



Arms Trade Treaty Implementation Toolkit

Module 6 Export

I. Introduction

Any country joining the Arms Trade Treaty (ATT) commits to putting in place effective measures to implement the Treaty.

Each State will decide which measures it needs in order to carry out its obligations under the ATT. These measures may vary from country to country.

This sixth module, *Export of conventional weapons, ammunitions, parts and components*, provides States with practical information to consider when establishing and maintaining a national export control system. In particular, this module will discuss how to conduct an export assessment.

II. National export control system

➤ A national export control system comprises the institutional arrangements and mechanisms, laws, regulations, policies, procedures and processes through which government exercises control over the export of certain products, technology and services. Normally, the national control system regulates, assesses, monitors, authorizes and/or denies the export of those goods, technology or services from territory under the jurisdiction of the State in question.

➤ Under the ATT, States Parties shall establish and maintain a national control system to implement the provisions of the Treaty.¹

➤ States Parties shall authorize or prohibit the export of conventional arms, ammunition/munitions, parts and components pursuant to the export assessment conducted by their national control system.²

➤ Through a national export control system, States Parties can effectively:

- Comply with their obligations under the ATT;
- Control the conditions under which items are exported from territory under the jurisdiction of the authorizing State Party to another country (regardless if the importing country is a State Party to the ATT);
- Prevent the export of items under certain conditions and circumstances;
- Reduce the risk that the exported items will be diverted to unauthorized users;
- Keep track of transfers originating from territories under their jurisdictions.

1. Elements of a national export control system under the ATT

1.1. National legislation and national control lists

➤ The national legislation should clearly state:

¹ Article 5 (2).

² Article 7.

- a. Which items are subject to export control (national control list);
- b. Which government ministries, departments and agencies are responsible for regulating and controlling exports of items (national authorities);
- c. Processes for granting or refusing export authorizations (regulatory procedures);
- d. The legal and/or administrative actions that would be applied in case of export offences (e.g., enforcement measures, mechanisms, prosecution and punishment).

➤ States Parties are required to maintain and establish a national control list.³ At a minimum, the national control list shall contain national definitions of the eight categories of weapons listed in Article 2(1). The list could also include ammunition/munitions⁴ as well as parts and components that are subject to export control.⁵

➤ In addition, States Parties may wish to control parts and equipment such as transport helicopters, tanker aircraft, trucks, assault boats, electronics, optical equipment, radar, and many others.

➤ A national control list may be a single list covering all items subject to export controls or a collection of lists, each covering different categories/types of items subject to export control.

➤ A national control list should be updated on a regular basis to ensure that it covers technical developments and emerging technologies that should be subject to export control.

➤ States Parties shall provide their national control lists to the ATT Secretariat, which shall make them available to other States Parties.⁶

➤ States Parties are encouraged to make their control lists publicly available. In particular those involved in the manufacture, export or import of arms or ammunition or in the arms trade, including authorized brokers, should be able to access the list(s).

➤ States Parties may choose to apply a “catch-all” provision⁷ on items that are not, in principle, subject to mandatory export authorization.

1.2. National authorities

➤ States Parties have to designate competent national authorities to ensure the effective and transparent national control and regulation over the export of items covered under the ATT.⁸

➤ The requirement to establish an export control system applies to all States Parties, including those that are mainly importers and only occasionally process a transfer of items from its territory to that of another State. Typically, States with little or no arms exports may not need an elaborate system.

³ Article 5 (2).

⁴ Article 3.

⁵ Article 4.

⁶ Article 5 (4).

⁷ Many peripheral items that are not listed on the national control lists may still enhance the weapons' effectiveness, or contribute to weapons development/enhancement/production programmes. It may be difficult or impractical to attempt to include all those items in the list. Instead, a “catch-all” provision requires government's authorization to export unlisted items when there is a reason to believe that the item may be intended for undesirable end use and/or end-user.

⁸ Article 5 (5).

- It is a national prerogative to decide which government entities are involved in the licensing and authorization process. Considerations regarding which entities need to be involved include the amount of trade, the existence of a domestic defence industry, and the strategic importance of the items.
- In some countries, certain government ministries, such as the ministry of foreign affairs, carry out political assessments and/or provide guidance to be considered in the assessments undertaken by the national export control authorities at the administrative level.
- The designated national authorities should be able to consider strategic, military and foreign-policy implications, including human rights considerations, of the proposed exports. Again, such considerations should be guided by directives or guidelines emanating from high governmental levels.
- The designated national authorities should administer the regulatory regime and implement controls through an export authorization process.
- In some countries, the national authority is subject to an oversight mechanism (e.g. by the legislative body).
- Tasks to be undertaken by the authorization agency may include:
 - a. Granting permission/licence to engage in international arms trade;
 - b. Receiving and reviewing export applications;
 - c. Ensuring compliance with the national laws and the country's obligations under international law, including Article 6 of the ATT;
 - d. Conducting the export assessment required under Article 7 of the ATT;
 - e. Issuing or denying export authorizations and, in the case of the latter, ensuring full compliance through inter-agency cooperation;
 - f. Ensuring that all documentation and approvals for the export of conventional arms and items are detailed and issued prior to the authorization
 - g. Keeping records of export licences/authorizations;
 - h. Making available appropriate information about an authorization, upon request, to the importing State and to transit or trans-shipment States, if applicable and subject to its national laws, policies and practices;
 - i. Coordinating with other ministries and departments involved in the export authorization process;
 - j. Reporting to the oversight body, where applicable and in accordance with national laws;
 - k. Conducting awareness-raising programmes and outreach to industry, including providing information to familiarize industry with the relevant laws and procedures;
 - l. Assessing the internal compliance systems/programs of exporting companies.

1.3. Regulatory procedures for conventional arms exports

1.3.1. Sequencing procedures

➤The national export control system should indicate the sequencing procedures to be followed in exporting any conventional weapons or related items included in the national control list.

➤Typically, the sequencing procedures will entail:

Pre-requisite – Permission from the Government for the exporter and other actors involved in the transfer to engage in international arms trade (in States where such permission is required).

Step 1 - Exporter obtains from the importer an import authorization, if applicable or feasible, end-use/user documentation and other relevant documents. The exporting State verifies the authenticity of relevant documents. The broker involved in the transfer, if any, obtains brokering authorization.

Step 2 - Exporter applies for export authorization.

