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The Firearms Protocol and the Arms Trade Treaty: Divergence or Complementarity?

Issue Paper

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Executive summary

Two major United Nations treaties govern illicit arms trade and trafficking since the early twenty-first century. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (generally known as the Firearms Protocol (FP)), adopted by the United Nations General Assembly in May 2001, supplementing its parent instrument, the United Nations Convention against Transnational Organized Crime (UNTOC), which entered into force in July 2005. Over a decade later, the second instrument, the Arms Trade Treaty (ATT), was opened for signature in June 2013, and entered into force in December 2014.

Both instruments promote international cooperation to tackle the challenges posed by the illicit trafficking of weapons and its negative consequences on peace, security and socioeconomic development. The UNTOC and the Firearms Protocol aim to promote cooperation to combat as well as prevent transnational organized crime more effectively, while the ATT is of broader scope, as it specifically refers to international humanitarian law, reduction in armaments, as well as human rights considerations.

The ATT covers eight categories, whereas the FP covers just one—firearms, their parts, components and ammunition, as discussed further in this Paper. Despite such differences, there is a marked degree of complementarity between the two instruments, which clearly reinforce each other. In fact, as argued here, the ATT was drafted so as to strengthen and enforce the FP.

A number of countries are parties to both instruments, which reiterates the need for complementary and harmonized implementation of both instruments at the national level. The ATT and the UNTOC appear to have adopted a similar, if not identical, institutional framework. The main difference may well be that the United Nations is empowered to act as secretariat for the FP and its parent convention, while a non-United Nations body will act as a secretariat for the ATT; better implementation of both frameworks will require meticulous coordination of action between the United Nations and non-United Nations entities.

The First Conference of States Parties on the ATT, held in Cancún, Mexico, in August 2015, decided to establish a Provisional Secretariat outside the United Nations System to carry out the duties and responsibilities states have under article 18 of the Treaty. Thus, the locus of implementation is as yet evolving, and neither the United Nations Office on Disarmament Affairs (UNODA) nor the United Nations Office on Drugs and Crime (UNODC)

have direct oversight with regard to the treaties within their aegis. However, the secretariats of the two legal frameworks may, with the consent of the parties concerned, coordinate their efforts to further implementation.

This Issue Paper is primarily for policymakers, legislators and practitioners involved in the sphere of preventing and countering illicit manufacturing and trafficking in firearms.

Introduction

The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol),¹ supplementing the United Nations Convention against Transnational Organized Crime (UNTOC) was adopted by the United Nations General Assembly in May 2001;² the United Nations Arms Trade Treaty (ATT) was endorsed 12 years later, in April 2013.³ The Protocol entered into force on 3 July 2005, and was signed by 52 parties and ratified/acceded to by 114 parties. The ATT, on the other hand, has been (as of January 2016) signed and ratified by 130 and 78 States respectively, and entered into force on 24 December 2014.

The Firearms Protocol (FP) was mainly a response to the problem of illicit manufacturing and trafficking in firearms, their parts and components and ammunition, and to their negative impact on socioeconomic development, security and well-being of people, countries and regions (Preamble, para. 1). The parent Convention, and the Firearms Protocol, aim to promote cooperation to prevent and combat transnational organized crime more effectively (art. 1, UNTOC; art. 2, FP). In contrast, the ATT recalls, inter alia, the need to “promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world’s human and economic resources” (Preamble, para. 1). It also refers to security, development and human rights as pillars of the United Nations collective security framework (Preamble, para. 6). This appears to suggest that the Firearms Protocol covers organized crime prevention and illicit activities, while the ATT’s objectives are broader than these, as they take into consideration the reduction of armaments, as well as human rights aspects.

Nonetheless, the ATT, in language similar to the Firearms Protocol, underlines:

¹ United Nations, *Treaty Series*, vol. 2326, No. 39574.

² *Ibid.*, vol. 2225, No. 39574.

³ General Assembly resolution 67/234 B.

“the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts”. (Preamble, para. 2).

