

POSSIBLE VOLUNTARY GUIDING AND SUPPORTING ELEMENTS IN IMPLEMENTING
OBLIGATIONS UNDER ARTICLE 6 (1)¹

Article 6(1) of the ATT prohibits international transfers of conventional arms, their ammunition and parts and components to entities that are subject to UN arms embargoes – using the definition of transfer provided in ATT Article 2. The purpose of the sub-paragraph is to ensure in particular that the sanctions adopted by the UNSC are respected. All export licences should be assessed on a case-by-case basis and consideration must be given to Article 6 (1).

A) What to do

States Parties should control the stated or probable destination of export and the location of end-user against the embargoes enforced by the UN. As the list of embargoed countries, non-state entities and individuals (such as terrorist groups and individual terrorists) is subject to regular changes, it is important to take recent developments into account and consult with updated lists of arms embargoes in force.

While fully acknowledging that States Parties themselves decide what sources they will use in carrying out the risk assessment under art 6.1, which also involves the risk of diversion art. 11, the following non-exhaustive list of sources of information could be of value:

- Foreign affairs desk officers dealing with the particular country and with respective disarmament, SALW or export control agreements.
- Information from State Parties' diplomatic missions and other governmental institutions, including police, customs and intelligence sources.
- Information provided through regional organisations, if applicable.
- Information provided through export control arrangements, if applicable.
- UN Sanctions Committee Implementation Assistance Notices (provides information on the detection of an attempted violation of UN Arms embargoes – identifying entities involved in the violation, route, vessel, types of items concealed and method for concealment)
- Reports of UN Panels or Groups of experts mandated to monitor the implementation of UN sanctions and investigate alleged violations
- iTrace <http://www.conflictarm.com/itrace/>
- Non-governmental research organizations

Non-exhaustive list of where information about embargoes in force can be found:

United Nations - <https://www.un.org/sc/suborg/en/sanctions/information>

SIPRI - <http://www.sipri.org/databases/embargoes>

GRIP - <https://www.grip.org/fr/node/1558>

¹ Annex E to the Draft Report to the Fourth Conference of States Parties (CSP4) ([ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep](#)) presented by the Chair of the Working Group on Effective Treaty Implementation (WGETI).

B) The importance of legal and structural framework to implement UNSC arms embargoes and accordingly ATT Article 6(1)

Proper implementation of an arms embargo decided by the UNSC is facilitated if the necessary national legal and structural framework is in place in the State Party. Otherwise there is a risk that national authorities may not be able to implement the obligations under the arms embargo.

When reviewing States Parties' initial reports to the ATT, there seems to be two main options that can be identified, that each provide a clear legal basis for implementation of UNSC arms embargoes:

1. Specific United Nations Act, which enables the 'fast-track' introduction of government regulations (decree) for specific sets of sanctions imposed by UNSC
2. Strategic trade control (export control) legislation that prohibits the issuing of licences for export, import, transit, brokering, technical assistance etc. if the end user is subject to an UNSC arms embargo.

Furthermore, some States Parties use policy guidelines to ensure transfers to embargoed entities are prohibited, instead of a UN Act or strategic trade control legislation. While this method on its own may provide less legal clarity, it can of course also be combined with legislation to provide more specific guidance within an existing legal framework.

But when going through the ATT database of initial reports, as well as other open sources (such as Council of Europe's Committee of Legal Advisers on Public International Law Database on how UN sanctions, including arms embargoes, are implemented <http://www.caheidatabases.coe.int/Search/Index/>), there are States Parties that declare a respect for UN arms embargoes in their initial report, but for whom it is difficult to identify the legal basis to implement the provisions, enforce the arms embargo, or impose penalties and sanctions on entities identified as violating UN arms embargoes.

Way forward to strengthen implementation of Article 6.1

It would therefore be valuable if States Parties to the ATT ensure that the necessary national legal framework is in place to properly implement art 6.1 of the treaty.

International work on how to improve design and national implementation of UNSC arms embargoes is nothing new and States Parties to the ATT need not invest time and resources to develop proposals on legal mechanisms and practical measures to improve implementation. Examples of previous international processes to strengthen UNSC arms embargoes are:

- Bonn/Berlin Process on Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions
- Stockholm Process on Implementation of UN Sanctions

The two processes were initiated and funded by Germany and Sweden respectively and were international efforts involving some 70 States and organisations with a wide geographic distribution, aimed at strengthening UNSC sanctions and improve their implementation. The reports contain examples of model national legislation for the implementation of UNSC arms embargoes as well as practical guidance on what type of resources and organisational structure which are useful or needed for the implementing authority. The reports date from 1999 and 2001 respectively, but the vast majority of the recommendations are still valid.

States Parties to the ATT which would like to strengthen their national legal and structural framework to implement article 6.1, may decide to look at these reports, or others not mentioned, for guidance and inspiration.

Included in the legal framework important to fully implement arms embargoes is the need to ensure enforcement of violations of the arms embargoes. It will be necessary to be able to assess whether a given transaction might be subject to an arms embargo in the context of a regular licensing process, but most transfers in violation of an arms embargo will not be the subject of a licence application; they will take place in an illicit context. In order to prevent such transfers, its important that States Parties set-up an enforcement regime, providing appropriate sanctions for violations of arms embargoes, but also providing enforcement agents such as customs and police with tools needed to detect transfers that are unlicensed and that might violate arms embargoes.

Interlinked with implementation of UNSC arms embargoes is the role that transit and trans-shipment States can play in detecting and averting transfers in violation of arms embargoes. They basically provide a second chance if an export in violation of an arms embargo has not been stopped by an exporting State, either because it was not detected by the authorities or happened without governmental consent, and the shipment passes through the territory of the transit or trans-shipment State. In that respect all States Parties need, where necessary and feasible, regulate transit and trans-shipment of arms which will allow for prevention of embargo violations.

Financial and other support

A possible source of funding for an activity or project to strengthen implementation of Art 6.1 could be the ATT Voluntary Trust Fund.

Furthermore, this could be an area in which assistance and cooperation could be rendered by States that have found effective solutions for implementing Article 6.1.
