



Towards a Universal Arms Trade Treaty

Understanding barriers and challenges in South-East Asia

Giacomo Persi Paoli, Elli Kytomaki



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Preface

This report presents the findings of a research project conducted by RAND Europe and grant-funded by the United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR). The goal of the project was to support universalisation of the Treaty by identifying barriers and obstacles (e.g. political, administrative, legal, budgetary, technical) to its ratification, or accession, and by generating a set of proposals for actions to overcome these barriers, be they at the national, regional or international level. As such, this project contributed to the strategic goals of UNSCAR which include supporting the ratification of, or

accession to, the ATT as well as improving the effectiveness of assistance. For more information on the project please visit <http://www.rand.org/randeuropa/research/projects/globalised-arms-trade-treaty.html> or contact the project leader:

Dr Giacomo Persi Paoli
Research Leader | Defence, Security
and Infrastructure
RAND Europe
Westbrook Centre, Milton Road, Cambridge,
CB4 1YG, United Kingdom
Office: +44 1223 353 329
Email: gpersipa@rand.org

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Regional Centre for Peace and Disarmament in Asia and the Pacific (UNRCPD) for their support and substantive input to our study. Within RAND Europe, our gratitude goes to Ms Sarah Grand-Clement for her support during the workshop organised in occasion of the Second Conference of State Parties (Geneva, 22 August 2016), to Mr Dan Jenkins and Mr James Black for providing useful and constructive feedback on the report and, finally, to Ms Jess Plumridge and Ms Anna Knack for their support in the finalisation of the layout.

Abbreviations

ASEAN	Association of Southeast Asian Nations
ATT	Arms Trade Treaty
CP	Corruption Perceptions Index
CSP	Conference(s) of States Parties
GEE	Group of Governmental Experts
MOD	Ministry of Defence
MS	Member State(s)
NSR	National Systemic Readiness
SALW	Small Arms and Light Weapons
SP	States Parties
UNGA	United Nations General Assembly
UNODA	United Nations Office for Disarmament Affairs
UNRCPD	United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific
UNSCAR	United Nations Trust Facility Supporting Cooperation on Arms Regulation

1. Introducing the study

1.1. Background

The Arms Trade Treaty (ATT, in the text also referred to as ‘the Treaty’),¹ adopted in 2013 and in force since 24 December 2014, is the first international legally binding treaty to control the transfers of conventional arms.² It aims to establish the highest possible common standards for regulating the international trade in these weapons to prevent and eradicate their illicit trade and to prevent diversion³ in order to contribute to regional and international peace, security and stability, reduce human suffering, and promote cooperation, transparency and responsible action by States Parties (SP). The ATT does this by setting minimum standards that all countries should introduce and implement at the national level, such as comprehensive legislation, national control lists, case-by-case risk assessment of licence requests, and transparency measures.

Since the adoption and entry in force of the Treaty, the goal of the international community has been twofold: to support the Treaty’s implementation, and to promote its universalisation. In the first case, a number of initiatives, tools and guidelines have been produced to support ATT SP in taking decisive

steps towards effective and comprehensive implementation of the Treaty. With regard to universalisation, most initiatives have focused on advocacy and training/learning to support ratification by those UN member states (MS) that signed the Treaty before its entry into force and accession by non-signatories.⁴

1.2. Project objective and relevance for UNSCAR

This project aims to support universalisation of the Treaty by identifying barriers and obstacles (e.g. political, administrative, legal, budgetary, technical) to its ratification or accession, and by generating a set of proposals for actions to overcome these, be they at the national, regional or international level. As such, this project contributes to the goals of the United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR), which include supporting the ratification of, or accession to, the ATT as well as improving the effectiveness of assistance. In addition, this project contributes to UNSCAR’s efforts in promoting universalisation of the ATT in Asia and the Pacific by exploiting synergies with previously funded and ongoing projects such as, for example, *Target insight: Promoting*

1 UNGA (2013)

2 The ATT regulates the transfer of most conventional arms, the ammunition they fire and integral parts and components. The arms covered by the Treaty are: battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, and small arms and light weapons (Article 2(1)). By virtue of Article 5(3), SPs are encouraged voluntarily to apply the Treaty to a broader range of conventional arms. According to Article 2(2), the terms ‘trade’ and ‘international transfer’ are synonyms for the purpose of the Treaty and include export, import, transit, transshipment and brokering of conventional arms.

3 For the purpose of this report, ‘diversion’ is defined as the process by which holdings or transfers of arms (including associated parts, components and ammunition) that are authorised by relevant state(s), and are subject to their legal controls, are acquired by or delivered to unauthorised end-users. (Greene and Kirkham, 2009, 9)

4 See, for example, the list of projects funded in the last three years by the United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR): <https://www.un.org/disarmament/unscar/>



ATT ratification and PoA implementation in the Asia-Pacific through building capacity and best practices, implemented by the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific (UNRCPD).

1.3. Project scope and overview of the methodology

This project focused on ten Asian states, chosen by the study team on the basis of their engagement with the ATT process among those which have not signed the Treaty, or have signed but not ratified. The project focused in particular on seven MS from South-East Asia (Cambodia, Indonesia, Malaysia, Republic of the Philippines,

Singapore, Thailand, Vietnam), complemented by a small selection of MS from South and East Asia (India, Sri Lanka and Republic of Korea) acting as control group.

To meet the objective of this study, the project team employed a mixed-methodology approach that included document review and stakeholder engagement through participation in two regional workshops,⁵ individual interviews with 12 officials from targeted MS and the organisation of a workshop during the Second Conference of States Parties in Geneva on 22 August 2016.

The document review phase included the analysis of open sources including national reports, national statements during the ATT

⁵ Southeast Asia Workshop on Building Capacity for the Implementation of the Arms Trade *Treaty*, organised by the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific (Bangkok, 4–5 April 2016); Regional Seminar for South Asia and South East Asia on Maritime Arms Transfers and Challenges of Illicit Trafficking and Diversion, organised by the German Federal Office for Economic Affairs and Export Control (BAFA) (Dhaka, 4–5 May 2016)

negotiations and consequent meetings, press releases and other background documents such as studies by different local and international non-governmental organisations (NGOs) and academics, existing arms transfer control databases and newspaper articles.

The interviews with officials from MS were conducted under the Chatham House Rule⁶ with the use of bespoke questionnaires.

Assumptions and caveats

This study builds on the following assumptions and caveats:

- It is assumed that increased participation in the ATT would be considered a positive development in response to the issue of illicit arms proliferation and their irresponsible trade.
- The research focused exclusively on ten MS; therefore, the analysis presented in this report does not discriminate between findings applicable only to targeted countries and those applicable also to other MS that may face similar strategic, political, economic and technical constraints.
- The project did not conduct a full audit of skills, capabilities, ways of working and legislation in target countries; therefore

the assessment of barriers and challenges presented here is based solely on the research undertaken by the study team through the methodology described above. As the breadth and depth of the evidence available vary between MS, other research projects currently under way in the same region on related issues may yield slightly different perspectives. However, we are confident that the assessment presented in the study provides a robust basis for discussion, a reliable set of data and, therefore, a fair opportunity to identify potential options for action and recommendations.

1.4. Structure of this report

This report is structured in six chapters. After this introduction, chapter 2 provides an overview of global and regional trends in arms trade; chapter 3 focuses on the ATT and its current status in East and South-East Asia; chapter 4 introduces and explains the framework model the project team utilised to map challenges and barriers to accession to and implementation of the ATT; chapter 5 summarises the findings of the regional assessment; and, finally, chapter 6 gives some concluding remarks focusing on implications and possible options for action.

⁶ The Chatham House Rule states that 'when a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.' (Chatham House, n.d.)



2. Overview of global and regional trends in arms trade

This chapter presents a brief overview of the international trade in conventional arms, both in terms of value and geographical distribution. After providing a look at the international picture, it moves to discuss the production and trade specifically in South and South-East Asia.

2.1. Overview of global trends in arms trade

The trade in conventional arms is a global phenomenon that touches all countries and regions, no matter whether they mainly produce, export or import weapons, become involved through being points for potential transit or transshipment of arms, or run the risk of becoming hubs for illicit trafficking. Most of the trade in conventional weapons is legitimate and important to many governments in securing their self-defence capabilities. However, given the nature of conventional arms and other defence materiel, their production and trade require stringent controls and constant monitoring to avoid the many potentially devastating consequences resulting from poorly controlled and illicit arms trade.

Some 60 countries regularly export conventional arms, and over 150 import them.⁷ In addition, international arms trade touches upon many transit and transshipment countries.

With the arms trade becoming increasingly globalised,⁸ it is more and more difficult for states to exercise the necessary controls individually and to effectively monitor the production and transfers of weapons and equipment. Past decades have seen the establishment and development of a number of multilateral confidence- and security-building measures, export control regimes and other arrangements, such as for instance the UN Register of Conventional Arms (UNROCA), the Wassenaar Arrangement (WA) and instruments at the regional level such as, for example, within the EU, the Organization for Security and Co-operation in Europe (OSCE), as well as within the Association of Southeast Asian Nations (ASEAN).

