

Controlling parts and components of conventional weapons in the Arms Trade Treaty — a necessity and a challenge

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EXECUTIVE SUMMARY

The global trade in parts and components of conventional weapons is poorly regulated as it does not have a global reach. United Nations Member States will have one month of negotiations in New York in the summer of 2012 to decide the content of an Arms Trade Treaty (ATT). There is not yet any agreement within the UN on whether to include parts and components under the scope of the ATT. Opponents state that the inclusion of parts and components would be too onerous and would demand far more technical expertise than a majority of UN Member States possess at the moment. Advocates point at the plethora of risks that an omission of parts and components from the scope of the treaty will generate.

Controlling militarily significant parts and components under the Arms Trade Treaty is both a challenge and a necessity. Just as the finished conventional weapon should be under control, so should the items that comprise it. A buyer that has been denied a transfer of a conventional weapon could circumvent the denial by shopping for the necessary parts from different locations, or in some cases buy a self-assembly kit. A greater threat lies in the fact that existing weapons may be repaired, upgraded or amplified in their military capacity using technologically sophisticated spare parts and components.

The international defense equipment market of today is far more diverse than ever before. The defense companies themselves are more consolidated, but they all use a network of subsidiaries and subcontractors. Very few countries have the capacity to independently produce conventional weapon systems without this international supply network of parts and components. Some countries defense production is therefore solely focused on parts and components. **An ATT that would not integrate this category under its scope would risk that a majority of the world's defense equipment production will fall outside of the ATT mandate and thereby create a huge transparency gap and a severe security risk.**

Finally, the global but scattered supply chain creates **risks of diversion** in locations or trade hubs where the authorities might not be aware of the need to protect and control the militarily significant parts or components that they produce, or simply trade in. This creates a risk and vulnerability for defense equipment companies that want to ship sensitive equipment through these countries. The lack of a national strategic trade control system that incorporate parts and components can also be an inhibitor to defense companies to establish themselves in a country that has no strategic trade control system.

There are many different examples of existing national systems that control militarily significant parts and components. There are also multilateral initiatives in place that attempt to coordinate national efforts and find common standards. This indicates that global control of parts and components is indeed possible, although somewhat challenging. This report describes an example of a multilateral strategic trade control initiative as well as two national case studies to provide food for thought for how parts and components

can be controlled in reality.

The inclusion of parts and components in the ATT could follow a simple model that caters both to the need for control of international transfers as well as for transparency concern. Parts and components could be made a separate category under the scope of the treaty. Another alternative would be to incorporate a parts and components reference to each category of items under the scope. Further definitions of what types of parts and components that should be covered would be left to national discretion to avoid lengthy technical discussions in the UN. Reporting on each state's international trade in parts and components would initially be limited to the collected value shipped and received from specific regions following the UN recognized terminology. Finally, state parties to the treaty should have the opportunity to request and receive technical assistance to build a national system that incorporates the control of parts and components.

BACKGROUND

The Diplomatic Conference for the negotiation of an International Arms Trade Treaty will occur in New York in July 2012. It will be the culmination of a process that started years ago through the Nobel Peace Prize Laureates initiative led by Oscar Arias. The idea then and now is to set in place a global regulatory standard for the control of international transfers of conventional weapons. The debate over what should be controlled under the ATT is ongoing, and UN Member States have still to come to an agreement on the contents of the treaty. One area of particular importance is the scope of the treaty – what items and transfers will be placed under control. There is a general understanding that the treaty needs to incorporate the various types of conventional weapons that are being traded today. But what happens when a shipment contains not the finished weapon but instead the different parts and components that could be assembled into a weapon system, or update or increase the capacity of an existing system? To be the strong and robust Arms Trade Treaty that so many states have called for, the diplomatic negotiators will have to solve the challenge of controlling parts and components under the ATT.

THE IMPORTANCE OF PARTS AND COMPONENTS

To explain the need for control of parts and components under the ATT let us look at the example of a conventional battle tank. To build a modern day battle tank you will need such basic parts as armored steel for the hull, hydraulics and caterpillar tracks for the chassis, a turret and its associated gun or cannon and a gas turbine engine. Certain components - technically sophisticated equipment like thermal imaging night sights, laser rangefinders and nuclear, biological and chemical protection systems - will further enhance the military capability of the tank.¹ All these items go into the construction of a tank, but which parts and which components need to be controlled? Should every nut and bolt be controlled, or just those items that give the battle tank its firepower or mobility? The issues of military significance and where to put the threshold for control are two very important questions to take into account when discussing parts and components.

The international defense industries today are more consolidated than ever before, but at the same time they are very seldom the sole manufacturers of a given conventional weapon systems. Global defense companies use subsidiaries worldwide to manufacture their product line, and can be better described as weapons integrators, rather than producers. If the ATT would not include parts and components a majority of the world's defense equipment production would fall out of the scope of the ATT. In addition, the global but scattered supply chain creates risks of diversion in locations or trade hubs that might not be aware of the military significance of the part or component that they produce, or that pass through their port.