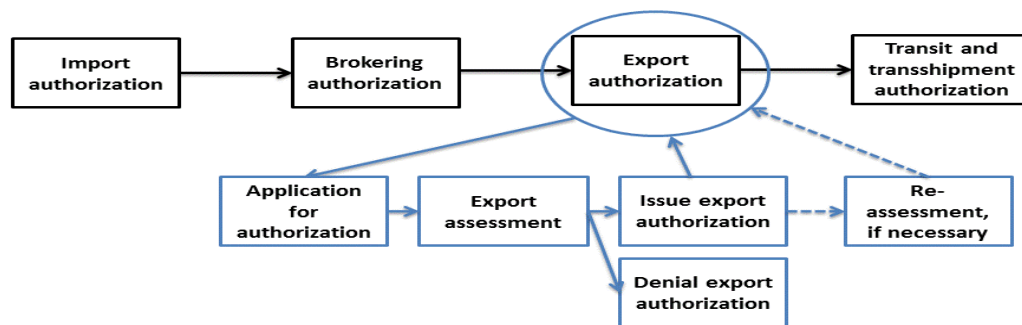
Step 3 - Export assessment is conducted by national export control authorities.

Step 4 - Export authorization is granted/ denied by national authorization agency.

Step 4 bis. – If an exporting State Party becomes aware of new relevant information, export authorization is re-assessed after consultations, if appropriate, with the importing State.

Step 5 - Transit/trans-shipment authorization is obtained from transit/trans-shipment State.

Figure 1 - Sequencing procedure



Operating licence (only if required by national law)

➤States Parties, according to their national laws, may establish an export licensing system whereby only the holders of a valid operating licence can apply for an export authorization.

➤In such cases, the operating licence is a pre-requisite for applying for an export authorization. Normally, an authorization would be required for each separate transaction.

Application for an operating licence (only if an operating licence is required by national laws)

- Applicants for operating licences should be required to meet the criteria set forth by national regulations.
- An application for an operating licence should be refused if:
 - a. The applicant fails to meet the licensing criteria established by national regulations.
 - b. There is evidence of past involvement by the applicant in illicit trade of weapons.
 - c. Information submitted in support of the application is false, inaccurate or incomplete.
 - d. The applicant has been refused an operating licence in another State on grounds that would also apply in the State considering the application.
 - e. The applicant has a criminal record.

Expiration of the operating licence (only if an operating licence is required by national laws)

- Where export licences are issued, the validity of licences should be limited in time. These documents should have an expiration date after which they are no longer valid. The expiration date should be clearly marked on operating licences. The national authority could distribute the information on expiration dates to other authorities involved in export control, especially customs.

Obtaining and verifying necessary documents

- When applying for an export authorization, the exporter should be required to submit relevant documents to accompany its application. The national authority of the exporting State Party should review and verify the authenticity of the documents submitted as well as the truthfulness and accuracy of information contained therein. Examples of relevant documents include:
 - a. Import authorization;
 - b. End-use/user documentation;
 - c. Brokering authorization.

Step 1 - Import authorization

- If applicable, the exporter may obtain an import authorization from the importing State prior to applying for an export authorization. However, not all countries issue import authorizations.

End-use/user documents

- The national export control authorities may require the submission of end-use/user documentation.
- End-use/user documents can have different names depending on the country or whether the end-user is a governmental entity or private entity (e.g., end-user certificates, end-use statements).

- An end-use/user certification process may require the submission of an end-user certificate, end-use/user statement or assurance or other documents that provide relevant information about the end-use/user.
- The exporting State may turn to other sources in order to obtain additional information that would corroborate the veracity or reliability of documents provided by the importer and of the end-user and importer themselves.
- There is no internationally agreed standard format for end-use/user documents, including end-user certificates.⁹ These documents most frequently contain:¹⁰
 - a. Date of issuance;
 - b. Contract number;
 - c. Details of the exporter (name, address);
 - d. Details of the end-user (name, address);
 - e. Details of the consignees, brokers or other parties involved in the transfer, if applicable (name, address);
 - f. Country of final destination;
 - g. Description of the goods;
 - h. Quantity;
 - i. Value;
 - j. Stated end-use of the goods;
 - k. Non re-export clause;
 - l. Full name of person authorized to sign end-user certificate, signature of said person;
 - m. Seal of company or Government. It should be noted that the shift towards electronic applications may bring about new forms of authentication other than watermarks and embossed stamps or seals. However, such traditional methods continue to serve their purpose where electronic systems are not in place or where hard copies are required in addition to electronic applications.¹¹

Authentication of end-use/user documents

- Authentication of end-use/user documents is a legal formality by which the authorities of importing States certify the authenticity of signatures affixed to the documents, the capacity in which

⁹ Some regional or other organizations, such as the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA), the Organization for Security and Co-operation in Europe (OSCE) and the European Union (EU) have produced best practice guidelines that elaborate on the types of information and assurance that should be contained in end-user certificates.

¹⁰ Also, exporting States often have specific legal requirements for contents or may provide templates to be utilized or completed by the importers.

¹¹ Some electronic applications systems still require the submission of an original, hard-copy EUC.

the signatories are acting and, if applicable, the authenticity of the seal or stamp affixed to the document.

➤ Upon request, importing States should assist exporting States in end-use/user verification processes, including in authenticating and determining the validity and reliability of end-user documents. This assistance could be provided through embassies or consular agents, if possible and appropriate. For example, the delivery of end-use/user documents could be carried out through diplomatic channels.

➤ In their end-use/user verification processes, the national export control authorities can use a variety of sources of information, including checks against open source information such as telephone and business directories, internet sources, national contact points and any other sources available to the relevant authorities in the exporting States.¹²

Step 2 - Applying for export authorizations

➤ Export authorizations shall be required for all transfers of conventional arms, ammunition/munitions and parts and components, regardless of whether the importer is a State or a non-State entity. Therefore, export authorizations are required for:

- a. State-to-State transfers;¹³
- b. State-to-private transfers;¹⁴
- c. Private-to-State transfers;
- d. Commercial sales (private-to-private).

Contents of applications for export authorizations

➤ Each State decides on the format and content of the application form for authorizations regarding exports of conventional arms and related items that are included on the national control list. The application form could request the following information:

- a. Name and contact details of the applicant for the authorization;
- b. Applicant's operating licence number, if applicable;
- c. Detailed descriptions (type, model name, model number, quantity, etc.) of items for export;
- d. Details of the transfer (value, date of transfer, etc.);
- e. Countries/ports of transit and/or trans-shipment, if applicable and known at the time of application;

¹² For more on end-use and end-user control systems:

www.un.org/disarmament/HomePage/ODAPublications/OccasionalPapers/PDF/OP21.pdf

¹³ In this particular context, the term "State" refers to government entities, such as armed forces and law enforcement institutions.