International conventional arms trade has gone through some profound changes in the past decades. Looking at the global picture, the global volume of conventional arms transfers started to decline already during the last years of the Cold War, falling in 2002 to a level only 38 per cent of the Cold War peak.⁹ Since then, with some exceptions, the volume has again been on a steady rise (see Figure 2.1 for the statistics on exports). Although setting a precise figure on the financial value of the international arms trade (comprising both exports and imports of weapons) is challenging, based on official government data, the Stockholm International Peace Research Institute (SIPRI) estimates that

7 Wezeman and Wezeman (2015)

8 Kytomaki (2014)

9 Wezeman and Wezeman (2015)

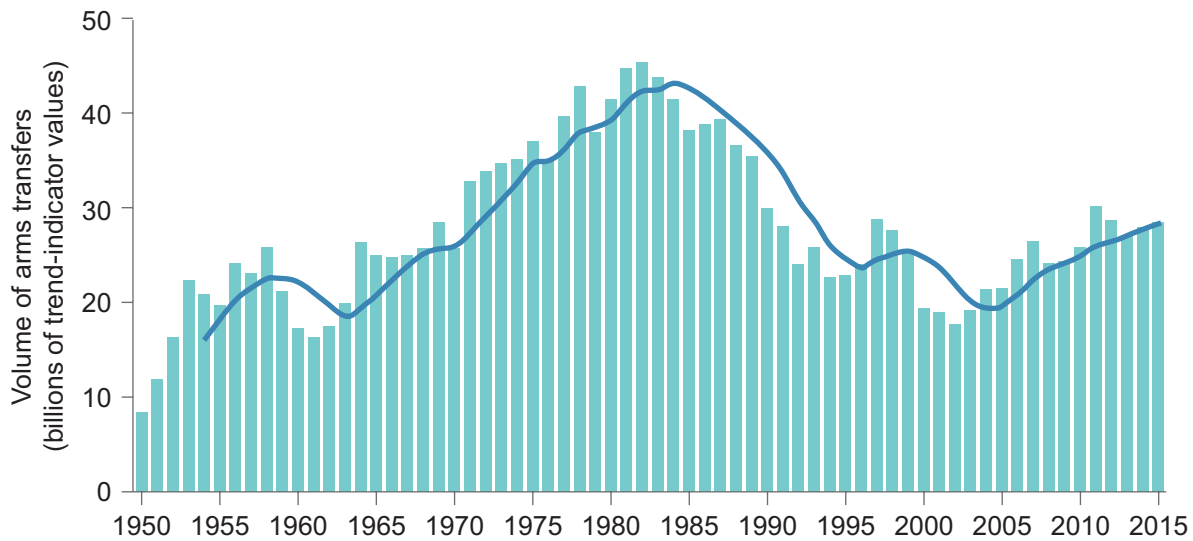


Figure 2.1. Trends in international exports of conventional arms

Source: Fleurant et al. (2016)

the financial value of the global arms trade in 2015 was at least \$94.5 billion (last year for which global data was available in September 2016).¹⁰

Since the 1980s, the major exporters of conventional arms have been the United States, Russia, Germany, France and the United Kingdom. In the period from 2004 to 2008 these five accounted for 78 per cent of global arms exports.¹¹ Since the late 1990s, China and India have been the two biggest importers. Contrary to the landscape of arms exporters, there is a large number of minor importers, as most countries rely on some foreign supplies to establish and maintain their national defence capabilities (Figure 2.2).¹²

There are significant regional differences in the patterns of trade in conventional arms. In general, Asian countries feature high on the list of the biggest arms importers, and in

the past decade, arms imports in and to the region have been on the increase: from 2010 to 2014, Asia and Oceania had the highest level of conventional arms imports, accounting for almost 40 per cent of the global total.¹³ The rising tensions around especially the South China Sea and the offensive actions taken by the Democratic People's Republic of Korea (DPRK) in 2015–2016 have put extra pressure on the countries in the sub-region to upgrade their defence material and increase the percentage of defence spending.¹⁴

Further, in addition to growing global legal and reported trade in conventional arms, problems related to illicit trafficking of weapons, equipment and ammunition prevail, fuelling insecurity and conflicts, terrorism and criminal activities. The volume of this 'shadow trade' is even more difficult to estimate than the value of legal arms trade. While it may only constitute a fraction of

10 Fleurant et al. (2016)

11 Wezeman and Wezeman (2015)

12 Fleurant et al. (2016)

13 Fleurant et al. (2016)

14 The Economist (2016); Parameswaran (2016); BBC News (2016)

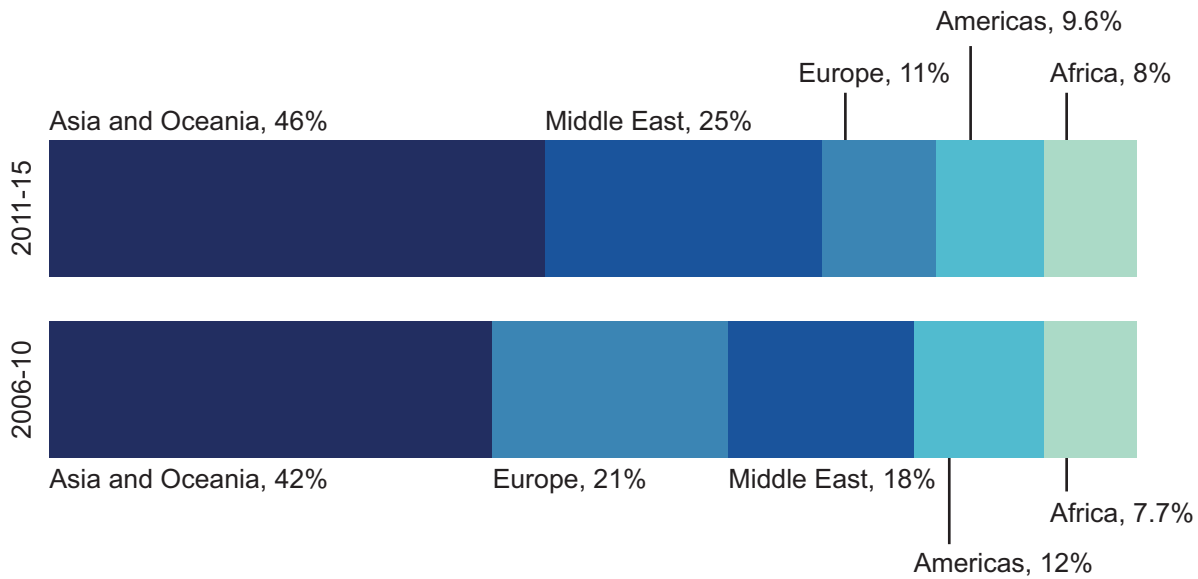


Figure 2.2. Major importers of conventional arms, by region, 2006–2010 and 2011–2015, as per cent of global share

Source: Fleurant et al. (2016)

the volume of legal transfers, its consequences are often disproportionately devastating. The growing availability of especially small arms and light weapons (SALW) has been a major factor in the increase in the number of conflicts and insecurity.¹⁵ In modern warfare it has been estimated that over 80 per cent of all casualties have been civilian, with some suggesting that up to 90 per cent of these are caused by small arms (though it remains difficult to discriminate the impact of illicit trade on such a percentage).¹⁶

In this context, developing controls over the legal trade in conventional arms through closing regulatory loopholes and improving transparency and accountability in the trade may benefit and reinforce current efforts aimed at combating illicit trade. This falls under the remit of the ATT, which will be discussed more in detail in chapter 3.