Both legal frameworks also refer to similar, although not necessarily identical, principles of international law. The Firearms Protocol makes general references to “equal rights of States and the right to self-determination of peoples”, to the United Nations Charter and the 1970 resolution of the General Assembly on friendly relations between States. The UNTOC refers to the principles “of sovereign equality and territorial integrity” or non-intervention, and expressly refers to the prohibition of exercising jurisdiction in the territory of another State (art. 4). The ATT enshrined and expanded these fundamental principles by referring to the right of States to defend themselves, to import, export and acquire conventional weapons for their lawful needs. However, the ATT has also recognized the principle of “Respecting and ensuring respect for international humanitarian law” and international human rights and freedoms, among other principles, which is not the case either in the Protocol or the UNTOC.

What is common across both instruments is that promoting international (or regional) cooperation to tackle the challenges posed by the illicit trafficking of weapons and its negative consequences is considered the primary means through which the commitments are to be implemented, irrespective of the aforementioned differences.

This Issue Paper is primarily meant for policymakers, legislators, and practitioners involved in preventing and countering the illicit manufacture of and trafficking in firearms, their parts and components and ammunition. It reviews the various links between the Firearms Protocol and the ATT. The Paper focuses on the nature and relationship between the two global instruments, with the aim of exploring the extent to which they are related, and complement each other.

Countering illicit activities in firearms and the regulation of international transfers of conventional weapons have common aims: to arrest illicit transactions and diversion, and to regulate international weapons trade and transfers. The control of such activities presents some significant challenges that require strategic prevention approaches, proactive investigations, diligent prosecution and, often, also international cooperation. This Issue Paper identifies a number of common areas that the Firearms Protocol and the ATT share, and concludes with suggestions deriving from the analysis of the two instruments.

I. Scope

The Firearms Protocol regulates firearms, their parts and components and ammunition (art. 3); the ATT applies “to all conventional arms within the following categories: (a) battle tanks; (b) armoured combat vehicles; (c) large-calibre artillery systems; (d) combat aircraft; (e) attack helicopters; (f) warships; (g) missiles and missile launchers; and (h) small arms and light weapons.”

The ATT covers eight categories, whereas the Firearms Protocol covers only one. The overlap between the two instruments is only over one category of weapons: firearms in the Firearms Protocol, and respectively, small arms and light weapons (SALW) in the ATT. It has to be stressed that firearms are often considered synonymous to small arms but not to light weapons. However, both the ATT and the Firearms Protocol cover parts, components and ammunition; here again the scope of the ATT is broader, as it covers not only parts, components and ammunition for SALW, but also for all categories of conventional weapons (arts. 3 and 4), whereas the Firearms Protocol covers parts, components and ammunition only for firearms.

The Firearms Protocol excludes State-to-State transactions, provided that they are justified on national security grounds and are subject to the principles of the United Nations Charter, whereas the ATT only excludes “the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party’s ownership” (art. 2(3)). It is of note that while the Firearms Protocol has defined the weapons covered and other related terms, the ATT refers vaguely to most terms and weapon categories, but specifically refers to existing definitions and categories contained in the United Nations Register of Conventional Arms.⁴

⁴ A/RES/46/36, 65th plenary meeting of 6 December 1991. In 2003, the General Assembly decided that Member States could add also the category of small arms and light weapons in their reports, which some States do (<http://www.un.org/Depts/ddar/Register/4636.html>).

II. State duties under the Firearms Protocol and the Arms Trade Treaty: divergence or complementarity?

The main approaches to the prevention of firearms trafficking are detailed in the Firearms Protocol. The Protocol, in article 3, defines illicit trafficking as “the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol”. It also identifies several measures that can be taken to prevent firearms trafficking, including border control, information exchange between jurisdictions, measures to ensure the security and control of documents, and public awareness programmes. The effective regulation of international arms transfers, as was made obvious in the preceding discussion, is also essential to the effective prevention of firearms trafficking.

Consistent with the duties provided for in the UNTOC, the Firearms Protocol requires States parties to: criminalize illicit manufacturing, trafficking and falsifying or altering marking of a firearm (art. 5), among other aspects; to keep records on the marking of illicitly manufactured and trafficked firearms and all international transactions of firearms, for up to 10 years; to mark firearms for purposes of their effective tracing and identification; and to certify deactivated firearms (arts. 7-9). Moreover, as part of the duty and strategy to prevent illicit activities, the Protocol obliges States parties to “establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition” (art. 10).