¹⁴ In this context, the term "private" refers to any non-State entity, including, but not limited to, private individuals and organizations.

- f. Names and contact details of brokers, intermediaries, importer, consignees or any other parties involved in the transfer;
- g. Details of the transport route, including the means of transport to be used for each segment, if known at the time of application;
- h. Country of import;
- i. Intended use of the items being exported;
- j. Name and contact details of the authorized end-user.

➤ A duly filled application form should be accompanied by any other required documents (import authorization, end-use/user documentation, etc.) and should be submitted to the national authorization agency via prescribed methods determined by the national law.

Step 3 - Undertaking the export assessment

➤ Upon receipt of duly filled applications for export authorization and all other required documents, the authorization authorities should assess the applications, taking into account the following principles:

a. *Non-discrimination*

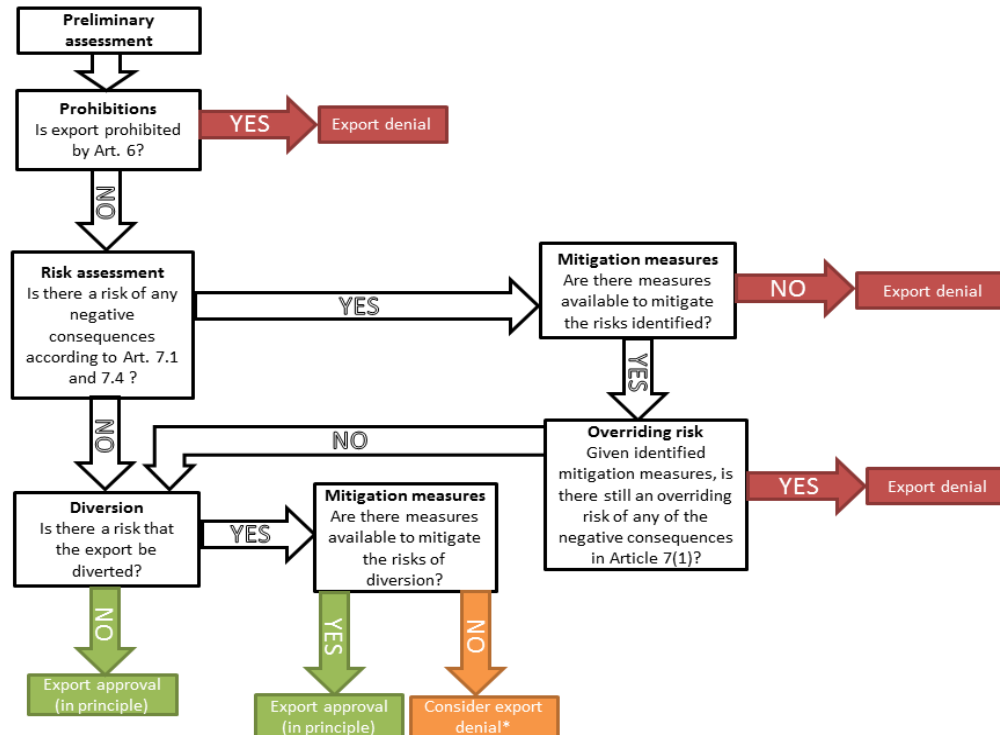
Export assessments shall be carried out in a non-discriminatory manner.

b. *Objectivity*

Each State Party shall implement the ATT in an objective manner. In order to ensure objectivity, export assessments be made on the basis of a set of clear and pre-defined criteria in accordance with national legislation and policies.

c. *Transparency*

Procedures for export authorization should be well defined in relevant laws or regulations, and be applicable to all export authorization processes, unless otherwise stipulated by laws or regulations. In order to ensure maximum transparency, general information on assessment procedures should be publicly available and the results of particular export assessments should be accessible to the parties concerned.

Figure 2 - Conducting an export assessment¹⁵


*Any exporting State is encouraged to consider export denial in compliance with the object and purpose of the Arms Trade Treaty.

a. Preliminary assessment

➤The authorization agency should pre-screen applications to determine if :

-All necessary documentation (e.g. end-use/user documentation, import authorization if applicable) is duly completed;

-Eligibility conditions concerning the exporter/manufacturer are met (e.g., does the exporter have an operating licence? Is the exporter otherwise qualified to apply for an export authorization? Is the exporter/manufacturer not barred due to a prior violation or some other reason?).

b. Assessment on prohibitions of transfers¹⁶

➤The authorization agency has to assess whether the proposed export is not prohibited under Article 6 of the ATT.

➤To that end, the authorization authorities shall assess:

¹⁵ This diagram aims to reflect the order of the relevant articles of the ATT, hence it begins with an assessment of the prohibitions (Article 6), followed by the assessment of the risks listed in Article 7, which is in turn followed by an assessment of the risk of diversion (Article 11). In practice, national authorities may not necessarily follow this sequence and may choose to cover all the steps in a single assessment.

¹⁶ For a detailed analysis on Article 6 (Prohibitions) of the ATT, see module 5.

- If the proposed export would violate the State's obligations under measures adopted by the Security Council acting under Chapter VII of the UN Charter, in particular arms embargoes;
- If the proposed export would violate the State's relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms;
- If the State has any knowledge that the arms or items to be exported would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

➤ If it is found that the export would lead to any of the violations mentioned above, the exporting State shall deny the export authorization.

➤ States may also establish additional criteria in their national laws to prohibit export authorizations of conventional arms, ammunition, parts and components.

➤ In carrying out the assessment, the authorization agency should seek information and inputs from other relevant government entities as well as other sources, including open sources.

c. Risk assessment

➤ If it is found that the export would not violate the prohibitions set forth in Article 6 of the ATT, then, the exporting State Party shall assess if the export would carry any of the risks listed under Article 7 of the Treaty.

To that end, the exporting State shall assess:

➤ The potential that the conventional weapons or items would contribute to or undermine peace and security.¹⁷ It is noted that the use of "would" in Article 7 (1) (a) sets a higher threshold for certainty than that of Article 7 (1) (b), which, instead, uses the word "could".

In making this assessment, the national authorities should identify and weigh the positive and negative consequences stemming from the export of items covered by Articles 2(1), 3 and 4. If those authorities determine that an export is likely to contribute to peace and security (a positive outcome), they should add this finding to the list of factors favouring the authorization of the export. If the national authorities find that an export is likely to undermine peace and security (a negative outcome), they should add this risk to the list of factors that point towards the need for consideration of mitigating measures or a denial of the export.