2.2. Arms trade in South-East Asia

South-East Asian countries have traditionally relied mostly on foreign-produced weapons and equipment, as domestic production within the countries in the region has been limited. Suppliers of major conventional arms to the countries in South and South-East Asia include, but are not limited to, the Russian Federation, China, the United States, Germany and France, with smaller-scale imports from the Republic of Korea (in the region) and the Czech Republic. Occasional suppliers in the past five years have included, for example, Brazil, Sweden, Italy, Poland, Bulgaria, Serbia, Canada, Switzerland and South Africa.¹⁷

The gap between imports and exports of defence equipment is even more evident when looking at

15 Saferworld (2015)

16 Shah (2006)

17 See Annual Consolidated Reports of the Secretary-General 2010-2015, UN Register of Conventional Arms (UNODA, 2016b)

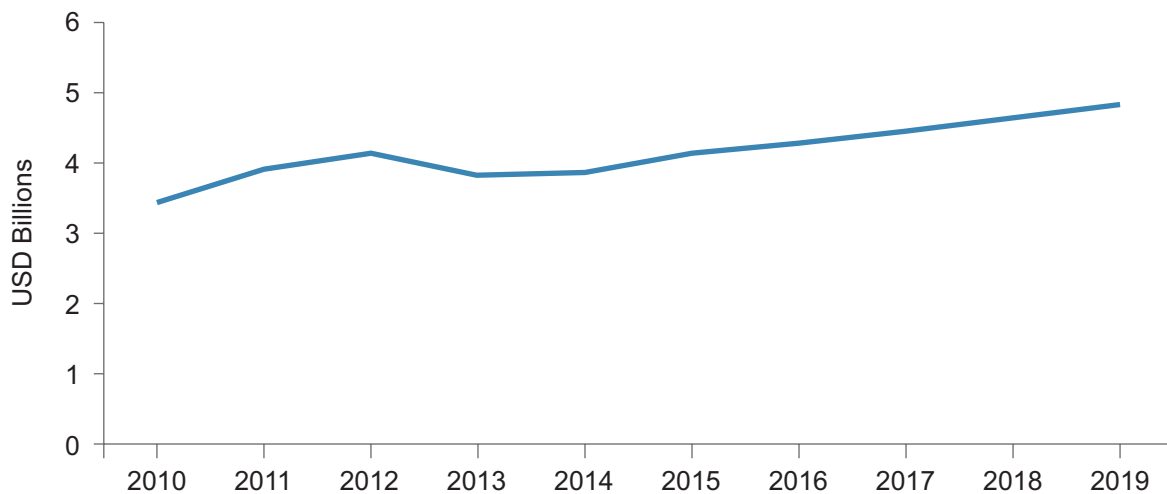


Figure 2.3. Average value of military expenditure in the ASEAN Community

Source: Adapted from Stockholm International Peace Research Institute (2016b) (for period 2010–2012); IHS Jane’s (2016) (for period 2013–2019)

the values traded. For example, between 2010 and 2015, the aggregate value of exports from the ASEAN region was just over \$360m while the aggregate value of imports for the same period reached \$31bn.¹⁸

This pattern is coherent with the ongoing momentum in the region to modernise states’ military forces as a result of the regional security situation, which has increasingly influenced capability-development efforts.¹⁹

For example, the years 2014–2016 alone have seen several countries in the region make significant investments in high-end weaponry and platforms: in December 2014, the Philippines announced a multibillion-dollar deal to purchase three high-end submarines, while Singapore has purchased F-15 fighter jets from the United States and both Malaysia and Indonesia have imported Sukhoi Su-30 jets from the Russian Federation.²⁰

Such high-profile purchases are part of a trend towards expanding defence budgets. While in value terms there is a significant variance within the region (e.g. Singapore has long been the region’s largest investor in its military, dedicating over \$9bn to defence in the last four years while countries such as Cambodia have been spending in the area of \$200m annually on their defence), most countries in the region have in the past ten years seen ‘sustained, multi-year increases in defence spending’.²¹ This partly reflects the significant investments in procurement over the past five years resulting from states’ recapitalisation of ageing inventories, investment in new technologies and reorientation of capabilities from internal to external threats.²²

Figure 2.3 illustrates the average military expenditure in the ASEAN Community in the period 2010–2015, as well as forecasts reaching 2019.

18 Stockholm International Peace Research Institute (2016a)

19 International Institute for Strategic Studies (2016, 212)

20 Hutt (2015)

21 Stockholm International Peace Research Institute (2016b, 215)

22 International Institute for Strategic Studies (2016, 215)

The increase in defence budgets across the Asia-Pacific region also reflects the strategic turn that many governments have taken by focusing on expanding domestic defence industrial capabilities and exports of defence equipment as part of a broader effort to sustain economic growth.²³ Despite this strategic turn, developing a national defence industrial base strong enough to penetrate the international defence market requires time and resources; therefore in the short and medium term it is reasonable to believe that arms imports will continue to dominate over exports.

Even where domestic production is being stepped up, at the moment it consists mostly of licensed production of foreign-developed weapons. Licensed production agreements are said²⁴ to have both positive and negative impacts on the industry: because South-East Asian companies do not have their own indigenous technologies – or, at least, do not have advanced indigenous technologies – their presence on the world stage as potential future exporters remains limited. However, industry collaborations do allow the companies to develop and grow, learning new techniques and absorbing knowledge.²⁵ Efforts to meet technology transfer and local participation demands in the context of offsets arrangements have sometimes been hampered by the relatively limited capabilities of the

national defence industrial base. On the other hand, advanced capabilities exist in certain niche areas (e.g. advanced materials, C4ISTAR,²⁶ unmanned systems) and efforts are under way to strengthen wider national capabilities.²⁷ One of the most advanced defence manufacturing companies in the region is arguably Singapore Technologies Engineering (ST Engineering). It specialises in a range of military hardware, from small arms and ammunition to complex components for aeroplanes and submarines. There are sizeable defence companies also in Indonesia, Malaysia and Thailand.²⁸

Given recent developments in domestic defence capabilities and markets as well as the rising tensions in the region, it could be foreseen that procurement programmes in the ASEAN region will continue to grow to reflect the shifting balance between internal and external security threats. Potential synergies and opportunities for joint procurement programmes and/or industrial cooperation may arise should ASEAN MS decide to build upon ongoing efforts in the field of defence cooperation (e.g. through the ASEAN Defence Ministers' Meeting-Plus initiative).²⁹ To exploit such opportunities, several challenges will have to be addressed, including, but not limited to, the alignment of timelines and budgetary planning and harmonisation of requirements.

23 Deloitte (2016)

24 Kytomaki (2014)

25 Hutt (2015)

26 Command, Control, Communications, Computers, Information/Intelligence, Surveillance, Targeting Acquisition and Reconnaissance

27 IHS Jane's (2016)

28 Hutt (2015)

29 The ADMM-Plus is a platform for ASEAN and its eight Dialogue Partners to strengthen security and defence cooperation for peace, stability and development in the region. The inaugural ADMM-Plus was convened in Ha Noi, Viet Nam, on 12 October 2010. The Defence Ministers then agreed on five areas of practical cooperation to pursue under this new mechanism, namely maritime security, counter-terrorism, humanitarian assistance and disaster management, peacekeeping operations and military medicine. To facilitate cooperation in these areas, five Experts' Working Groups (EWGs) were established. For more information visit: <https://admm.asean.org/index.php/about-admm/about-admm-plus.html>



3. The Arms Trade Treaty

This chapter provides a brief re-cap of the history of the ATT and presents an overview of the current state of participation in the Treaty in East and South-East Asia.

3.1. Introducing the ATT

The normative framework around regulating international transfers of conventional arms changed at the end of 2014 with the entry into force of the ATT, the first international legally binding treaty to control the transfers of conventional arms. With only a couple of years of implementation behind it, the Treaty's actual impact on countries' arms transfer decisions remains to be seen, but it has already had an impact on, for example, domestic parliamentary debates over arms exports and press coverage around the issue.³⁰ While many³¹ argue that the Treaty's first years have seen some disappointing developments especially in the decisions of some major arms-trading states, the aim of the ATT remains clear: to establish (and implement) the highest possible common standards for regulating the international trade in conventional arms, and through that to prevent and eradicate their illicit trade, combat diversion, contribute to peace, security and stability, and promote cooperation and transparency in an area that traditionally has often been covered with secrecy and corruption.

In modern times, the idea of global normative regulation of conventional arms trade was first

brought up by the civil society in the early 1990s. According to the activists and researchers involved, despite the large number of regional, national and international export control agreements and regimes developed in the decades following the two world wars and during the Cold War, controls over the international trade in conventional arms remained incomplete. Because of the ever-growing complexity and globalisation of this trade, it was realised that solutions to improve transfer controls needed to be international and comprehensive in nature.

In 1995, a group of Nobel Peace Laureates led by Óscar Arias began a campaign for a more responsible arms trade in the form of a global Code of Conduct.³² In the following years, the idea developed into a movement calling for a global, legally binding ATT. The issue was first taken up by the United Nations in 2006 through the General Assembly (UNGA) resolution entitled *Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms*.³³

After being introduced at the UN, the idea of an ATT gained support at an almost unprecedented speed within disarmament and arms control negotiations: following the call of the first UNGA resolution on the ATT, a group of governmental experts (GGE) was established to examine 'the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for

30 See, for example, the ongoing inquiry into the ATT launched in 2015 by the UK Committees on Arms Export Controls to assess the impact that the Treaty has had on the arms trade and how it could be made more effective. (United Kingdom Parliament, n.d.)