The ATT does not regulate manufacturing and manufacturers unless they are engaged in import, export and transfer activities. The ATT does not

also explicitly speak about criminalizing violations of the Treaty. This may well lead to the conclusion that the Firearms Protocol and the ATT are divergent. Yet, article 11 of the ATT provides that “Each State Party involved in the transfer of conventional arms covered under Article 2(1) shall take measures to prevent their diversion”. The obligation includes the taking of “all measures” to prevent diversion. As per subparagraph (4) of article 11, a State party:

“shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include alerting potentially affected States Parties, examining diverted shipments of such conventional arms covered under Article 2 (1), and taking follow-up measures through investigation and law enforcement.”

This suggests that the drafters envisaged domestic measures including criminal law (which involves the police, prosecution and other law enforcement agencies), as a tool to implement the Treaty.

Nonetheless, the ATT is silent on marking and deactivation, but legislated in article 12 that:

“Each State Party shall maintain national records, pursuant to its national laws and regulations, of its issuance of export authorizations or its actual exports of the conventional arms”.

Yet States are only encouraged (but not obliged) to record their imports, transit shipments and “the quantity, value, model/type, authorized international transfers of conventional arms” (art. 12(3)).

The ATT reinforces the Firearms Protocol requirements to regulate exports by stating that:

“Each importing State Party shall take measures that will allow it to regulate ... imports under its jurisdiction of conventional arms ... Such measures may include import systems” (art. 8(2)).

Article 5(2) of the ATT also provides that “Each State Party shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty”. It can be presumed that States parties to the ATT will be required to establish an arms export system, although the obligation to do so is not as explicit as the Firearms Protocol on this subject.

Nonetheless, differing from the Firearms Protocol, the ATT imposes a ban on imports, exports and transfers: (a) in violation of mandatory Security Council arms embargoes (art. 6 (1)); (b) if a State has:

“knowledge at the time of authorization that the arms or items 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” (art. 6 (3));

and (c) the ATT also envisages a duty for a State to refrain from engaging in arms transfers:

“if the transfer would violate its 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” (art. 6 (2)).

These three contexts constitute an unconditional ban on arms transactions.

The ATT also requires States parties to carry out “import and export risk assessment” concerning:

“the potential that the conventional arms or items:

(a) would contribute to or undermine peace and security; (b) could be used to: (i) commit or facilitate a serious violation of international humanitarian law; (ii) commit or facilitate a serious violation of international human rights law; (iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or (iv) 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 Party” (art. 7).

Here, the UNTOC and its Firearms Protocol (arts. 5 and 10 in particular) and the ATT appear to expressly complement each other; criminal offences under the Protocol (art. 5) have been referred to in the ATT as provided for in article 6 (2) and article 7 (b) (iv), as grounds for the duty to assess risks of arms transactions. What this means is that if a given transfer risks a violation of article 5 (including illicit manufacturing and trafficking and falsifying marking of firearms) a State must refrain from authorizing exports (ATT, art. 7 (3)).

Such relationships between the two legal instruments can also be assessed in relation to the duty to “maintain an effective system” of import and export of firearms (FP, art. 10). The Model Law against the Illicit Manufacturing

of and Trafficking in Firearms, Their Parts and Components and Ammunition,⁵ prepared under the auspices of UNODC, rightly explains (in chapter VII, Commentary) that:

“The Protocol does not specify in detail the form the system of licensing of import and export or the measures on international transit a State must take. This is left largely to the discretion of States [...]. In addition to ensuring that legislation incorporates all the mandatory provisions of the Protocol, States may have existing obligations under other multilateral, regional and sub-regional agreements that have application to the international import, export or transit of firearms, their parts and components and ammunition”.

It is of note that European Union (EU) Council and Parliament Regulation 258/2012 implementing article 10 of the Firearms Protocol transposed the latter’s obligations into EU law; Member States of the EU are thus obliged to maintain export and import control systems on civilian (but not military) weapon transfers from, and to, third countries. Such a transposition “is based on the principle that firearms and related items should not be transferred between states without the knowledge and consent of all States”.⁶ The Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition and all Parts and Components that can be used for their Manufacture, Repair and Assembly (Kinshasa Convention; opened for signature in 2010),⁷ however, only stresses the importance of the Firearms Protocol, without addressing issues of transposition of the duties provided in the Firearms Protocol.