➤ The risk that the conventional weapons or items could be used to commit or facilitate a serious violation of international humanitarian law.¹⁸

¹⁷ Article 7 (1) (a).

¹⁸ Article 7 (1) (b) (i).

What is a serious violation of international humanitarian law?¹⁹

A serious violation of international humanitarian law is a war crime. Such a violation can take place in international or non-international armed conflicts.

A violation is serious, if it endangers protected persons (e.g. civilians, prisoners of war, the wounded and sick) or objects (e.g. civilian objects or infrastructure) or if it breaches important values.

The majority of war crimes involve death, injury, destruction or unlawful taking of property. Acts can amount to war crimes because they breach important universal values, even without physically endangering persons or objects directly. These include, for example, abusing dead bodies and recruiting children who are under 15 years of age into the armed forces.

Serious violations of international humanitarian law are:

- **Grave breaches as specified under the four Geneva Conventions of 1949;**²⁰
- **Grave breaches as specified under Additional Protocol I of 1977;**²¹
- **War crimes as specified under Article 8 of the Rome Statute of the International Criminal Court;**
- **Other war crimes in international and non-international armed conflicts in customary international humanitarian law.**

Suggested indicators to assess the risk that the export of covered items could be used in the commission of a serious violation of international humanitarian law^{22, 23}

- Whether the importer or end-user has committed serious violations of international humanitarian law;
- Whether or not the importer or end-user has aided or abetted serious violations of international humanitarian law;
- Whether or not the importing State²⁴ has taken all feasible measures to prevent violations of international humanitarian law or cause them to cease, including by punishing those responsible;
- Whether or not the importing State has made a formal commitment to apply rules of international humanitarian law and taken appropriate measures for their implementation;
- Whether or not the importing State has in place the legal, judicial and administrative measures necessary for the repression of serious violations of international humanitarian law;

¹⁹ International Committee of the Red Cross (ICRC), Explanatory Note What are “serious violations of international humanitarian law?”, available at www.icrc.org/eng/assets/files/2012/att-what-are-serious-violations-of-ihl-icrc.pdf.

²⁰ Articles 50, 51, 130, 147 of Conventions I, II, III and IV respectively.

²¹ Articles 11 and 85.

²² International Committee of the Red Cross (ICRC), Arms transfer decisions: Applying international humanitarian law criteria – A practical guide (2007), in particular pages 5-15. Available at www.icrc.org/eng/resources/documents/publication/p0916.htm

²³ The proposed indicators listed herein are to be understood as a non-exhaustive list of suggestions. Except for the indicators that correspond to the criteria or factors stipulated in the ATT, particularly in Articles 6 and 7, it is up to each State Party to decide which indicators would be most appropriate for use in its export assessments.

²⁴ Transfers to non-State entities that are not under the control or jurisdiction of a State must also be subject to the prohibitions and risk assessments provided in Articles 6 and 7 of the ATT.

- Whether or not the importing State disseminates international humanitarian law, in particular to the armed forces and other arms bearers, and has integrated international humanitarian law into its military doctrine, manuals and instructions;
- Whether or not the importing State has taken steps to prevent the recruitment of children into the armed forces or armed groups and their participation in hostilities;
- Whether or not the importing State has established accountable authority structures with the capacity and will to ensure respect for international humanitarian law;
- Whether or not the arms and military equipment requested are commensurate with the end-use and/or the operational requirements and capacities of the stated end-user;
- Whether or not the importing State maintains strict and effective control over its arms and military equipment and their further transfers.

➤The risk that the conventional weapons or items could be used to commit or facilitate a serious violation of international human rights law²⁵

What is a serious violation of international human rights law?

While all human rights violations are unacceptable, the ATT addresses only “serious” violations of international human rights law. The standard adopted in Article 7 (1) (b) (ii) indicates that only violations of great concern to the international community should prevent the exporting State from authorizing a transfer of covered items. This standard underlines the human rights consequences of arms transfers.

This standard should incorporate the **due diligence standard in human rights law**.

The due diligence standard requires that exporting States engage in an effective inquiry in order to make a reasoned determination as to whether the proposed export carries a substantial risk of facilitating serious violations.

While human rights can be violated with or without weapons, transfers of arms to human rights violators can facilitate or exacerbate violations.

While there is no internationally agreed definition of what constitutes a serious violation of international human rights law, States Parties may wish to consider the following factors in determining what constitutes a serious violation:

- The nature of the right violated;
- The magnitude of the violation;
- The type of victim (vulnerability);
- The impact of the violation.²⁶

²⁵ Article 7 (1) (b) (ii).

²⁶ “What constitutes ‘a serious violations of human rights law?’” Geneva Academy, Academy Briefing No. 6. www.geneva-academy.ch/docs/publications/Briefings%20and%20In%20breifs/Briefing%206%20What%20is%20a%20serious%20violation%20of%20human%20rights%20law_Academy%20Briefing%20No%206.pdf

Violations of human rights are also serious when they are persistent, systematic and/or widespread.

Examples of serious violations of international human rights law include, but are not limited to: systematic murder, rape, forced displacement, attacks against civilian populations, excessive use of force, ill-treatment by military and security forces, disappearances, torture, gender-based violence, and extra-judicial killings.

Suggested indicators to assess the risk that the export of covered items could be used in the commission of a serious violation of international human rights law

- Whether or not the recipient State is a party to international and regional human rights instruments;
- Whether or not the importer or end-user has aided or abetted a serious violation of international human rights law;
- Whether or not the recipient State has adopted national legislation and regulation to implement international and regional human rights instruments;
- Whether or not the recipient State has legislation and effective procedures for the investigation of human rights abuses and violations, including those committed by the State or its agents;
- Whether or not the recipient State has accountable structures with the authority, capacity and the will to ensure respect for international human rights law;
- Whether or not the recipient State has a competent, independent, impartial and functioning judiciary with the capacity and will to prosecute serious human rights violations;
- Whether or not the recipient State disseminates international human rights law, in particular to the security and police forces and other arms bearers, and has integrated international human rights law into its training, manuals and instructions;
- Whether or not the recipient State has independent monitoring bodies and national institutions for the promotion of international human rights law;
- Whether there is a record of impunity for human rights violators in the recipient State;
- Whether or not the recipient State has mechanisms for monitoring and investigating alleged serious violations of international human rights law;
- Whether or not there is evidence that the type of arms described in the export authorization application or a similar type is or has been used for serious violations of international human rights law in the recipient State;
- Whether or not the arms and military equipment requested are commensurate with the operational requirements and capacities of the stated end-user;
- Whether or not the conduct of the stated end-user in respecting international human rights law has been subject of substantial concern by UN human rights monitoring bodies, regional human rights monitoring bodies, national human rights commissions;
- Whether or not the recipient State maintains strict and effective control over its arms and military equipment and their further transfers.