Furthermore, the necessity to control parts and components under the ATT stems not only from the risk of a buyer circumventing a denied transfer by procuring a "Build-your-own-tank" kit online, or by shopping for parts from different locations. A greater risk of diversion lies in the fact that already existing weapons may be repaired, upgraded or modified using technologically sophisticated spare parts and components.²

BROAD OVERVIEW OF TRADE PATTERNS REGARDING PARTS AND COMPONENTS

Trade flows and trade patterns

It is very hard to gauge how large the international arms trade really is. This is particularly true for the trade in parts and component. Getting a clearer picture of what is traded, and where, is further complicated by the fact that difference in technical specification makes the data that is reported internationally very hard to compare. The very nature of the conventional weapons industry affects the possibility to both control and review the flow of parts and components in the international market. Since the 1990s defense companies worldwide have gone through a consolidation process. Fewer companies are around, but the companies that do exist have a global reach to a much wider extent.³ In addition the increasing importance of civil technology in conventional weapons' systems has increased the pool of companies that today can be considered as defense related. This is particularly true for IT and electronics companies. The trend has shifted from a situation where military technologies got spun-off for the civilian market, to a new environment where civilian technology is used in weapon systems.⁴ For instance the microwave oven is a good example of a civilian product generated originally by military technology. An example of the reverse situation is today's video gaming industries that can produce items that could potentially have a military application.⁵ This creates a larger group of trade data and very little is consolidated for a general overview.

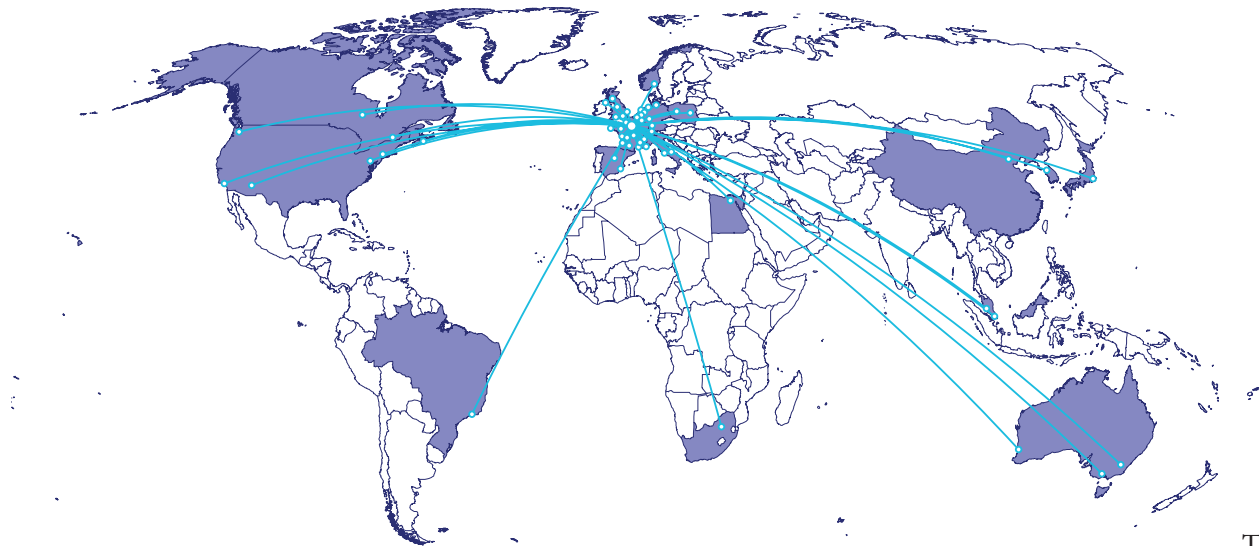
Two world-renowned sources for trade statistics for the international arms market are the Stockholm International Peace Research Institute (SIPRI)⁶ and the Peace Research Institute Oslo (PRIO).⁷

SIPRI has maintained an extensive arms transfer database since 1950. The database does not cover parts and components of conventional weapons as a specific category. It does however cover items such as engines and sensors that to a certain extent and under specific circumstances can be considered as parts and components to larger conventional weapons. One representative year of trade in engines generates large quantities of data that provide guidance on the depth and breadth of the trade. In 2010-2011, fourteen countries, according to the SIPRI Arms Transfer Database, made deals with deliveries or orders for the supply of engines of various make but all with a military application.⁸ Their customers on the other hand could be found in 69 countries. The quantities range from just one delivery, to hundreds. In short the trade is large and global.⁹

PRIO conducts research on the conditions for peaceful relations between states, groups and people. The organization has an extensive database on Small Arms and Light Weapons (SALW) transfers since many years back. The Norwegian Initiative on Small Arms Transfers was established in 1997 and covers a wide range of categories related to SALW, including parts and components. The data provided can illustrate individual transfers of parts and components country by country.¹⁰

Trade flow chart

To describe how the trade in defense equipment and thereby parts and components flow through the international market for conventional weapons, it could be of interest to look closer at a company that operates globally, in addition to the two case studies chosen for this report. Thales is one of the world's largest producers of defense and security materiel. It specializes in designing and building so called mission-critical information systems for defense, security, aerospace and transportation.¹¹ Thales' history dates back to 1893 and has over decades of development, mergers and change remained in the expanded telecommunication area.¹² Today Thales has operations in both the military and civilian market; but with regards to the defense related branch Thales can provide systems for surveillance, detection and intelligence gathering, or communication, command and control for all branches of the armed forces; air; land and sea. For instance it produces sophisticated radar for air forces around the world.¹³ The Thales Group employs 68,000 people in 56 countries¹⁴ around the world and it has a presence in both of the countries chosen for the case study.