It may be argued, however, that article 10 of the Protocol is intended to impose regulatory administrative and procedural duties on authorities rather than criminalizing such conduct. Conversely, article 7 of the ATT goes beyond establishing an “effective system” of regulation as it imposes substantive duties upon States to assess “potential risks” of arms exports to facilitate or support offences proscribed by the Protocol and other international treaties such as the Geneva Conventions of 1949. What this means is that a transaction can be lawful under the Protocol as all regulatory requirements may be met, but not necessarily be in compliance with the terms of the

⁵ United Nations Office on Drugs and Crime, Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, second revised edition, United Nations publication, Sales No. E.14.V.8 (Vienna, 2014).

⁶ See http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-firearms/docs/regulation_258_2012_en.pdf.

⁷ A/65/517-S/2010/534, annex.

ATT on transfer. It must be noted, however, that the ATT, similar to the Protocol, but different from other legal instruments such as the ECOWAS⁸ and Central African Convention on SALW does not expressly prohibit the supply of weapons to non-State actors (NSAs). Article 4 of the Central African Convention on SALW expressly prohibits any transfer of SALW to armed groups.

Unlike the controversy over the legality/illegality of arms transfer to NSAs, however, the regulation of brokering has received express support from the ATT (art. 10). Article 15 (1) of the Protocol, which is better elaborated on brokering than the ATT, states that:

“States Parties [...] shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as: (a) Requiring registration of brokers operating within their territory; (b) Requiring licensing or authorization of brokering; or (c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.”

The Protocol’s requirements as regards brokering has been acknowledged as being feasible (United Nations, Report of the Group of Governmental Experts on illicit brokering, 30 August, 2007, para. 24).⁹ The Group, upon examining national legislation of States submitted that:

“National legislation allows a State to exercise jurisdiction over individuals and entities brokering small arms and light weapons transactions from its own territory. Some States have explicit provisions expanding jurisdiction to cover their nationals, permanent residents and companies when they conduct arms brokering activity abroad, while others do not” (para. 47).

It is of note that while the Firearms Protocol and the ATT do not speak about “illicit brokering”, the Group of Government Experts on illicit brokering does.

Building upon UNTOC articles 1 and 31, the Firearms Protocol envisages other preventive and security measures such as establishing effective border

⁸ Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (ECOWAS Convention), 16 June 2006.

⁹ Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons. A/62/163 of

controls, policing and customs' systems to prevent diversion, loss and theft of weapons within States' territories and while in transit (art. 11). Similarly, the ATT expressly mentions the responsibility of States to "prevent and eradicate the illicit trade in conventional arms and prevent their diversion" (art. 1) as one of its cardinal principles. Article 11 of the ATT also envisages a series of obligations with regard to combating and preventing diversion, as mentioned before.

III. Implementation

Both the Firearms Protocol (and its parent Convention) and the ATT are primarily subject to national implementation. The duty to criminalize firearms-related offences (art. 5 of the Firearms Protocol), confiscate, seize and dispose of illicit firearms and related components (art. 6); the duty to keep records (art. 7), mark (art. 8) and ban or certify deactivated firearms (art. 9); the duty to “establish and maintain an effective system” of authorization, licensing and international transactions (art. 10); and the duty to take security measures to prevent “theft, loss or diversion” of firearms (art. 11) are all evidence of such an approach.

In accordance with article 3 of the UNTOC, article 4 of the Firearms Protocol articulates the scope of implementation of the instrument as follows:

“This Protocol shall apply, except as otherwise stated herein, to the prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to the investigation and prosecution of offences established in accordance with article 5 of this Protocol where those offences are transnational in nature and involve an organized criminal group” (art. 4).

States are thus required to take legislative, law enforcement, criminal justice and administrative measures to implement their commitments under the Protocol. States must prevent and criminalize the activities, referred to in article 4, of organized transnational criminal groups.

The scope of the Firearms Protocol must be read in conjunction with the statement of purpose of the UNTOC. Article 1 of the instrument aims to “promote cooperation to prevent and combat transnational crime more effectively”. The Convention’s *Legislative Guide* reminds legislators and policy-makers of States parties “to consider how the Convention interacts with other key international obligations”, in particular the duty of States “under the Charter of the United Nations to cooperate with one another in the promotion and observance of human rights and fundamental freedoms”. The *Guide*

also reminds States of “the need to pay attention” to “obligations arising from international human rights law” (para. 19).