➤The risk that the conventional weapons or items could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party.²⁷

International conventions or protocols relating to terrorism

- Convention on Offences and Certain Other Acts Committed On Board Aircraft of 1963;
- Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 and its Protocol thereto of 2010;²⁸
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971 and its Protocol thereto of 1988;²⁹
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons of 1973;³⁰
- International Convention against the Taking of Hostages of 1979;³¹
- Convention on the Physical Protection of Nuclear Material of 1980 and its amendments;³²
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 and its Protocol thereto of 2005 and its Protocol thereto of 1988, and its Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 2005;³³
- Convention on the Marking of Plastic Explosives for the Purpose of Detection of 1991;³⁴
- International Convention for the Suppression of Terrorist Bombings of 1997;³⁵
- International Convention for the Suppression of the Financing of Terrorism of 1999;³⁶
- International Convention for the Suppression of Acts of Nuclear Terrorism of 2005;³⁷
- Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation of 2010.³⁸

Suggested indicators to assess the risk that the export of covered items could be used to commit or facilitate terrorist acts

- Whether or not the recipient State is a party to international conventions and protocols relating to terrorism;
- Whether or not the recipient State has adopted national legislation and regulations to implement international conventions and protocols relating to terrorism;
- Whether or not the recipient State has legislation and effective procedures for investigating offences under international conventions and protocols relating to terrorism;

²⁷ Article 7 (1) (b) (iii).

²⁸ www.icao.int/secretariat/legal/Docs/beijing_protocol_multi.pdf.

²⁹ www.icao.int/secretariat/legal/Lists/Current%20lists%20of%20parties/AllItems.aspx.

³⁰ www.unodc.org/tldb/en/1973_Convention_Internationally%20Protected%20Persons.html.

³¹ www.unodc.org/tldb/en/1979_Convention_Hostage%20Taking.html.

³² www.iaea.org/publications/documents/conventions/convention-physical-protection-nuclear-material.

³³ www.imo.org/en/About/Conventions/ListOfConventions/Pages/SUA-Treaties.aspx.

³⁴ www.unrol.org/doc.aspx?d=2822.

³⁵ www.unodc.org/documents/treaties/Special/1997%20International%20Convention%20for%20the%20Suppression%20of%20Terrorist.pdf.

³⁶ www.unodc.org/documents/treaties/Special/1999%20International%20Convention%20for%20the%20Suppression%20of%20the%20Financing%20of%20Terrorism.pdf.

³⁷ www-ns.iaea.org/security/nuclear_terrorism_convention.asp.

³⁸ www.icao.int/secretariat/legal/Docs/beijing_convention_multi.pdf.

- Whether or not accountable the recipient State has structures with the authority, capacity and the will to ensure respect for international conventions and protocols relating to terrorism;
 - Whether or not the recipient State has a competent, independent, impartial and functioning judiciary with the capacity and the will to prosecute offences under international conventions and protocols relating to terrorism;
 - Whether or not the importer, end-user or recipient State finances or sponsors terrorist groups;
 - Whether or not the importer or end-user has aided or abetted violations of international conventions and protocols relating to terrorism;
 - Whether or not the recipient State has a record of prosecuting or extraditing offenders that are brought into its custody;
 - Whether or not the recipient State has assisted other States in connection with criminal proceedings brought under any international convention or protocol relating to terrorism;
 - Whether or not the recipient State has a record of impunity for perpetrators of terrorist acts;
 - Whether or not the recipient State exercises strict and effective control over its arms, ammunition and parts and components within its jurisdiction.
- The risk that the conventional weapons or items could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party³⁹

Offences under international conventions or protocols relating to transnational organized crime

Organized crime is a threat to peace and human security. It violates human rights and undermines the political, socio-economic, civil and cultural development of States.

Offences under the UN Convention against Transnational Organized Crime (UNTOC)

States parties to the Convention shall establish the criminal offences of:

- participating in an organized crime group;
- money laundering;
- corruption;
- obstruction of justice.

Under the three supplementary Protocols of UNTOC – on **Trafficking in Persons, Smuggling of Migrants and Trafficking of Firearms** – States Parties to the Protocols have to criminalize:

- trafficking in persons;
- attempts to commit a human trafficking offence;
- participation as an accomplice in a human trafficking offence;
- organizing or directing others to commit human trafficking;
- smuggling of migrants;
- enabling a person to remain in a country illegally;
- aggravating circumstances that endanger lives or safety, or entail inhuman or degrading treatment of migrants;

³⁹ Article 7 (1) (b) (iv).

-illicit manufacturing of and trafficking in firearms.

Suggested indicators to assess the risk that the export of covered items could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime

-Whether or not the recipient State is a party to international conventions and protocols relating to transnational organized crime;

-Whether or not the recipient State has legislation and effective procedures to investigate offences under international conventions and protocols relating to transnational organized crime;

-Whether or not the recipient State has accountable structures with the authority, capacity and the will to ensure respect for international conventions and protocols relating to transnational organized crime;

-Whether or not the recipient State finances or sponsors transnational organized criminal groups;

-Whether or not the recipient State has a record of prosecuting or extraditing offenders that are brought into its custody;

-Whether or not the recipient State has assisted other States in connection with criminal proceedings brought under any international convention or protocol relating to transnational organized crime;

-Whether or not there is a record of impunity for participants in organized criminal activities, human traffickers, smugglers of migrants, money-launderers, corrupt officials, firearms traffickers in the recipient State;

-Whether or not there is evidence that the type of arms described in the export authorization application or a similar type is or has been frequently used for organized crime in the recipient State;

-Whether or not the arms and military equipment requested are commensurate with the end-use or operational requirements and capacities of the stated end-user;

-Whether or not the recipient State exercises strict and effective control over arms, ammunition and parts and components within its jurisdiction.