31 Stohl (2016); Amnesty International (2016)

32 Capodaglio (1999)

33 UNGA (2006)

the import, export and transfer of conventional arms.³⁴

The GGE, which met three times in the course of 2008, recommended further consideration of efforts to address the international trade in conventional arms within the UN,³⁵ and as a response, the UNGA decided later in the same year to establish an Open-ended Working Group (OEWG) to further elaborate the issue. The group met twice in 2009, and following the conclusion of its work, the GA adopted Resolution 64/48, which called for a UN Conference on the ATT in 2012 to 'elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms'.³⁶

To prepare for the Conference, UN MS convened in four Preparatory Committee (PrepCom) meetings between July 2010 and February 2012.³⁷ The four-week diplomatic conference itself was held at the UN in New York from 2 to 27 July 2012. Despite the efforts of tens of proactive ATT-supporting countries, it ended without success. This was, however, not the end of the process: towards the end of the same year, the UNGA adopted a resolution³⁸ in which it decided to convene another conference to finalise the elaboration of the proposed treaty. The Final United Nations Conference on the Arms Trade Treaty took place at the UN Headquarters in New York from 18 to 28 March 2013. Also the Final Conference failed to agree on the Treaty by consensus because three countries blocked it on the last day, but it forwarded the matter once more to the UNGA, which overwhelmingly supported the Treaty's adoption,³⁹ and the ATT was born.

The Treaty opened for signature on 3 June 2013 in a formal signing ceremony, during which a total of 67 states signed it. As noted in the ATT's Article 22(1), the Treaty was to enter into force 90 days after the day on which the 50th state deposited its instrument of ratification, acceptance or approval with the UN Secretary-General. After a push especially from the civil society organisations to encourage signatures and ratifications, the Treaty saw another peak of accessions during the GA in September 2013 and entered into force in record speed by 24 December 2014. As the UN Secretary-General Ban Ki-Moon said in a statement following the entry into force: 'From now on, the States Parties to this important treaty will have a legal obligation to apply the highest common standards to their international transfers of weapons and ammunition.' He also called on all states that had not yet done so to join the ATT 'without delay'.⁴⁰

As set by the Treaty, its implementation is reviewed annually in Conferences of States Parties (CSP), which also signatory states can attend. The first CSP was held in Cancun, Mexico, in August 2015 and the second took place in Geneva, Switzerland in August 2016. The third CSP is scheduled for September 2017.

During the first years of its operation, the ATT has gained a rapidly widening participation base. By October 2016, the Treaty had 87 SPs and a further 46 countries had expressed their intention to be bound by its goals and objectives as signatories (see Figure 3.1). However, some 60 UN MS, including some large exporting countries, remain outside the Treaty.

34 UNGA (2006)

35 García Moritán (2008)

36 UNGA (2010)

37 PrepComs were held on 12–23 July 2010, 28 February–4 March 2011, 11–15 July 2011 and 13–17 February 2012 to discuss procedural matters.

38 UNGA (2013)

39 A total of 154 voted in favour; three countries voted against and 23 countries abstained.

40 Ki-Moon (2014)

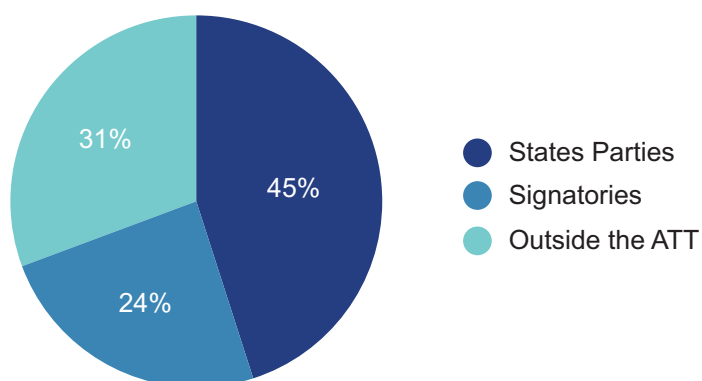


Figure 3.1. Participation in the ATT (situation as of 30 October 2016)

Source: Adapted from UNODA (2016a)

Participation in the Treaty has so far been fairly unequal between the different regions. While the ATT has members from all over the world, its strongholds are among European and Latin American countries. As of October 2016, less

than half of the countries in Sub-Saharan Africa and Asia-Pacific have joined the Treaty. Figure 3.2 shows the membership of the ATT in terms of geographical regions.

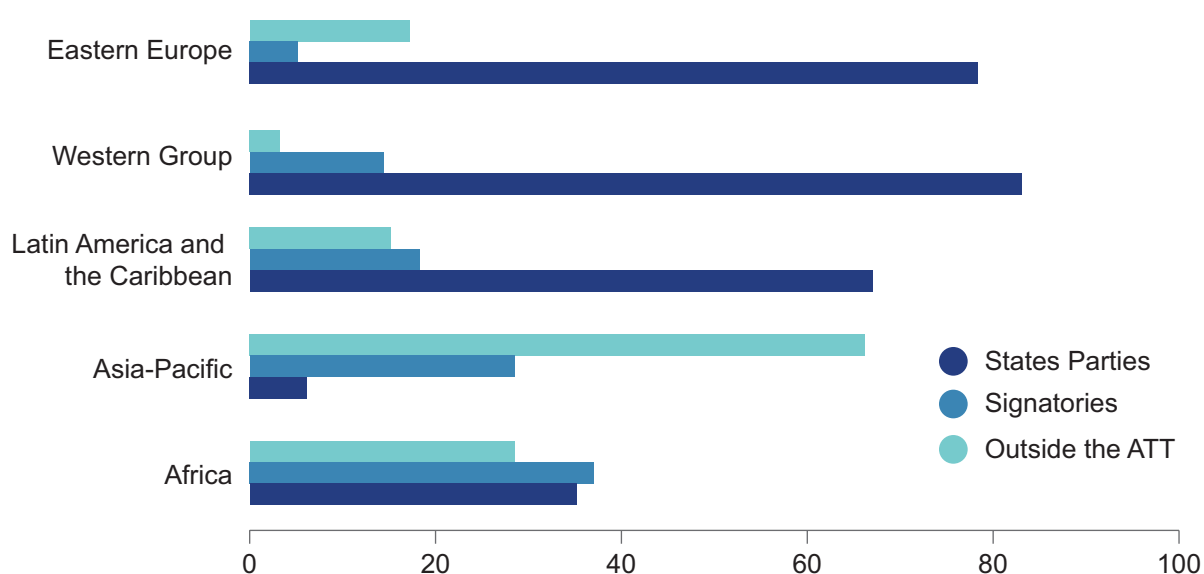


Figure 3.2. Participation of countries in the ATT by region (%)

Source: Adapted from UNODA (2016a)

3.2. The ATT in East and South-East Asia

During the ATT negotiations, some significant regional differences started to appear in the perceptions and priorities of countries that took

part in the discussions. With mostly European and Latin-American countries in the lead, the negotiations however enjoyed substantive input also from Asia-Pacific countries, among them some active voices from East and South-East Asia. Below is a table displaying the voting

Table 3.1. Participation of selected countries in East and South-East Asia in the ATT process

	Voting in ATT resolutions							Made statements during the process	Signed the ATT
	'06	'08	'09	'12a	'12b	'13	'14		
Cambodia	Y	Y	Y	Y	Y	Y	Y	Y	Yes
India	A	A	A	Y	A	A	A	Y	No
Indonesia	Y	Y	Y	Y	A	A	A	Y	No
Malaysia	Y	Y	Y	Y	Y	Y	Y	Y	Yes
Philippines	Y	Y	Y	Y	Y	Y	Y	Y	Yes
Rep of Korea	Y	Y	Y	Y	Y	Y	Y	Y	Yes
Singapore	Y	Y	Y	Y	Y	Y	Y	Y	Yes
Sri Lanka	Y	Y	Y	Y	A	A	A	Y	No
Thailand	Y	Y	Y	Y	Y	Y	Y	Y	Yes
Viet Nam	-	-	-	Y	-	-	-	Y	No

'Y' – voted in favour; 'A' – abstained (i.e. officially expressed intention to not vote either in favour or against); '-' – did not vote.
Source: Adapted from UNGA (2006; 2009; 2010; 2013a; 2013b; 2013c; 2014)

record of the ten case study countries of this project, together with their speaking record and current affiliation status with the Treaty.

As can be seen from Table 3.1 above, six of the case study countries from East and South-East Asia have signed the ATT, but none of them have yet joined the Treaty. Given the overall participation level from the Asia-Pacific region, the group is overall more positive towards the Treaty than many of the neighbouring countries: from the whole Asia-Pacific region, only three countries have joined the ATT by October 2016; 15 have signed and in total 35 countries remain outside of it.

During the ATT negotiation phase, many countries from the East and South-East Asian region highlighted especially the need for an ATT to be objective and balanced towards both countries that export weapons and those that mainly import them or are affected by the international trade in arms as transit or transshipment countries.

A major driving force in the region towards the ATT was also the need to better combat the illicit trade of weapons, especially SALW, given the many negative consequences that their trade and proliferation currently can have. Many South and South-East Asian countries also called for the inclusion of better controls on transit and transshipment of weapons.