Though the scope of implementation of the ATT differs from the Firearms Protocol (and the parent Convention), as the latter focuses on illicit issues while the former is broader than the notion of illicit, their main mode of implementation is similar. Domestic law policy and actions are considered primary, if not exclusive methods of implementation by both instruments. The ATT, under the title “General Implementation” states that:

“Each State Party shall take measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms covered under Article 2 (1) and of items covered under Article 3 and Article 4” (art. 5 (5)).

Nonetheless, article 11 of the ATT, as indicated above, suggests not only the duty to prevent diversion but also the duty to undertake investigation and law enforcement measures relating to diversion of conventional weapons.

As with the UNTOC, but more comprehensively, the ATT refers to several international obligations of States parties including obligations stemming from the Charter of the United Nations, the Geneva Conventions of 1949, and the Universal Declaration of Human Rights, 1948 (ATT, Principles). Thus, implementing the ATT at the domestic level requires compliance with other international obligations of States.

The challenge of unregulated and illicit firearms and other conventional weapons is, nonetheless, global or transnational in nature and thus national implementation alone cannot provide an effective regulatory framework. That is why international cooperation serves as one of the cardinal principles or approaches of both instruments, the Firearms Protocol and the ATT. Article 2 of the Firearms Protocol submits that:

“The purpose of this Protocol is to promote, facilitate and strengthen cooperation among States Parties in order to prevent combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.”

The Protocol, in articles 12-14, spells out the details of the duty to cooperate on matters of information exchange concerning those involved in the firearms business, organized criminals, scientific and technological information, and the notion of cooperating at all levels. These provisions must also be read in conjunction with the overall content of its parent Convention, the UNTOC,

whose backbone is precisely the promotion and facilitation of international cooperation.

There is also an element of training and technical assistance as part of the cooperation endeavour to fight illicit activity involving firearms.

One of the objectives of the ATT, furthermore, is:

“Promoting cooperation transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties” (art. 1).

The ATT also includes in article 11 the duty of States parties to take all necessary measures to avoid diversion. Article 11 (5) of the ATT says that:

“States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.”

As diversion is an illegal activity, which fuels illicit trafficking in weapons, the ATT reinforces the firearms implementation regime by setting out measures to prevent diversion, and by encouraging States to strengthen their cooperation to combat diversion.

Both frameworks also adopt a similar approach to furnishing global institutional mechanisms which are vital to foster cooperation, and review progress. As far as the Firearms Protocol and the UNTOC are concerned, the United Nations Secretary-General designated the Centre for International Crime Prevention and Criminal Justice (CCPCJ) of the United Nations Office for Drug Control and Crime Prevention (today the United Nations Office on Drugs and Crime or UNODC) to serve as the secretariat of the Conference of the Parties, which is in line with article 33 of the UNTOC. Its role is to assist, convene and facilitate the smooth running of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (CTOC-COP), which serves as the main follow-up, cooperation and review mechanism under the Convention. The main purpose of the review conference is “to facilitate the exchange of information”, identify trends and good practices and strengthen cooperation with international and regional organizations and NGOs on combating transnational organized crimes (art. 32). The Protocol does not refer to any global institution or to the review Conference, although reference has been made to the inevitability of working with international organizations and NGOs.

Article 18 of the ATT, on the other hand, envisages the establishment of a secretariat “within a minimized structure” which shall:

“undertake the following responsibilities:

- (a) Receive, make available and distribute the reports as mandated by this Treaty;
- (b) Maintain and make available to States Parties the list of national points of contact;
- (c) Facilitate the matching of offers of and requests for assistance for Treaty implementation and promote international cooperation as requested;
- (d) Facilitate the work of the Conference of States Parties, including making arrangements and providing the necessary services for meetings under this Treaty; and
- (e) Perform other duties as decided by the Conferences of States Parties.”

The First Conference of States Parties on the ATT (COSP-ATT), held in Cancún, Mexico, from 24 to 27 August 2015, decided to establish a Provisional Secretariat outside the United Nations System to carry out the duties and responsibilities States have under Article 18 of the Treaty. The ATT and the UNTOC appear to have adopted a similar, if not identical, institutional framework. The main difference may well be that the United Nations has been empowered to act as secretariat for the Firearms Protocol and its parent Convention, while a non-United Nations body will act as a secretariat for the ATT; better implementation of both frameworks will require serious coordination of action between the United Nations and non-United Nations organs.