Sources of information

➤ Exporting States may consult a variety of information sources, as they deem relevant, in order to conduct export assessments. Sources could include:

- a. The current list of Security Council arms embargoes in force;
- b. Implementation assistance notices issued by the Security Council Committees;
- c. Documentation from UN human rights bodies and international tribunals;
- d. Intelligence and other information available to the State Party through bilateral or regional information exchanges mechanisms;
- e. Information exchanged with other States Parties to the ATT;

- f. Documentation from other international and regional human rights monitoring bodies;
- g. Reports from credible national human rights institutions, international and national NGOs and the media.

Role of importing States in the export assessment

➤ An importing State shall provide appropriate and relevant information, upon request, to the exporting State in accordance with the importing State's national laws. Such information could include:

- a. Declaration of intended use of the transferred weapons;
- b. Official undertaking/assurance/guarantee not to re-export in a manner that would run counter to the provisions of the ATT or not to use for unintended purposes;
- c. Information on the country's import system, its measures to enhance weapons control, storage, and prevent diversion.

Mitigation measures⁴⁰

➤ If it is determined that the proposed export carries any of the risks listed in Article 7 (1) (a) or 7 (1) (b), the exporting State shall consider whether there are measures that could be undertaken to mitigate the risks identified. Such mitigation measures could include:

- Confidence-building measures;
- Jointly developed and agreed programmes by the exporting and importing States.

Confidence-building measures

Confidence-building measures (CBMs) enhance the reliability of importing States regarding the observance of relevant international law and the exercise of control over transferred weapons or items, so as to prevent unauthorized use or diversion. While there are many possible forms of CBMs, examples could include:

- Undertaking by the importing State not to re-export or re-transfer in a manner that would run counter to the provisions of the ATT;
- Declaration by the importing State of intended use of the transferred weapons or items, accompanied by the undertaking/assurance/guarantee not to use them for other purposes;
- Provision of information on weapons or items stolen, lost or otherwise unaccounted for;
- Disclosure by the importing State of its records regarding observation of relevant international human rights law, international humanitarian law, international conventions or protocols relating to terrorism and to transnational organized crime;
- Enhancement of transparency on military matters.

⁴⁰ Article 7 (3).

Jointly developed and agreed programme

In addition to CBMs, exporting and importing States could agree on jointly developed programmes to mitigate the risks of negative consequences of the weapons export, such as:

- Post-delivery monitoring/cooperation programmes;
- Joint programmes to enhance the implementation by importing State of, and compliance with, relevant international human rights law, international humanitarian law, international conventions or protocols relating to terrorism and to transnational organized crime.
- Joint programmes to enhance the capacity of importing States to control weapons and prevent their diversion.

Overriding risk⁴¹

➤ After conducting the assessment, the exporting State shall decide whether or not to grant an export authorization. The exporting State shall also consider whether there are measures to mitigate any of the risks listed in Article 7 (a) and (b).

➤ If, after conducting the assessment and considering mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences identified by the export assessment, the exporting State Party shall deny the export authorization.

What is an overriding risk?

➤ During the ATT negotiations there was no agreement as to the precise meaning of the concept of “overriding risk” or how to apply it in practice.⁴²

➤ The word “overriding” presupposes that the risks are to be weighed against something.

➤ One possible interpretation of Article 7 (3) is that the exporting State, after conducting its assessment and considering mitigation measures, should weigh the risk of negative consequences against expected positive consequences of the export. In this interpretation, if the risk of negative consequences outweighs the likelihood of positive consequences, the exporting State should not authorize the export.

➤ The ATT does provide guidance as to what constitute positive consequences of an export: the transfer contributing to peace and security.⁴³ It is up to each authorizing State to weigh whether a transfer is more likely to contribute to peace and security than to engender negative consequences.

➤ Another interpretation could be that the exporting State should determine whether the risk of negative consequences outweighs the likelihood that those consequences would not occur.

⁴¹ Article 7 (3).

⁴² For comparative purposes, see the “risk” standard (e.g. article 2.5 (b), article 2.7) and “clear risk” standard (e.g. [article 2.2 \(a\)](#), [article 2.2 \(c\)](#), [article 2.4](#)) in European Union Council Common Position 2008/944/CFSP of 8 December 2008, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008E0944&from=EN>.

⁴³ Article 7 (1)(a).

➤ Regardless of the interpretation given to the “overriding risk” standard, when conducting assessments and deciding on whether or not to authorize exports, State Parties are expected to act in a manner that is fully consistent with the provisions of the ATT.

➤ The determination of an overriding risk should be the product of a balanced consideration of all the relevant facts, based on an objectively informed conclusion reached through the systematic application of criteria set by the ATT and using reliable and credible sources of information.

Risk of diversion

See module 10.

Gender-based violence

The exporting State Party, in making the export assessment, shall take into account the risk of the conventional weapons or items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against children.⁴⁴

Serious acts of gender-based violence and serious acts of violence against women and children

Acts of gender-based violence or serious acts of violence against women and children constitute serious violations of international humanitarian law or serious violations of international human rights law. They may also be offences under international conventions or protocols relating to terrorism or transnational organized crime to which the exporting State is a party.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) establishes the norms and standards to prevent and eliminate all forms of discrimination against women, protect and promote women’s human rights and ensure gender equality.⁴⁵

Gender-based violence impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions. It is violence that is disproportionately directed against a woman because she is a woman or

⁴⁴ Article 7 (4).

⁴⁵ www.un.org/womenwatch/daw/cedaw/.

that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.⁴⁶

The **Convention on the Rights of the Child** (CRC) provides the legal standards to protect children from all forms of violence and to prevent violence against children.⁴⁷

A child is every human being under the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

The CRC has three optional protocols.

Suggested indicators to assess the risk of conventional weapons or items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children

-Whether or not the recipient State implements its obligations under the Security Council resolutions 1325 and 1820;

-Whether or not the recipient State has legislation and effective procedures in place to investigate serious acts of gender-based violence and serious acts of violence against women and children committed by the State or its agents;

-Whether or not accountable authority structures exist with the capacity and will to ensure respect for international human rights law pertaining to women rights and children rights;

-Whether or not the recipient State disseminates international human rights law regarding women rights and children rights, in particular within armed forces and law enforcement, and has integrated international human rights law on women's rights and children's rights into its training, manuals and instructions;

-Whether or not there is a record of impunity for offenders who committed serious acts of gender-based violence and/or serious acts of violence against women and children in the recipient State;

-Whether or not there are patterns of gender-based violence in the recipient State;

-Whether or not there is evidence that the type of arms described in the export authorization application or a similar type has been used repeatedly in the commission of serious acts of violence against women or serious acts of gender-based violence, or the commission of serious acts of violence against children, in particular recruitment of child soldiers, in the recipient State.