SALW and especially their illicit trade and proliferation are a priority for many countries in the region, as is the fight against terrorism and criminal use of illicit weapons. As many countries are active participants of the UN Programme of Action on Small Arms and Light Weapons⁴¹ and have also taken part in the UN Register of Conventional Arms,⁴² they highlighted the need to fully benefit from the already existing instruments also in the framework of the ATT. The perceived priority issues that affected the countries' approach to the ATT already during the discussion and negotiation phases, are discussed in more detail in section 5.1.

41 UNODA (2016c)

42 United Nations Register of Conventional Arms (2016)

4. Joining and implementing the Arms Trade Treaty: framing the challenges

This chapter introduces a conceptual framework that can be used to identify and describe the factors which may determine how a country is positioned vis-à-vis ratification of, or accession to, the ATT. Such factors, often interdependent and mutually supportive, also play a critical role in the successful implementation of the ATT.

4.1. Introducing the issue

The ATT is characterised by language that leaves ample room for interpretation and, consequently, manoeuvring space for different national administrations to determine how to best implement it. Nevertheless, it remains a complex, legally binding treaty whose provisions are built on the assumption that each participating state is capable of designing, where not already present, an arms control system that brings together all relevant stakeholders from the public and private sector in a coherent, coordinated and regulated matter. While in many countries such systems already exist and few modifications are needed to ensure that the ATT can ‘run’ smoothly through national processes, in other countries where national arms control measures are still under development or are limited in scope, creating a national system able to absorb and implement the ATT can be a challenging and onerous process.

In addition, since the Treaty entered into force in December 2014, the line distinguishing challenges to join and challenges to implement the ATT may not be well defined. In fact, before its entry into force in December 2014, signing the Treaty could have been seen as a

statement of intent to work towards ratification and implementation, but with no substantive commitment especially with regard to timeline. After the entry into force, however, this ‘soft’ position is no longer available and countries not already officially part of the ATT have only three options: 1) ratify (if having previously signed) the ATT; 2) accede to the ATT (if not among the signatory MS) or 3) stay out of the ATT.

In the first and second options, the legally binding nature of the Treaty creates an expectation that an MS joining the ATT is ready and willing to implement its provisions (recalling that the ATT entries into force 90 days after depositing the instruments of ratification/accession).

This context leads to the establishment of a connection between challenges to join and challenges to implement: concerns over the ability or capacity to implement the ATT may play a crucial role in hampering the ratification or accession process in any given country. Figure 4.1 illustrates the relation between barriers to implementation and barriers to ratification/accession.

4.2. Defining the concept of ‘national systemic readiness’ for the ATT

The previous section introduced the concept of the degree to which a national system as a whole is able to absorb (by accession or ratification) and implement the ATT. For the purpose of this study, this concept can be referred to as ‘national

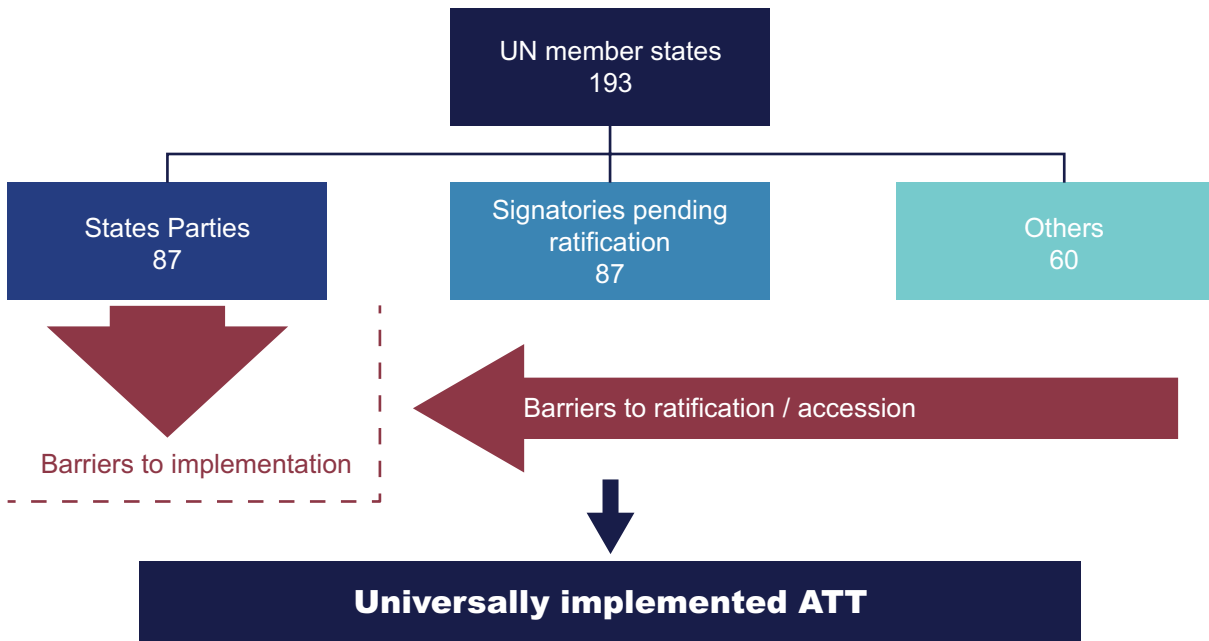


Figure 4.1. Barriers to ratification/accession and implementation

Source: RAND Europe analysis

systemic readiness' (NSR). It encapsulates a series of interconnected factors which all play an important role in the ratification of or accession to and consequent implementation of the ATT.

To describe the concept of NSR, we introduce a framework which is a modified version of the RAND Europe proprietary Defence Innovation Model,⁴³ developed by RAND Europe as part of a study commissioned by the UK Ministry of Defence (MOD).

The relevance of this model to the objective of this study resides in the fact that ratifying/ acceding to the ATT, as well as implementing it, is, in essence, a cross-departmental and multi-stakeholder endeavour which requires addressing interdependent challenges at many different levels (e.g. regulatory, technical, organisational, human, logistical) in the complex environment of defence procurement and arms control.

For the purposes of this study, the team has therefore adapted this model to develop a robust framework to support the analysis and synthesis of the data, as well as the generation of recommendations. The framework for describing, and potentially assessing, NSR is based on the seven factors defined in the paragraphs below. It was used by the project team in internal workshops when synthesising all available data and identifying key conclusions.

In addition, the framework was also used to frame the findings on barriers and obstacles, providing a useful point of reference for the identification of capacity-building opportunities and for the generation of final recommendations. Figure 4.2 illustrates the seven factors and their relationships.

43 Freeman et al. (2015)

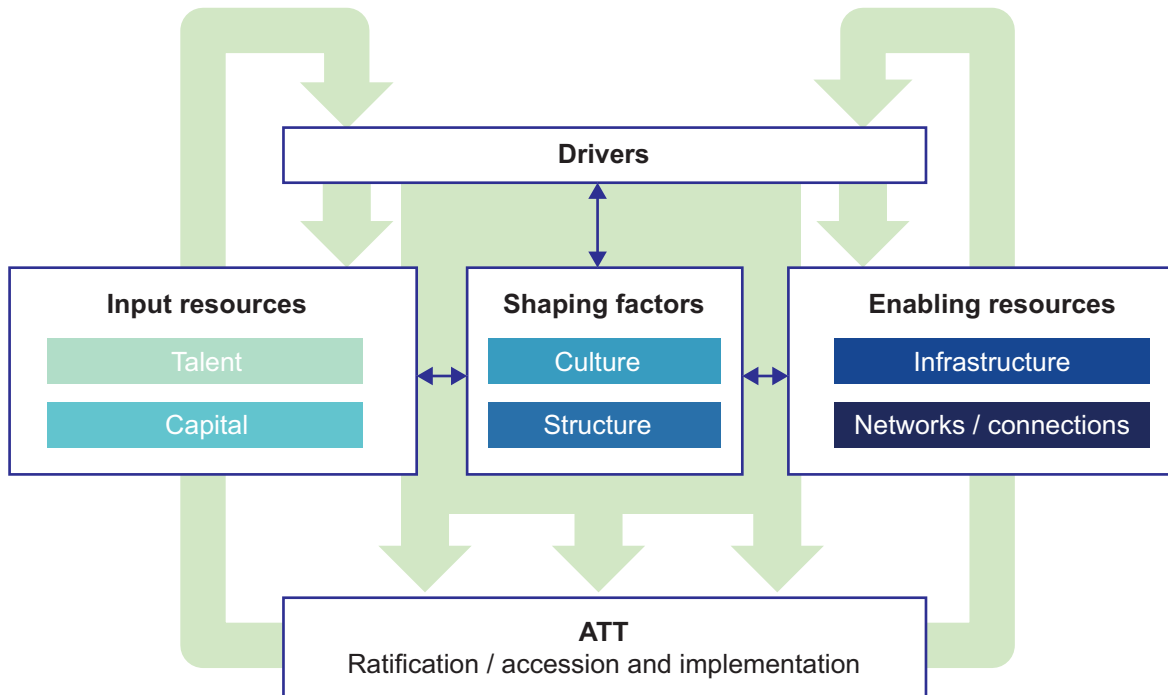


Figure 4.2. RAND analytical framework for understanding national systemic readiness

Source: Adapted from Freeman et al. (2015, 11).