Thales

is only one example of a defense company with a global reach. The intended purpose of this example is not to highlight the specific traits of one company, but to illustrate how wide one company's reach can be and how vulnerable such reach can make it. It can use subsidiaries within its own corporate group to generate the end-product, but still the merchandise travels the globe. The products that are developed and manufactured in dispersed locations from Stavanger, Norway to Gauteng, South Africa are incorporated and used in the end-product of major conventional defense systems sold and transferred worldwide. Thales can therefore, with its presence in the global defense market, illustrate the scope of the market flows for parts and components.

THE NORWAY AND SOUTH AFRICA CONNECTION

Thales Norway employs 185 employees in three different locations – it is also one of the major communities for hi-tech development in Norway. This branch of the Thales Group serves as a systems integrator for developing and industrializing its own products for primarily the defense market. Thales Norway has customers in over 32 countries and supply NATO with IP cryptel solutions, i.e. products that are approved for classified information.¹⁶ It is also a main supplier to the Norwegian Armed Forces and has been active in Norway since 1960s.¹⁷ Thales has been working in South Africa since 1998 and today employs 300 people within three companies; Thales Defense Systems (Pty)Ltd, Thales Air Traffic Management (Pty) Ltd and Global Telematics (PTY) LTD. Thales primary focus markets in South Africa are aimed at hi-tech defense electronics systems for both naval and land forces application.¹⁸

As will be described later in this paper both Norway and South Africa have comprehensive strategic trade control systems in place and can therefore apply necessary precautions for the international transfers of parts and components intended for conventional weapons systems. But what happens in the locations that have yet to develop a strategic trade control system? Or what could happen if the trade route between a buyer and a seller with solid control systems passes through a trade hub that has no established system at all? The trade route itself can be a vulnerability that a global defense equipment company such as Thales, that specializes in sophisticated component production, has very little to defend itself against. A state without a strategic trade control system that also covers sensitive parts and components will be less attractive to invest in and could also constitute a diversion risk as a trading hub. This is why there is a commercial reason to incorporate parts and components under the control of the ATT. Without a universal call for the control of sensitive parts and components that can have a military applicability, states will be able to disregard the necessity to provide a safe environment for their trading community.

WHAT HAS BEEN SAID IN THE UN SO FAR?

The UN Member States are still divided on whether or not to include parts and components in the scope of the ATT. There is strong support voiced by some, while others are directly opposed. Some arguments raised against the inclusion of parts and components point to technical difficulties in establishing and maintaining a comprehensive and technically detailed control list over which parts and components should be controlled. Some state that many UN Member States, as well as the UN organizational structure itself, simply lack the technical expertise and capacity to conduct the necessary evaluations for inclusion in or omission from a control list. Others have stated that it will be too onerous on UN Member States to apply controls to items in which they might not even trade.

Advocates on the other hand state that parts and components need to be controlled under the Treaty just as the finished products are. No buyer should be able to circumvent a denial of a conventional weapon's transfer simply by procuring the parts and assembling them. In addition, states have made the argument that due to the nature of today's defense market very few suppliers produce the finished product. However, they manufacture essential parts and components for the finished product and if these items would not be controlled by the ATT a majority of the international defense trade would fall outside of the ATT mandate.

DEFINING PARTS AND COMPONENTS

Defining what is considered as a part or a component can at a first glance appear tautological. A part of a conventional weapon is the component thereof – a definition that does not provide much guidance. At present there is no internationally agreed definition on what constitutes a part or a component. Those multilateral instruments for strategic trade control that cover the control of parts and components integrate the definition under each relevant category of their control lists. A strategic trade control list comprises categorized items, technologies and software that are considered strategically sensitive. Trade in these items require licensing and monitoring. For instance, an export of the battle tank earlier described would require a license or a special permission to transfer from country A to B.

For the purposes of this paper a very basic definition of parts and components will be used to differentiate the two terms. A part can be considered an item that cannot work independently, but is primarily used in the construction for a larger item. For instance, the armored steel plates that will go into the battle tank chassis. A component on the other hand can be considered an item that has an independent function – like a gas turbine engine - but that will need to be integrated into a larger item to be used. This crude definition is an attempt to separate the two terms and explain them further, but as will be explained further into the paper; there are no generally accepted definitions for parts and components. The practical use of the terminology in existing control lists have a specific structure that does not define the part or component per se, but rather incorporates them in existing categories for instance . Finally, for the purposes of the inclusion of parts and components into the ATT a selection of possible solutions will be presented at the end of the paper.

THE DUAL-USE DILEMMA

When discussing parts and components the definition of what is militarily significant or sensitive lies at the heart of the conversation. It also opens for discussion the inclusion of so called dual-use products. This type of product has both a military and civilian application. A majority of defense equipment-producing countries have chosen to not only include conventional weapons and their parts and components under their national strategic trade control systems, but also dual-use products. This distinction has filtered into the conversation regarding the ATT, and dual-use products have also been suggested as a candidate for inclusion.

