-ref-136)
137. Erickson (n 122) 5. [↑](#footnote-ref-137)
138. ibid 7. [↑](#footnote-ref-138)
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