4.2.1. 'Drivers' are the motivations behind a member state's decision to join, or not, and implement the ATT

Drivers leading to joining and implementing the ATT (or not) can be divided into three macro categories:

- 1. Security-related drivers:** Considerations related to national security and the wider regional geo-strategic context may influence both ways the willingness to join and implement the ATT.
- 2. Internal drivers:** The national context plays a key role. Factors such as interdepartmental consensus and shared vision, influence and lobbying by other sectors, relationship between government and national defence industry, and market context (e.g. arms import/export ratio) are all determinants of the national attitude towards the ATT.

- 3. External drivers:** External drivers include those motivations that reflect the engagement with the international community such as, for example, the perceived effect on reputation and diplomatic relations and the eligibility for/access to specific international assistance programmes.

4.2.2. 'Input resources' are the primary components required for ratification/ accession and effective implementation

- Talent** is the first input resource that is necessary for ratification/accesion and effective implementation of the ATT. Defined as 'individuals with high levels of capital', talent refers to both the technical (e.g. legal, operational) and managerial expertise and skills necessary to support successful cooperation both in the public and in the industrial sector.⁴⁴ While often

limited to technical expertise and specialised labour, the expertise needed throughout the ratification/accession and implementation processes also includes proficiency in foreign languages, strong managerial, negotiation and networking skills and knowledge of relevant policies and regulatory frameworks.⁴⁵

- To mobilise talent, at least a minimal amount of **capital** is required. While capital can mean equipment and physical assets held by firms to produce or manufacture their goods/ services, for the purposes of this report capital refers to the monetary or financial capital that organisations can access.

4.2.3. 'Enabling resources' allow cooperation between all relevant stakeholders

- **Networks and connections** are a key enabler of the cooperation necessary in the ATT ratification/accession or implementation process. They encourage/enable the exchange of knowledge, information and best practices. The specific nature of these networks may be formal (e.g. structured partnerships like the ASEAN ADMM-Plus or the network of official National Points of Contact, as well as specific tools such as those listed on the Programme of Action Implementation Support System to match needs and resources⁴⁶) or informal (such as personal contacts and virtual networks).
- **Infrastructure** includes resources and facilities (both physical and virtual) and equipment that exist to support and enable the work of all relevant stakeholders. Examples may include: adequate facilities for the processing of arms shipments during export, import, transit and transshipments, systems and databases to support licensing and end-user verification, and marking equipment for SALW.

4.2.4. 'Shaping factors' influence the drivers, resources and enablers throughout the process

- **Culture** can be described as patterns of organisational behaviour. The ratification/accession process as well as successive implementation can be heavily influenced by organisational factors such as attitude towards transparency, accountability and corruption. In addition, leadership plays an important role in setting strategic priorities and in keeping (or hampering) internal momentum within both the government and the civil sector.
- Closely linked with culture is the element of **structure**, both within an organisation itself and in its interactions with external actors. It includes the whole range of institutional practices, policies, procedures, regulations and laws that 1) shape how the relevant actors interact/cooperate, and 2) influence the ratification/accession process and further ATT implementation.

The seven factors described above illustrate the different elements and components that determine a country's NSR to embark on the process of ratification/accession and consequent implementation.

While every country may deal with individual factors (as well as with their interaction) in different ways, it is relevant to note that all factors have to be taken into consideration to ensure an efficient and effective implementation of the ATT. For any given country, the higher the number of weaknesses across the seven factors at the time of ratification/accession, the higher the risk of the country not being fully capable of implementing efficiently and effectively the ATT.

45 Kline and Rosenberg (1986); Caraca et al. (2009).

46 UNODA (2016d)

5. Asia-Pacific case study countries

Chapter 4 provided a description of the key elements which in combination can be used to assess the NSR of any given MS to ratify/accede to or implement the ATT. As described in sections 1.3 and 4.2, in the course of this project we have used this framework to map and analyse barriers and challenges in a selection of case studies. This chapter summarises the findings of our research. As mentioned in section 1.3, all engagements with the selected MS were under the Chatham House Rule; therefore the following sections, while elaborating on specific examples, have been anonymised and do not reflect the position of any individual country, but a synthesis of the range of barriers across the region that emerged from this study.

5.1. Drivers

At the political level, there are a number of factors in the case study countries that have functioned as drivers towards both joining the ATT and keeping countries from signing and/or acceding to the Treaty at present. The six countries from the region that have signed the Treaty have highlighted more drivers connected to the benefits of joining it, while the four that have so far stayed outside the Treaty have underlined potential pitfalls or risks associated with joining the ATT.

While some drivers mentioned in ‘pro and con’ discussions differ, there are also some, such as regional security situation, that are advanced both as an argument for countries to join the Treaty and a point that has prevented some from joining. The following section presents the main drivers identified during background research and interviews with relevant country officials.

5.1.1. Drivers pushing countries in the region to join the Treaty

Combating illicit trade and uncontrolled proliferation of arms

For the countries analysed as part of this study, one of the main reasons to back the ATT was the its perceived potential with regard to combating illicit weapons trade, especially as it relates to the continued proliferation of SALW,⁴⁷ and in mitigating violence and the loss of human lives.⁴⁸ As one of the two main objectives of the ATT,⁴⁹ prevention and eradication of illicit trade in conventional arms are at the centre of the expected effects that the Treaty will have in the coming years. During the research phase, five countries mentioned this as a main driver influencing their position towards the Treaty.⁵⁰

More specific arguments in favour of Treaty accession from this point of view include

47 See, for example, the statement by Thailand (Sinhaseni, 2014) at the First Committee of the UN General Assembly

48 See, for example, the statements by the Philippines (Dery, 2013) and Cambodia (Ry, 2014) at the First Committee of the UN General Assembly

49 UNGA (2013, Article 1)

50 RAND Europe interviews (5), April–August 2016

improving the fight against terrorism and international criminal networks, and preventing arms from being diverted or smuggled to either insurgent groups working within the country in question or political powers in the neighbouring country/countries. For example, Thailand noted that ‘illicit trade in conventional arms and their diversion to the informal market could be an aggravating factor of conflicts, violence, instability and that transnational crime networks, including those involved with terrorism who benefit much from such a situation’⁵¹, and The Republic of Korea has argued against the transfer of arms to North Korea.⁵²

Improving regional security and cooperation

Two case study countries named the regional security situation and related concerns as main drivers for their future ATT accession, while some others have pointed to regional factors in their previous statements and reports, but did not name them as main drivers. Based on a review of background documentation, regional considerations have been a constant feature in official statements from the region.⁵³ Of the two countries that highlighted this aspect, one has recently experienced a conflict while the other underlined that its concerns are related to one specific country and its aspirations to acquire both weapons of mass destruction and conventional weaponry together with related technologies from the world market.⁵⁴ Two other countries mentioned that they constantly monitor the security policy developments and attitudes

towards the ATT in the region, but said that the national policymaking is not affected by regional considerations or stances expressed by major exporters of defence materiel or other important trade partners.⁵⁵ Interviewed officials noted, in addition, how the ATT is also seen as both an instrument and an opportunity ‘to improve regional cooperation and help address also wider political and strategic factors in the sub-region.’⁵⁶

Supporting sustainable development and human security

Two countries in the region mentioned the ATT’s potential in contributing to the achievement of Goal 16 of the Sustainable Development Goals (SDGs) to promote peaceful and inclusive societies by reducing all forms of violence and illicit arms flow. Somewhat related to the point about preventing illicit trade and uncontrolled proliferation of arms, both countries also mentioned that in their view the ATT can contribute to the further strengthening of human security by preventing illicit weapons from falling into the hands of unauthorised end-users: participating MS would have the responsibility to put in place adequate measures to ensure that international arms transfer is controlled in a transparent and effective manner, in line with treaty obligations.⁵⁷

51 See for example statement by Thailand (Thongphakdi, 2016) at the Second Conference of States Parties to the Arms Trade Treaty

52 See for example statement by Republic of Korea (Kim, 2016) at the Second Conference of States Parties to the Arms Trade Treaty

53 See for example statements by Philippines (Government of Philippines, 2016) and Malaysia (Government of Malaysia, 2016) at the Second Conference of States Parties to the Arms Trade Treaty

54 See for example statement by Republic of Korea (Kim, 2016) at the Second Conference of States Parties to the Arms Trade Treaty

55 RAND Europe interview, August 2016

56 RAND Europe interviews (2), April–August 2016

57 RAND Europe interviews (2), April–August 2016



5.1.2. Drivers hampering the ratification or accession process in the region

Competing domestic security policy priorities and developments

Evidence from three of the countries in the region indicates that joining the ATT has been undermined, in the period 2014–2016, by other domestic security policy issues, such as monitoring and responding to the overall security developments in the neighbouring country/ countries and keeping up with national political developments, such as shifts in security policy priorities that might occur with election schedules.