Determining how this would be defined and applied under an ATT merits a closer look at already existing examples. A majority of the world's arms and defense equipment manufacturers, as well as many other countries that trade in conventional arms, maintain national control lists. The basis for these lists is in almost all cases gathered from the only multilateral trade control regime currently in existence - the Was-

Wassenaar Arrangement on Export Control for Conventional Arms and Dual-Use goods and Technologies. ¹⁹

CURRENT INTERNATIONAL CONTROLS ON PARTS AND COMPONENTS

A multilateral example

The Wassenaar Arrangement, as the organization is often called, is a voluntary export control regime with 41 Participating States. Its purpose is to contribute to regional and international security and stability, by promoting greater responsibility and transparency related to transfers of conventional weapons and dual-use goods and technologies. ²⁰ In its sixteen years of operation the Wassenaar Arrangement has generated, in addition to the two control lists, a number of best practices and guidelines which its participating states adopt and implement through their national strategic trade control systems. ²¹ The manner of national adoption and implementation is up to each individual participating state. Some choose to take documents agreed to within the organization as a guide or point of reference. Others have integrated the mechanisms into their legal and regulatory framework. Participating states have established a comprehensive information sharing system amongst themselves on national policies and technology trends, and more importantly share what types of transfers have been made and what kind of transfers have been denied.

The Wassenaar Arrangement has established two control lists, and it is here that lessons for the inclusion of parts and components in an ATT can be made. The Munitions List comprises 22 different categories ranging from smooth bore weapons and ammunition through aircraft, vessels of war and directed energy weapons. Each category has a reference to the control of components specially designed for that category:

Example: ML.1. Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less and accessories, as follows, and *specially designed components* therefor:

At times the description of control on components is further specified in the technical specification of the category:

Example: ML. 9 Vessels of war (surface or underwater), special naval equipment, accessories, components and other surface vessels, as follows:

- a. Vessels and components, as follows:
 1. Vessels (surface or underwater) specially designed or modified for military use, regardless of current state of repair or operating condition, and whether or not they contain weapon delivery systems or armour, and hulls or parts of hulls for such vessels, and *components therefor specially designed for military use*;

By using a tiered system of definition, the list captures the necessary components without branching over the dual-use threshold. ²²

The Wassenaar Arrangement List of Dual-Use Goods and Technologies comprises nine different categories. ²³ Each category has alphabetized subsections (A to E) describing different types of items. Subcategory A for each of the nine product categories covers: Systems, Equipment and Components. This means that the components related to each of the nine categories are specifically highlighted through the category's subsection A. At the same time the same philosophy as was present in the Munitions List is also reflected here by using the sharper definition of "specially designed".

Example: Category 3 – Electronics

3. A. 1. Electronic components and specially designed components therefor, as follows:...

The Wassenaar Arrangement lists are comprehensive and technically detailed. Each year an Expert Group convenes for a total of one month to review and discuss proposals related to the control lists. The technical detail of the Wassenaar Arrangement lists far exceeds the needs of the ATT. However, sixteen years of experience in defining categories and working with a technically detailed list provide valuable lessons from which the ATT could benefit. The Munitions List could be entered into the pool of documents that the ATT could use as a reference. Furthermore, the way the Wassenaar Arrangement defines parts and components as closely linked to the categories for control provides another valuable lesson.

To see how the rules and procedures regarding parts and components can be practically applied, two countries have been chosen as general case studies - Norway and South Africa. Both countries have a developed defence industry and both are members of the Wassenaar Arrangement.

CASE STUDIES

Controlling Transfers of Conventional Arms Parts and Components in Norway

The defense and security industries in Norway constitute about 100 companies across the country in a wide variety of sectors and employing approximately 25 000 people. The turnover in the defense sector is estimated at NOK 9 billion per year of which NOK approximately 4 billion is dedicated to exports.²⁴ In 2011 the Stockholm International Peace Research Institute (SIPRI) gave Norway a ranking of 16th of the world's top 20 conventional arms exporters.²⁵ There is no production in Norway of weapons defined as SALW under the Organization for Security and Cooperation Europe (OSCE), but the country produces and exports ammunition for SALW.²⁶

The Norwegian strategic trade control system is based on the Export Control Act no. 93 of 18th December 1987 relating to control of the export of strategic goods, services, technologies, etc. However, the policy decision to establish export control procedures dates back to the government proclamation on March 11, 1959.²⁷ The main purpose of the Norwegian strategic trade or export control system is to guarantee that strategic goods, services and technologies are only exported from Norway pursuant to Norwegian security and defense policies. In addition, dual-use exports are only allowed if they do not contribute to the proliferation of weapons of mass destruction.²⁸ In other words, certain goods, technologies and services may not be exported from Norway without an export license. Norway also has a specific regulatory system for the control of small arms and light weapons (SALW). The Act no. 1 of June 9, 1961 relating to Firearms and Ammunition entered into force April 1, 1963 and establishes a control system for the possession, purchase, trade and import of SALW.²⁹