It remains to be seen whether the ATT secretariat will be better resourced and effective compared with other governing bodies such as the secretariat to the UNTOC Conference of the Parties (TCOC-COP), as the ATT emphasized the need for a “minimum structure”. While the role and functions of the two secretariats remain different and separate, the ATT secretariat may find it useful to draw on important lessons learned from the TCOC-COP experience as well as from the work of the Biennial Meeting of States (BMS). It is of note that neither the United Nations Office for Disarmament Affairs (UNODA) nor the United Nations Office on Drugs and Crime (UNODC) have been given a role in the effective implementation of the ATT.

What is clear is that neither the UNTOC nor the ATT secretariat have the power to oversee compliance with their respective conventions. They are meant to facilitate cooperation and technical assistance, and organization of

the Conference of the Parties, as stipulated in the Convention and evidenced by the practices of UNODC. On the basis of the requests made by the Conference and under the auspices of UNODC, a *Legislative Guide*, a Model Law on Firearms and training materials have been developed, and a global data collection initiative on seized firearms launched, leading to the development of the first UNODC Study on Firearms, among other things.

What is slightly different in the ATT's institutional framework is that the ATT secretariat is mandated to receive and process reports from States parties concerning general measures taken by States, and their arms transactions (as required under art. 13 of the ATT). States are also encouraged to report on matters of diversion of weapons to other states through the secretariat. Both the Conference of the ATT and the COP to the UNTOC also have the powers to establish additional bodies when necessary, such as the open-ended intergovernmental working group on firearms, established by the COP in 2010.¹⁰

¹⁰ The open-ended intergovernmental working group on firearms was established in accordance with article 32, paragraph 3, of the United Nations Convention against Transnational Organized Crime, and rule 2, paragraph 2, of the rules of procedure for the Conference (resolution 5/4). By its resolution 7/2, entitled "Strengthening the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto", the Conference decided that the Working Group on Firearms would be a constant element of the Conference of the Parties, forwarding its reports and recommendations to the Conference, and encouraged the Working Group to consider meeting on an annual basis, as needed.

IV. Conclusion

In a nutshell, the relationship between the Firearms Protocol and its parent Convention and the ATT can be explained by both divergence and complementarity. The fact that the ATT covers eight major categories of conventional weapons demonstrates that its purpose is not limited to illicit activity. The substantive criteria adopted by the Treaty is mainly an international trade control measure as opposed to criminal or judicial action, meaning that the two instruments differ in scope and objective. Nonetheless, the cause they stand for—to fight illicit trafficking and avert the negative consequences of such trafficking on human beings, countries and regions—and most importantly, the fact that the ATT was partly designed to enforce and implement the Firearms Protocol and its parent Convention mean that the two instruments, rightly, complement each other.

It is notable that both are subject to national implementation, as a primary mode of implementation, subject to relevant international obligations and commitments of States parties to the instruments; it is most likely, if not in all jurisdictions, that the same authorities deal with issues arising out of both instruments. What is very clear, however, is that both have their own weaknesses and strengths; for example, the Firearms Protocol and its parent Convention are much more rigorous, detailed and specific in articulating phrases and State duties. The ATT is a relatively new framework and only entered into force in 2014. It presents more substantive elements than the Firearms Protocol, and also has a wider scope than the latter. The fact that it was drafted building on pre-existing commitments contained in the Firearms Protocol lends weight to both instruments. It is evident that a number of countries are parties to both instruments, a fact which reinforces the need for a complementary, and harmonized, implementation of both instruments at the national level.

V. The way forward

The Firearms Protocol and the ATT are two different treaties with similar, as well as differing, objectives. Dozens of States are parties to both instruments. This poses a serious question of coordination and integrated implementation of the duties enshrined in both instruments. Although it is not often the case for arms control treaties to criminalize conduct—rather than articulate State responsibility—the ATT took the initiative to enforce the Firearms Protocol, and suggests that the national measures that must be taken encompass investigations and other law enforcement measures. States parties to the two instruments may thus want to integrate the implementation of the Firearms Protocol and the ATT at the national (and regional) level, which may well include criminalizing and prosecuting breaches of ATT duties such as knowingly violating mandatory United Nations (or regional) arms embargoes, supplying weapons to criminals operating transnationally to fuel genocide, war crimes and crimes against humanity, among other objectives. To such purpose, the secretariats of the two legal frameworks may, upon the consent of the parties concerned, coordinate their efforts to promote better implementation of the two related legal frameworks.





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