At least two of the case study countries reported high-level political support for joining the Treaty,⁵⁸ while in the other countries the ATT has been

analysed and worked through mostly at the working level within civil services. Interviewed country officials from two of the case study countries indicated how the lack of high-level political involvement has, potentially, delayed their accession process.⁵⁹ In some countries, the situation is the opposite, with high-level political support and engagement not always being triggered down to the working level or disseminated across the ministries.⁶⁰

Four of the case study countries indicated that while there is currently a consensus about the respective political positions regarding the Treaty, the process has not been completely straightforward in the past ten years. Mostly, it seems that scepticism towards the need and benefits of joining the ATT has been

58 RAND Europe interviews (2), April–August 2016

59 RAND Europe interviews (2), April–August 2016

60 Woods (2013)

raised by the MOD and the Armed Forces, while the Ministry of Foreign Affairs (and/or Trade, depending on the country) has felt most positively about a possible membership. One case study country also noted that it has not signed the Treaty because joining it would be in contradiction of its current legislation.

Finally, the electoral cycle is also an important element. In 2012–2016 there have been major elections in seven of the ten case study countries, which may have had an impact on attitudes towards the Treaty, progress made (if any) towards accession or ratification, and overall prioritisation of resources and political agenda items.

Regional security policy considerations

Just as some countries in the region noted regional security policy considerations as a driver towards joining the ATT, others mentioned the regional security situation as a potential hindrance factor for deepening regional and international cooperation on arms transfer controls. One country for instance noted that past experience has shown how a higher level of transparency in the implementation of arms regulation as well as clear end-user and transshipment control would go a long way towards dealing with problems of insecurity and continued conflicts in the region, but so far no instrument has been able to address these points, and it will be up to the ATT to show its potential in the coming years.⁶¹

Concerns related to national defence industry

Four of the case study countries raised especially their defence industry concerns when explaining their relationship with the ATT during the interviews

and/or as part of their official documentation from the ATT process.⁶² Main issues related to industry participation and the impact of the ATT on national enterprises in the region are related to existing cooperation agreements and licensed production contracts. In addition, the needs of all countries to secure national security and for the Treaty to ensure the non-interference of other countries in internal affairs of any state were highlighted as causes of concern.⁶³

One country specifically noted that its national law prohibits the government from conducting defence acquisition deals with foreign governments or private entities that can apply restrictions on how the imported military equipment should be deployed and for what objective.⁶⁴

The ATT's application of export criteria, especially regarding human rights

Four studied countries reported how the content of the Treaty itself represents a possible hindering factor in their accession process: it was noted that the Treaty should be based on better-defined terminologies and stricter rules of procedure to know what could be expected. They also noted that in their view, the ATT is currently too much an 'exporters' treaty', giving exporting states power over the countries that are at the moment mostly relying on imports for their national defence needs.⁶⁵ Especially two countries underlined the issue of human rights considerations and called for a more thorough assessment of the meaning of the term and how the application of the ATT's Articles 6 (on Prohibitions) and 7 (on Export and Export Assessment) would affect countries depending on the exporters' view of their human rights record.⁶⁶ Under the treaty, it is the responsibility

61 Lindberg et al. (2011)

62 RAND Europe interviews (4), April–August 2016

63 Mazlan (2015); RAND Europe interview, April–August 2016

64 Haripin (2013)

65 RAND Europe interviews (4), April–August 2016

66 RAND Europe interviews (3), April–August 2016

of arms exporters to assess the human rights records of client countries. One country noted, for instance, that the ATT ‘gives an impression that arms trade is decided or influenced by conditions for weapons importers in regard to human rights abuses, giving the “exporters a full, one-sided authority... This article is highly subjective and is made in favour of the political interest of big countries. We also believe arm-producing countries have double standard in implementing the treaty’.⁶⁷

5.2. Input resources

The case study countries identified fewer resource-related issues relevant to their ATT position and process than political drivers or structural factors. While this may be caused by a selection bias in the pool of interviewees, this finding is particularly relevant since it raises the question of the relative relevance of future efforts aimed at capacity building and training, which remain crucial for implementation vis-à-vis ATT’s universalisation, compared to focusing on the political-strategic-level barriers that still persist.

5.2.1. Talent

Not all the study countries identified human resources or talent-related issues during the interviews, and these have also been largely absent from the official/press information from the region. Nevertheless, evidence suggests that there are two types of issues related to talent: 1) availability of enough staff, and 2) staff qualifications and skillsets. Interviewed officials from three of the studied countries noted that, while the situation remains manageable, current human resources to conduct arms transfer controls and participate in various regional and

international processes on the subject in their countries are limited, and there are some issues with regard to attracting enough qualified, well-informed and trained officials.⁶⁸ Staff rotation and limited time available to study the issues at hand and familiarise with the processes and actors were noted also as an issue.⁶⁹

Some areas for capacity building and training were also identified in the course of the interviews. Four of the interviewed officials flagged the need of more basic introductory training about arms trade, international and regional regulations and available information, as well as more specialised training on the different aspects related to the risk assessment process as part of the licensing decisionmaking, with examples from how other countries/regions are conducting their assessments. In addition, two interviewed country officials specifically noted that they would welcome more regional customs and border officials’ cooperation and training.⁷⁰

As mentioned at the beginning of this section, issues related to talent were not identified by a large number of case study countries. However, the group of those who identified some room for improvement in terms of human resources/ talent includes two MS among those with the most advanced national arms control systems in the region. This may suggest that issues related to talent availability and qualification are either already relevant to other countries in the region or would become relevant as such countries developed and expanded their national arms control systems, although limited data pointing in this direction emerged from the interviews and background research. For example, one case study country, as part of its SALW reporting and other official data exchange, indicated that

67 Antara News (2013)

68 RAND Europe interviews (3), April–August 2016

69 RAND Europe interview, April–August 2016

70 RAND Europe interviews (2), April–August 2016



it would welcome assistance on ‘all aspects of resource-related issues’, including that of talent building,⁷¹ and another mentioned interest in further capacity building focused on import licensing and record-keeping.⁷²

5.2.2. Capital

The case study country officials were also asked about possible financial limitations and challenges associated with the ATT, either in relation to mobilisation of talent or development and maintenance of infrastructure. None of the ten countries identified capital challenges as a determining or otherwise crucial factor in the formation of their ATT position. However, two countries did mention budgetary limitations and addressed resource factors as part of more general interest in receiving further specialised training and capacity building.⁷³

5.3. Enabling resources

Similarly to what has been described in the previous sections, evidence suggests that the impact of enabling resources on ratification and

accession is quite limited, while a more visible correlation exists between such resources and possible future implementation of the ATT.

5.3.1. Infrastructure

Countries in the sub-region have very different levels of virtual and physical infrastructure dedicated to arms control.

In terms of virtual systems such as those supporting inter-agency work, timely background checks during the licensing process, record-keeping and reporting, five countries indicated that they already have electronic infrastructure in place to deal with arms transfer controls, and two noted that changes are currently under way to improve the existing systems. The challenge consists in the fact that not all countries have digitalised their records of weapons holdings and transfers and, even where this has been done, records are kept by different national authorities separately instead of having, for instance, centralised electronic databases. One country noted that in addition to having a largely electronic system for record-keeping and licensing, it is also supporting regional

71 Government of Cambodia (2008)

72 RAND Europe interview, April–August 2016

73 RAND Europe interviews (2), April–August 2016

development of electronic systems by providing assistance and training.

In terms of physical controls, five countries referred to their physical stockpile management system and said they exercise effective and comprehensive controls. One country mentioned that it is currently receiving assistance in developing this aspect and another noted that it is providing support for countries in the region to develop this aspect of infrastructure.⁷⁴ Two countries referred to marking equipment and electronic record-keeping systems for law enforcement as specific areas requiring assistance.

5.3.2. Networks and connections

At the national level, while all countries interviewed as part of the study indicated relatively good domestic networks and connections between the different officials and authorities involved in arms control issues, inter-agency support and cooperation are still a challenge, as awareness across the different governmental departments about the ATT remains limited, for example on the law enforcement side and in MODs, and with regard to outreach to national industry.⁷⁵

Some areas of improvement were identified: for instance, it was noted that staff rotation (as already described in section 5.2.1) also poses challenges to the establishment of working networks not only within the civil sector, but also in relation to the engagement with relevant external actors (e.g. industry). Challenges related to national coordination are often mitigated by the organisation of regular coordination meetings to discuss matters related to the ATT.