» *Licensing*

The Ministry of Foreign Affairs Section for Export Control is responsible for the administration of the Export Control Act and can also draft and adopt related regulations and guidelines as well as grant licenses.³⁰ The Ministry of Justice is responsible for the administration of the Firearms Act.³¹ The Ministry of Foreign Affairs Section for Humanitarian Affairs is the UN-Program of Action point of contact for SALW issues in Norway.³² The Firearms Act excludes firearms, firearms parts and ammunition intended for the Defense Forces or the Police. In addition it does not apply to ammunition intended for or belonging to the State Inspectorate of Explosives and Flammables.³³ Article 2 under the Firearms Act defines “parts of firearms (firearms parts)” as locks and barrels. Anyone who intends to purchase and keep firearms under the law needs a permission to do so from the police.³⁴ Trading in firearms and ammunition as well as manufacture and import of the same requires permission from the competent governmental agency, which, depending on the situation, is the Police Authority or the Ministry of Defence.³⁵ The Firearms Act does not, however, control exports of arms, military materiel or relevant technologies and services. That control is based on the Export Control Act from 1987 and its Regulations. Regulation no. 51 of January 10, 1989 relating to the implementation of control of the export of strategic goods, services and technology – follows the Export Control Act and the subsequent Royal Decree from 1987.³⁶ In addition Norway has published Guidelines for the administration of the regulatory framework.³⁷

Norway has two primary control lists: one for military goods, and one for dual-use goods. List I is a national list under the Ministry of Foreign Affairs containing defense material such as: arms, ammunition, other military equipment and components and related technologies. List II incorporates items that are not on the first list but can have a military application, i.e. dual-use goods. It is derived from the multilateral export control regimes to which Norway is a member. The two lists are part of the implementing regulations to the Act. Norway also applies so called catch-all controls on items not on the list, but for which an export license still might be required if there is additional information related to the end-use of the item and the end-user.³⁸ The list related to defense material – List I contains 20 items – or categories. The different items are not specified in technical detail, but in broader terms. Article 17 of List I specifies control for *components, parts subsystems and auxiliary equipment specially designed or modified for products listed in items 1 to 16*. In addition the following three items 18-20 covers; Software, Materials and Machine tools and Technology and refers under each section to the previous listed items.³⁹ This builds a fairly cohesive system despite limited details.

In addition Norway has a special way of categorizing the controlled items into two groups or special categories according to the MFA Guidelines for license applications for export licenses of arms and military items. This can appear confusing at a first glance. The intent however is to identify the use of the item.

Category A: Arms, ammunition and certain types of military equipment and components

This category includes all kinds of arms and ammunition as well as other equipment that could be used effectively to influence the military balance of power beyond the immediate vicinity, including equipment for maritime surveillance and electronic measures against satellite-borne systems.

Category B: Other equipment and components designed or modified for military use.

This category includes other equipment designed or modified for military use specified in the Ministry of Foreign Affairs List I (Arms, ammunition, other military equipment and components and related technology) which does not have such properties or areas of application as specified for category A.⁴⁰

The MFA Guidelines also specify three particular types of countries and procedures for what can be shipped to whom. The three groups of countries used in the evaluation of a license are:

Group 1: the Nordic countries and NATO members. The group can also include other countries the Norwegian government deems as appropriate

Group 2: Countries at war or under the threat of war (civil or bilateral), countries to which the Ministry deem it inadvisable to export arms and equipment, and countries affected by an arms embargo (UN or by other organizations such as the OSCE which Norway choose to adhere to). The premise is that this group of countries cannot receive goods in category A and B.

Group 3: Countries not in the first two groups but to which Norway does not sell weapons and ammunition, but which may receive other equipment designed or modified for military use.⁴¹

The Guidelines further specify the approach to exports of goods, services and technology to countries with which Norway cooperates. If there is a bilateral agreement in place the export can proceed. Norwegian authorities also take into account whether or not the end-product can be perceived as Norwegian or not, if not the product can be shipped using the producing country's rules and procedures.⁴²

Goods in category A can only be exported to government agencies and will most likely be granted if the country of destination belongs to Group 1. Goods in category B requires a license for countries in group 1 and 2. Documentation regarding the end destination is required for both categories, but for export of goods in category A to countries other than allied countries requires additional officially confirmed end-

user statements with a re-export clause.

Chapter VII of the MFA Guidelines describes in detail the Norwegian procedure for the export of “part deliveries” (Norwegian - *delleverense*). In the English translation this is referred to as “parts and components”, but perhaps a more appropriate term would be “part delivery”. This chapter deals with *goods which have no independent function*. If the part delivery occurs under an already established agreement an export license will be given at the time of the agreement. It is also essential to underline that when the Norwegian part and components are integrated into the final product it is no longer considered as a Norwegian. No end-use documentation is required in these cases. If the exports or part delivery are not subject to a bilateral agreement, applications for export license will be considered as if for a final product. The Guidelines further stipulate procedures for export of technology and provision of services.⁴³ Norway has also chosen to align itself to the European Union Council Common Position 2008/944/CFSP on exports of military technology and equipment.⁴⁴ This means that the eight criteria under the EU Common Position are also applicable in the Norwegian export licensing process and they are annexed to the Guidelines.⁴⁵