⁴⁶ Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 (1992), www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#top.

⁴⁷ <http://www.unicef.org/crc/>.

Step 4 - Denial of export authorization/issuance of export authorization

Denial of authorization

Conditions for denial

The export shall be denied when:

- a. The application relates to an export that should be prohibited in accordance with Article 6;
- b. The export would undermine peace and security;
- c. The items could be lead to the negative consequences contained in Article 7;

The export should also be denied when the application contains wrong information or forged supplementing documents.

Notification of denial of authorization

- Denial of authorization should be communicated in written form to the applicant.
- In order to ensure procedural transparency, the notification should include information about the reason for denial.
- Sharing information on denial of authorization is of particular use in preventing the diversion of items to illicit markets. This would be consistent with the ATT provisions on the prevention of diversion (Article (11)).

Issuance of export authorizations

- If the proposed export is not prohibited under Article 6 and the export assessment does not have a negative outcome, the authorization agency can issue the export authorization.

Information to be contained in the authorization

- Export authorizations should be detailed and specific.⁴⁸ These documents could include the following information:
 - a. Record identifier / export authorization number;
 - b. Date of issuance;
 - c. Name and seal of national authority issuing the authorization;
 - d. Signature, printed name and position of the designated official of the authority issuing the authorization (some of these elements may not apply in the case of electronic applications, which may require different elements);
 - e. Name and contact details of the recipient of the authorization;
 - f. Detailed descriptions (type, model name, model number, quantity, etc.) of items authorized for export;
 - g. Date of expiration of authorization;

⁴⁸ Article 7 (5).

- h. Countries/ports of transit and/or trans-shipment, if applicable;
- i. Names and contact details of brokers, intermediaries, consignees or any other parties involved in the transfer;
- j. Details of the transport route, including the means of transport to be used for each segment;
- k. Country of import;
- l. Intended use of the items being exported;
- m. Name and contact details of the authorized end-user.

Notification of export authorizations

- Notification of export authorizations should be provided to the exporting company or individual and relevant national authorities involved in export control.
- A State Party's annual national report shall contain information on actual exports or on authorized export. If a State chooses the latter, export authorizations shall be communicated to the ATT Secretariat through the annual report, which will be shared with other States Parties to the ATT.

Step 5 - Reassessment of authorization

- If after the export authorization is issued, the exporting State becomes aware of new relevant circumstances, it is encouraged to reassess the authorization. When appropriate, this reassessment should be conducted after consultations with the importing State.⁴⁹

Reasons for reassessment

- States are encouraged to reassess the authorizations if:
 - a. they become aware of new relevant information that might require a review of the previous assessment, particularly with regard to the risks addressed in Articles 6 and 7 of the ATT;
 - b. information in the application was found to be forged, incorrect or obsolete;
 - c. new circumstances have arisen with respect to the end-user, importing State, the transit and trans-shipment States;
 - d. there is a change in the transit route or transportation arrangement;
 - e. confidence-building measures, joint programmes and other mitigation measures agreed between exporting and importing States have not been implemented or respected.

Procedures for reassessment

- The reassessment may follow the same comprehensive procedures for the initial export assessment, or may focus on the new relevant information that emerged and its implications;
- Procedures for reassessment should be established by law.

⁴⁹ Article 7 (7).

Result of reassessment

➤ Reassessment may result in:

- a. Authorization/re-authorization under the same conditions;
- b. Authorization under modified conditions;
- c. Temporary freeze/suspension of authorization;
- d. Revocation of authorization.

1.3 Export of items

➤ Once the necessary authorizations have been obtained, the exporter can proceed with the export.

➤ States are encouraged to exchange information among relevant governmental departments and agencies, on:

- a. Issuance of export authorization;
- b. Departure of the items from its territory/custom;
- c. A change in the transfer route, date or transportation arrangement.

1.3.1. Record keeping of exported weapons

➤ Each State Party shall maintain national records of its export authorizations or its actual exports of the conventional arms covered in Article 2 (1).⁵⁰ The records should be as detailed, accurate and comprehensive as possible and preferably entered in a pre-determined format/template.

➤ Records shall be kept for a minimum of ten years.⁵¹

➤ States are encouraged to require manufacturers – through legislation – to maintain records of actual exports and report periodically to the Government on actual exports.

➤ The ATT does not require States Parties to keep records of their exports of ammunition or part and components. Each State Party is free to adopt national record-keeping requirements that would also cover these items.

Contents of records listed in the ATT

➤ States Parties are encouraged to include in their records:⁵²

- a. Quantity;
- b. Value;

⁵⁰ Article 12 (1).

⁵¹ Article 12 (4).

⁵² Article 12 (3).

- c. Model/type/serial number;
- d. Export/import/transit authorization number/date;
- e. Details of exporting State(s);
- f. Details of importing State(s);
- g. Details of transit and trans-shipment State(s);
- h. Information about end-users.

Additional contents that could be included

- a. Unique authorization identifier (e.g, licence number);
- b. Issuing agency;
- c. Issue date and expiry date;
- d. Name and contact details of recipient;
- e. Year of manufacture;
- f. Information on import and/or export marking if available;
- g. Copy or scanned copy of authorization documents, end-use/user documentation and other relevant documents;
- h. Information on broker/intermediary (if applicable);
- i. Conditions on export/import (if applicable) (e.g. prohibition on re-transfer);
- j. Other information, such as intended use.

Maintenance of records

- The choice of methods for record keeping is a national prerogative. A good record-keeping system should be up-to-date, easily searchable, and accessible only to authorized officials.

- Traditional paper-based record-keeping systems are in principle as useful as electronic systems.

Use, application and sharing of records

- Good record keeping is a critical measure for an effective and transparent system for regulating the transfer of conventional arms and items covered under Article 3 and 4, in line with Article 5(5). The records could be used to:

- a. Inform export assessments and export authorization;
- b. Provide information needed for investigations of cases of breaches of export control laws and regulations;
- c. Prepare reports required by the ATT, the UN Register on Conventional Arms, and relevant regional commitments;

- d. Prepare reports to oversight bodies, such as parliament, if required by relevant national laws and regulations;
- e. Share with importing State, transit/ trans-shipment States and other States Parties, in accordance with national laws.