Finally, the practical procedures for the application of licenses are fairly straightforward. The application procedure time can be no longer than 12 weeks for goods in Category A and 6 weeks for goods in Category B. If need be the Ministry of Foreign Affairs can consult the Norwegian Defense Research Establishment under the Ministry of Defense on the technical application and use of an item. For matters of defense importance other branches of the Ministry of Defense can be consulted. The Ministry of Trade and Industry be consulted in matters of commercial importance.⁴⁶

Enforcement

The National Criminal Investigation Service in Norway is responsible for any firearms tracing requests from a foreign country.⁴⁷ Other governmental agencies that are involved in the Norwegian strategic trade control system are the Directorate for Civil Protection and Emergency Planning, the Security Service under the Police and of course Customs. The Export Control Act has extensive provision for penalties and it also includes duty of information provisions as well as a secrecy requirement for the information obtained under the auspices of the Act.

Implementation

Norway has since 1996 published an annual report to the Norwegian parliament (Stortinget) on the export of defense material, the export control policies and international nonproliferation collaboration. The last report was issued on June 10, 2011 and gives a detailed description, including statistical data of the previous year. In 2010 as well as 2009 94% of the export of defense equipment and 88% of the dual-use export went to NATO member states.⁴⁸ In 2010 42 named companies reported an export of defense material totaling NOK 3,94 billion in value, of this NOK 3,7 billion were sales. Export of items on Category A constituted 2,6 billion and Category B landed at NOK 1.04 billion. Service, repairs and transfer of production rights reached a level of NOK 260 million. For both Category A and B there was a slight decline in export in 2010. Looking closer at the different product category under the Control List I 69% of the export was components under article 17.⁴⁹ The National White Paper Table 9.3⁵⁰ leaves further exact details on what types of items were transferred to what country. Table 9.6 in the report carries data on the export of firearms from Norway in 2010 – a total of 548 pieces.⁵¹ It appears that no components to firearms were exported in 2010. The White Paper also disclose what type of weapons the Norwegian Armed Forces carries with them on missions abroad.

In 2010 Norway issued five denials on export control licenses to four countries according to the Guideline Annex A (the EU Common Position) criteria 1,2,3,4 and 7. In addition the Ministry of Foreign Affairs issued a number of negative pre-license notifications to nine countries in total.

In 2004 Norway entered a close collaboration with the European Union on export control matters, although it already had chosen to adhere to the EU Code of Conduct in 1998. As earlier stated, Norway

adheres to eight criteria under the EU Common Position on control of exports of military technology and equipment. The Norwegian government also has chosen to join or adhere to the EU Parliamentary Directive 2009/43/EC that aims to facilitate arms transfers within the union.⁵² The Directive fully enters into force by mid-2012 and changes are currently introduced to the Norwegian system. The Directive introduces the concept of certification of companies for facilitates strategic trade control purposes as well as project licensing. This will entail changes and possible liberalization of the Norwegian system with regards to the EU 27 Member States.⁵³

Controlling Transfers of Conventional Arms Parts and Components in South Africa

Originating prior to World War II and undergoing considerable expansion in the latter half of the 20th century, South Africa's defense industry is the largest and most sophisticated in Africa.⁵⁴ South Africa started to restructure the public sector defense industry and reform its conventional arms control regime in the 1990s. A number of internal factors contributed to this process, among others the 1995 inquiry into the country's arms export activities ordered by the Mandela administration, the so called Cameron Commission.⁵⁵ The reform efforts resulted in the creation of the National Conventional Arms Control Committee (NCACC) and the passage of the *National Conventional Arms Control Act of 2002 (NCAC Act)* and the *National Conventional Arms Control Regulations of 2004*.⁵⁶ These laws constitute the primary legal basis for South Africa to regulate its international trade in conventional weapons and dual-use items. The National Conventional Arms Control Regulations and the corresponding control list were updated April 20, 2012, and provide among other things further alignment to Wassenaar Arrangement requirements.⁵⁷

» Licensing

The *NCAC Act* establishes licensing requirements for transactions involving South African conventional arms and outlines guiding principles for granting arms licenses. Importantly, the law includes weapons parts and components in its definition of "conventional arms." The *NCAC Act* therefore grants regulators the authority to control trade in military and dual-use "components, equipment, systems, processes, and technologies" which could be used to "design, develop, manufacture, upgrade, refurbish, or maintain" weapons or weapons systems, in addition to the completed products.⁵⁸ The *NCAC Regulations* contain the South African control list for conventional arms, which corresponds directly with the Wassenaar Arrangement Dual-Use and Munitions Lists.⁵⁹

According to the *NCAC Act*, no entity may engage in any activity involving conventional arms unless it has been registered with the NCACC secretariat, the Directorate of Conventional Arms Control (DCAC), and has been granted a permit authorizing them to do so.⁶⁰ This licensing requirement encompasses the manufacture, marketing, export, re-export, import, and conveyance of conventional arms, components, or technology, as well as the provision of related brokering and other services.⁶¹ The DCAC issues 6 types of permits for various activities⁶² and each permit must specify the quantity, type, and value of the goods involved in the approved transaction. DCAC officers have the power to prescribe a number of other factors relating to conventional arms transfers, including the time period in which an activity may take place, the ports and airports through which a shipment may transit or transship, and the route a shipment may take.⁶³ All applications to export conventional arms must be accompanied by an end-user certificate issued by the relevant government authority in the recipient country. The recipient country must also guarantee the proper importation of the shipment by providing a Delivery Verification Certificate.⁶⁴ Though not mentioned in the *NCAC Act* or *Regulations*, the DCAC may also encourage the establishment of internal compliance programs, and may inspect and assess a permit holder's policies and procedures for complying with the *NCAC Act*.⁶⁵

The *NCAC Act* outlines several guiding principles for licensing officers to consider when assessing applications on a case-by case basis to transfer conventional arms, components, or technology. Among other criteria such as taking into account national interests and interests of allies, licensing officers must:

1. Avoid contributing to internal repression, including the systematic violation of human rights;

2. Avoid transfers of conventional arms to governments that systematically violate or suppress human rights and fundamental freedoms;
3. Avoid transfers that are likely to contribute to the escalation of regional military conflicts and endanger peace by introducing destabilizing military capabilities into a region;
4. Adhere to international law, norms, and practices and to the international obligations and commitments of South Africa;
5. Account for calls for reduced military expenditure in the interests of development and human security;
6. Avoid contributing to terrorism and crime;
7. Consider the conventional arms control systems of recipient countries and their record of compliance with end-user certificate undertakings and avoid the export of arms to countries that have committed violations in the past.

It is important to note that while the *NCAC Act* explicitly declares that regulators should account for the recipient country's ability to manage the arms in question, it does not authorize licensing officers to use black-lists or entity lists for end-users themselves. Furthermore, the law does not allow licensing officers to implement "catch-all controls" on unlisted items or technologies.

The South African process for licensing transfers of conventional arms – including their parts, components, and related technologies – entails several steps and involves multiple government agencies. After registering with the DCAC, an entity must submit a formal application to the DCAC for a specific activity. The DCAC, acting on delegated powers from the National Conventional Arms Control Committee (NCACC), preliminarily processes the application before relaying it to offices within relevant government agencies for review. These other agencies include the departments of Defense, International Relations and Cooperation, Trade and Industry, and Science and Technology, as well as the intelligence services. The DCAC then synthesizes these reviews and submits them to an interagency Scrutiny Committee,⁶⁶ which then makes a single recommendation to the ministerial-level NCACC. The NCACC orders the final approval or denial of the application, and the DCAC issues approved licenses.⁶⁷ The Committee is legally required to report its activities to the United Nations Register of Conventional Arms and to submit both quarterly and annual reports to the South African Parliament.⁶⁸

» *Enforcement*

Several government bodies bear responsibility for enforcing South Africa's arms control regulations. The *NCAC Act* establishes the NCACC Inspectorate as the investigatory arms of the Committee, for the purpose of ensuring that trade in conventional arms and dual-use items is conducted in compliance with the *Act*.⁶⁹ The Inspectorate has the power to conduct searches and seize evidence or illicit goods.⁷⁰ Separately, the South African National Defense Force (SANDF), the South African Police Service (SAPS), and the South African Revenue Service (SARS) enforce South African law on the country's borders.⁷¹ Moreover, SARS is tasked with leading the interagency Border Control Operational Coordinating Committee (BCOCC) in order to more effectively manage South Africa's border control efforts.⁷² The National Prosecuting Authority is in charge of prosecuting offenses against South African law and maintains a Priority Crimes Litigation Unit (PCLU) specifically for the purpose of prosecuting trade control violations.⁷³

The *NCAC Act* allows for extraterritorial enforcement of South African arms controls; South African courts may try any South African citizen, permanent resident, or organization incorporated or registered in South Africa for an offense committed under the *NCAC Act*, whether or not they are physically located within South Africa, and may try any foreign citizen having committed an offense in South African territory.⁷⁴

» *Implementation*

In 2010, the DCAC registered 65 companies and the NCACC approved 3,536 export permits, valued at roughly \$1 billion.⁷⁵ While the NCACC reports its activity by country, it does not publicly delineate the precise items or technologies transferred. As such, it is difficult to determine the exact way or how efficient it implements controls specifically over parts and components. However the updated regulations in April 2012, will open up for further enhancement in reporting and the national reports will follow a similar level of detail as is provided in the reporting to the UN Register of Conventional Arms.⁷⁶

CONCLUSION AND RECOMMENDATIONS

As the multilateral example and the two case studies have shown, there are different ways to incorporate the control of parts and components in a strategic trade control system. That does not mean that it is easy to do. The Wassenaar Arrangement has struggled for years to define what is meant by “specially designed”. In addition, the sheer amount of time dedicated for technical discussions in the WA each year proves that finding comprehensive and agreed definitions for each item under control will require time and technical expertise. Both the Norwegian and South African systems receive their fair share of critique from government watch dogs and NGOs for the practical implementation of their systems.