1.4. Enforcement measures

➤ States Parties shall put in place mechanisms to enforce laws and regulations related to export controls.⁵³ Enforcement mechanisms may entail:

- Identifying competent enforcement agencies and bestowing them with powers to enforce export control legislation;
- Establishing penalties;
- Inter-departmental cooperation by customs officials, police forces, judiciary;
- Compliance with export control laws by industry.

1.4.1. Establishment of penalties

➤ Penalties should be established to dissuade and punish violations of national export control laws and regulations. Such penalties could include:

- Fines;
- Administrative sanctions (suspension or revocation of licences and/or authorizations; barring violators from applying for licences or authorizations for certain lengths of time; placing additional burdens or imposing restrictive conditions for subsequent application of licences or authorizations);
- Imprisonment.

1.4.2. Inter-agency cooperation to enforce national export control laws and regulations

➤ Effective enforcement of laws and regulations requires the involvement of multiple government agencies or services. While different States provide different duties for agencies/services, typically the following could be involved:

- Authorization agency;
- Other national authorities involved in licensing /authorization process;
- Customs and border control;
- Police and other relevant law enforcement agencies;
- Intelligence agencies;

⁵³ Article 14.

- Judiciary.

➤ Close inter-agency cooperation is essential to ensure the effective enforcement of national export controls.

Customs and border control

Custom and border police play an important role in enforcing laws and regulations on arms transfers. At the border checkpoint, customs officials should determine that:

- a. The shipment of weapons, ammunition and/or parts and components is accompanied by all required authorizations and documentation, such as export/import/transit authorizations;
- b. The required documentation is authentic and accurate;
- c. The content of the shipment matches the description in the authorizations.

Police and other law enforcement agencies

Police and other law enforcement agencies, where applicable, should be provided with the necessary authority, investigative skills and capacity to deal with enforcement of national export control laws and regulations.

Judiciary

States may develop a cadre of prosecutors and judges specialized in national export control, to facilitate expeditious processing of relevant cases.

1.4.3. Industry

- States are encouraged to place obligations on companies and individuals involved in the manufacture and export of weapons, in particular regarding record-keeping, reporting of exports of items covered by the ATT, and cooperation with enforcement agencies.
- Companies and individuals involved in the manufacture and export of weapons should familiarise themselves with export control laws, regulations and procedures so as to facilitate compliance.
- Industry may establish nationally a consultative body or forum to help enhance industry compliance to national export control laws and regulation.

III. International cooperation and assistance

1. *International cooperation on sharing of information*

- States Parties shall cooperate with each other, consistent with their respective security interests and national laws, to effectively implement the ATT.⁵⁴
- States Parties should cooperate, in accordance with their national law, to assist national implementation of the Treaty, including through sharing information on illicit activities or actors.⁵⁵ Information provided could be limited by national laws on protection of personal data, commercial confidentiality and States' security considerations.
- States Parties are encouraged to cooperate in the validation of relevant documents for screening the legitimacy of all parties involved in a proposed transfer of items.
- States Parties should consider cooperating in law enforcement efforts to investigate illicit transfer activities.
- States Parties should engage in bilateral or multilateral cooperation pertaining to the investigation and prosecution of any individual or legal entity allegedly involved in illicit transfer activities.
- States Parties could conclude bilateral and multilateral arrangements or make use of existing arrangements for sharing information on illicit transfer activities.
- Contact between national points of contact on the ATT is an obvious first step to establish bilateral cooperation on sharing information.⁵⁶

2. *International assistance*

- States Parties may seek assistance (technical, legal, financial and other support) to regulate arms export activities.
- States Parties in a position to offer assistance are encouraged to do so when a request has been made.
- States Parties should explore possibilities of strengthening capacity-building in preventing and combating illicit brokering activities, including (e.g. through the World Customs Organization (WCO) SAFE framework).⁵⁷ WCO's Columbus Programme aims at full implementation of the SAFE Framework of Standards and other WCO conventions and instruments.⁵⁸
- Where relevant, States Parties should work with INTERPOL on operationalizing access to and efficient use of INTERPOL databases, including:
 - the INTERPOL Firearms Reference Table (IFRT)⁵⁹
 - the INTERPOL Ballistic Information Network (IBIN)⁶⁰

⁵⁴ Article 15 (1).

⁵⁵ Article 15 (4).

⁵⁶ See Article 5 (6), and module 4 of this toolkit.

⁵⁷ www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx.

⁵⁸ www.wcoomd.org/en/about-us/wco-secretariat/the-directorates/-/link.aspx?_id=D581386AEDDA4B328142E78D89F76536&_z=z

⁵⁹ www.interpol.int/Crime-areas/Firearms/INTERPOL-Firearms-Reference-Table-IFRT.

⁶⁰ www.interpol.int/Crime-areas/Firearms/INTERPOL-Ballistic-Information-Network-IBIN.

- the INTERPOL Illicit Arms Records and tracing Management System (iARMS) ⁶¹
- the INTERPOL Stolen Administrative Documents (SAD) database
- the INTERPOL Stolen and Lost Travel Documents database (SLTD)⁶²
- the INTERPOL Counterfeit Documents database⁶³
- the INTERPOL Comparison of Genuine and Fake Documents database⁶⁴
- the INTERPOL Maritime Piracy database.⁶⁵

➤ Note that all relevant INTERPOL databases are accessible real-time through the I-24/7 network which connects all INTERPOL National Central Bureaus (NCBs).⁶⁶

➤ INTERPOL encourages NCBs to extend I-24/7 access to additional authorized law enforcement entities, such as border control units and customs officials. INTERPOL continues to provide technical assistance and support to further extending its I-24/7 system to additional authorized law-enforcement organizations.

➤ INTERPOL's Integrated Border Management Task Force is the central point of contact and coordination for international border-security activities at INTERPOL. The Task Force supports law enforcement officers working at the frontline of border security by providing them with access to INTERPOL tools and services, delivering capacity building and training courses, and coordinating operational activities.⁶⁷

⁶¹ www.interpol.int/Crime-areas/Firearms/INTERPOL-Illicit-Arms-Records-and-tracing-Management-System-iARMS.

⁶² www.interpol.int/INTERPOL-expertise/Border-management/SLTD-Database.

⁶³ www.interpol.int/INTERPOL-expertise/Databases.

⁶⁴ www.interpol.int/INTERPOL-expertise/Databases.

⁶⁵ www.interpol.int/INTERPOL-expertise/Databases.

⁶⁶ www.INTERPOL.int/Public/Region/Default.asp

⁶⁷ www.interpol.int/INTERPOL-expertise/Border-management.