Controlling parts and components is a challenge and no system will be perfect and run smoothly from the very start. It is a capacity that will grow and develop over time. However the efforts made both in a multilateral context as well as on a national level prove that it is both necessary and possible to apply sensible and efficient control of this sensitive type of equipment.

The ATT needs to address the risk that that low tech defense items can be maintained, renewed or given a stronger military capacity by the right part or component. Vehicles used in a conflict can get a military capacity by adaptation – armor, better communication or guns mounted on top of it⁷⁷. In addition, already existing weapons can be updated, repaired, modified or renewed by adding or replacing an important part or component.

Another threat lies in conventional weapons being reverse-engineered or easily assembled using parts purchased separately – parts that can have been acquired without any control. There are also cases where a weapon is purchased as a kit for self assembly. Not all conventional weapons can be reversed engineered or purchased as a kit. IKEA does not sell self assembly submarines. However, for smaller types of weapons like SALW they can be purchased in kit form. Parts of these kits, the nuts and bolts would be very hard to control as they are easily obtained on the civilian market, but some other parts have a higher grade of technical sophistication and a sole military purpose. The quad rail for an assault rifle might be designed for a very specific purpose, but the screws that attach that part to the rest of the weapons might not.⁷⁸ The omission of parts and components from the ATT will also result in the treaty being rendered pointless from a transparency perspective as some countries valid defense trade will go unaccounted for. For many states, excluding parts and components would mean that the vast majority of their defense trade would fall outside the treaty.

But how can parts and components be incorporated under the ATT scope in an efficient way and how can it be integrated into the treaty’s transparency mechanism?

1. How to control it

The practical difficulties related to the inclusion of parts and components in the scope of the ATT are challenges that can be solved. The UN will not be able to conduct detailed technical discussions on extensive control lists in a similar way to what is currently the norm in the existing strategic trade control related organizations. The Wassenaar Arrangement spends at least one month of solid meeting time per year only on technical discussions related to the control lists. Lengthy discussions on technical specifications in minute detail in the UN would risk derailing the important discussion that will be needed to maintain a vital and

vibrant ATT discussion after the treaty's adoption.

Focus should therefore lay on the adoption of parts and components as a specific broad category under the ATT scope of items for control. This would avoid technical discussion on technical specificity, while at the same time elevate the importance of the control of parts and components to international law:

One way to do this would be to add parts and components as a special category such as suggested in the Chairman's paper from July 2011:

Part or Components "specially and exclusively designed" for any of the categories in subparagraphs (a)-(k)⁷⁹

Another solution would be to add language after each category referencing parts and components:

Example:

*"Rifles, carbines, shot-guns, revolvers and pistols, machine guns, and other weapons, including bayonets, intended for use by an individual, **and parts and accessories thereof.**"⁸⁰*

By using a tie-on definition of parts and components to each weapons category the ATT will capture the essence of what could be military significant without increasing the burden of defining parts and components. Each State Party of the treaty would be responsible to flesh out the definitions under each category. The national systems would have to follow similar procedures for the control of parts and components as for the finished conventional weapons.

2. How to report on it

One of the greater goals set for the ATT is greater transparency in the international arms market. For instance better transparency in the arms market provides a confidence building mechanism that will decrease fear, speculation and tension between countries. It can also strengthen the public debate on international arms transfers and also there decrease fear and improve understanding. Better transparency in the trade of parts and components related to the ATT can be achieved, while at the same time avoiding challenges related to technical specificity. The ATT State Parties should over the first five years after the ATT entering into force provide data of their own international trade in parts and components based on value and region, using UN recognized regional divisions.

Example:

Country A could for year X report on the collected value of its international trade in parts and components coming into the country and leaving the country for a specific region.

3. Technical assistance to help build national capacity

Few countries have the domestic expertise and knowhow to develop a national control list. The ATT can provide guidance on the broad categories, but it will require more technical detail to create clear, understandable control lists. Technical assistance and international cooperation under the treaty will therefore be important components in building that capacity. State parties to the treaty should be able to request and also supply technical expertise in this area.

Example:

A country wanting to adopt a national control list, following the basic broad categories under the treaty (with the inclusion of parts and components) should be able to request and receive assistance to do so.

Other international instruments in the nonproliferation domain have this type of clearinghouse mechanisms for technical assistance and international collaboration. In addition in these assistance efforts already existing examples like the Wassenaar Arrangement Munitions List could serve as a reference for countries aiming to adopt a comprehensive national control list for conventional weapons. The treaty will itself grow its own garden of best practices through years of implementing the treaty, but to get started already existing, albeit multilateral, instruments should not be forgotten.

Finally, UN Member States will have four weeks to come to a decision on a final document that creates a strong and robust Arms Trade Treaty. The ATT has no international precedent. It is not a ban treaty, but instead an effort to establish a global regulatory framework for the trade of particular weapons. The international community has a chance to create something that the world sorely needs, a tool for restraint and a global mechanism for the legitimate traders to play by the rules. By making the legal rules for international trade in conventional arms more cohesive and universal – the risk of leakage and diversion of weapons to the illicit arms market will decrease. The whole is perhaps greater than the sum of its parts, but without adequate inclusion of military significant parts and components under the scope of the treaty, the Arms Trade Treaty would be incomplete, leaving a dangerous loophole.

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