At the regional level, all countries expressed willingness to expand for regional cooperation, and many noted that they have already taken some steps towards improving regional-level networking. For example, three countries reported seminars and/or roundtable discussions they have organised or hosted as part of EU, ICRC⁷⁶ and UNRCPD projects. These have been seen as important activities to create a forum for regional dialogue, to come together and exchange views, ideas and discuss arms trade and the ATT with other colleagues from the region. Three countries also said that beyond attending meetings, they maintain regular contacts with their neighbouring countries.⁷⁷

Despite the general support for regional-level networks, some challenges arise when it comes to regional inter-agency coordination. In fact, in many instances the Ministry of Foreign Affairs (or equivalent agency) is the agency responsible for handling international relations, creating a barrier, for example, to direct MOD-to-MOD networking.

The importance and potential of more cooperation and coordination between ASEAN MS was often noted as the most important aspect of regional networking (as one official mentioned, 'ASEAN is good; we should use it more'). It was however also noted that as the organisation works on the basis of consensus, it might be 'difficult to get everyone on board' and 'do concrete things on the ATT in the near future'.⁷⁸

5.4. Shaping factors

The last elements of our analysis focus on shaping factors like culture and structure which have proven to play a key role in hampering ratification/accession and, possibly, may have an impact on implementation.

74 RAND Europe interview, April–August 2016

75 RAND Europe interviews (3), April–August 2016

76 International Committee of the Red Cross

77 RAND Europe interviews (3), April–August 2016

78 RAND Europe interview, April–August 2016

5.4.1. Culture

Four main elements emerged in relation to culture: attitude towards inter-agency cooperation, leadership, transparency and corruption. With respect to inter-agency cooperation, all case study countries indicated that they have a culture of inter-agency cooperation between different actors involved in conventional arms transfers and/or arms control more generally. Nevertheless, as the same issue has also been highlighted by some as an area requiring further development (see section 5.3.2) the reported 'culture of cooperation' indicates a positive attitude towards the concept of cooperation which only in some cases translates into comprehensive and effective cooperation for arms export and import controls.⁷⁹

Regarding leadership, it was noted how important the role of an internal 'champion' is to 1) maintain momentum and ensure that the ATT process remains on the agenda, and 2) support and smooth inter-agency cooperation. This 'ATT champion' role can be taken on either by a specific agency such as, for example, the National Security Council in Thailand, or by a specific (very) senior figure in the civil service who becomes the nationally recognised leader of the ATT process, gathering support from all involved agencies. Both solutions would support and facilitate the ratification and accession process, but the benefits associated with the involvement of a lead agency would likely transfer to the implementation phase as well.

The issue of transparency, while being raised only by one of the interviewees, is particularly relevant as it speaks directly to the reporting obligations under Article 13 of the Treaty. In particular, the interviewee mentioned that the

requirement to report is a major obstacle to ATT accession:

'There should be a balance between the need for transparency and legitimate security needs of states in [the Treaty's] provisions on transparency mechanism, including regulations on reporting responsibility of states, which are established in accordance with the primary objective of ATT, namely to prevent illicit transfer of conventional arms. Overlapping and complicated reporting mechanism would create unnecessary burden for States Parties, especially developing ones. It is our view that to ensure the universality of the Treaty the reporting mechanism should be based on voluntary basis'.⁸⁰

Finally, the issue of corruption, often linked in the literature to transparency, was not identified as a challenge by interviewees. Nevertheless, other evidence challenges this assumption showing that work could be done to improve corruption and transparency. For example, Table 5.1 show how the case study countries score against the Corruption Perceptions Index (CPI) used by Transparency International to map transparency and corruption around the world. The CPI ranks countries/territories based on how corrupt a country's public sector is perceived to be. It is a composite index, drawing on corruption-related data from expert and business surveys carried out by a variety of independent and reputable institutions.⁸¹ The scores range from 0 (highly corrupt) to 100 (very clean) and refer to data from 2015.

79 RAND Europe interviews (3), April–August 2016

80 RAND Europe interview, April–August 2016

81 Transparency International (2016)

Table 5.1. Corruption Perception Index in case study countries (data from 2015)

	CPI	Rank (/168)
Cambodia	21	150
India	38	76
Indonesia	36	88
Malaysia	50	54
Philippines	35	90
Republic of Korea	56	37
Singapore	85	8
Sri Lanka	37	83
Thailand	38	76
Vietnam	31	112

Source: Adapted from Transparency International, <http://www.transparency.org/country#KHM>. The rank indicator shows the relative ranking of a country based on its CPI (i.e. the least corrupt country – the one with the highest CPI – is ranked #1).

5.4.2. Structure

The challenges related to structure which resulted from our analysis can be grouped in two main categories: 1) issues related to national legislation, which provides the necessary normative ‘top cover’ and legitimacy; 2) issues related to working-level aspects such as conflicting or overlapping mandates among different agencies, or lack of well-established procedures for cooperation.

In terms of existing arms control legislation and regulations, seven of the ten study countries indicated that their legislation is either fully or mostly in line with the ATT and that no immediate changes would be needed were the countries to join the Treaty. Three countries indicated either directly or indirectly that further legislative

development would be needed, either in order to be fully compliant with the ATT or otherwise to develop more comprehensive controls. The main issue in this regard was brokering, which was mentioned by four countries as being currently lacking in their national legislation.⁸² Another issue that was mentioned as being under development/refinement was the establishment/consolidation of a national control list. In this regard, it is relevant to note that both the *EU List of Dual Use Items*⁸³ and the *Wassenaar Arrangement List of Dual-Use Goods and Technologies and Munitions*⁸⁴ were mentioned as being used as models by countries in the region for the development of national control lists. In addition, three countries noted that amendments to their legislation have been issued in the period 2010–2016 in light of the ATT and its Articles 6 and 7, specifically to incorporate further aspects related to human rights considerations.

An important element to be considered in the context of national legislation is the necessity felt by some countries to fully translate the ATT into their national language to be able to compare its text against national law. While this process is onerous and time-consuming, it is seen a fundamental given the legally binding nature of the Treaty. This activity was reported to be in progress in three of the case study countries.

Finally, the field of national legislation is also one of the more active in terms of assistance: two countries indicated that they have received or are currently receiving assistance in developing their arms control laws while one noted it was providing support to other countries in the region in developing their national legislation base.⁸⁵

In terms of the practical arms control system, harmonisation of different agencies’ mandates

82 RAND Europe interviews (4), April–August 2016

83 European Commission (2016)

84 The Wassenaar Arrangement (2016)

85 RAND Europe interviews (2), April–August 2016

and procedures remains a challenge, mainly in relation to the licensing process. In all but one of the case study countries, the licensing is currently divided between different authorities depending on the type of item transferred, the

end-user (e.g. military or civilian) or the type of transfer in question (e.g. import, export, transit or transshipment). One country reported that efforts are under way to develop a centralised arms transfer licensing agency.⁸⁶

86 RAND Europe interview, April 2016

6. Conclusions

6.1. Summary of findings

The model presented in this report to assess barriers and challenges faced at the national level to ratify, accede to or, potentially, implement the ATT is applicable to all countries and would likely yield different results depending on which country is the subject of the analysis. As part of this project we have focused on a selection of countries mainly from South-East Asia, complemented by a small selection of MS from South and East Asia acting as control group.

Based on the results of our analysis, it is possible to summarise the challenges in three main categories, depending on their impact on either ratification/accession or implementation:

1. Challenges with direct impact on ratification/accession
2. Challenges with indirect impact on ratification/accession and direct impact on implementation
3. Challenges with direct impact on implementation.

Direct impact on ratification/accession

The challenges that have been identified to have the highest impact on ratification/accession are grouped under Drivers and Structure. In particular, such challenges can be summarised as follows:

- **National political landscape:** In some cases the ATT agenda is supported at the civil service level, but lacks traction or drive in the political arena where factors such as general elections or other strategic considerations tend to generate conflicting priorities among political leaders and governmental agencies/ministries. In some

other cases the driving force of the ATT process remains confined at the political leadership level without being translated into specific national road maps actionable by the civil service.

- **Regional security and the ATT:** In some cases an unstable regional security influences a country's willingness to join a treaty that has the potential to limit its ability to transfer arms. Some concerns were raised over the disproportionate 'decisional power' in terms of export authorisations given to exporting states by the ATT, as well as its impact on existing bilateral agreements.
- **National legislation:** Countries are particularly conscious of the legally binding nature of the ATT and do not seem willing to proceed with ratification/accession until its text is fully analysed against the national legislation. This process takes time considering, in some cases, the need to translate the full text into the national language.

Indirect impact on ratification/accession and direct impact on implementation

Most of the challenges identified in relation to resources and culture have only an indirect impact on ratification or accession, but at the same time may pose more direct challenges to future implementation. They can be summarised as follows:

- **Limited access to qualified human resources:** The limited availability of prepared and qualified staff challenges the ability of a country to build and maintain momentum during the ratification/accession process, but poses a more direct challenge to implementation.

- **Limited inter-agency cooperation:** This problem results from a combination of multiple factors including lack of established formal guidelines for cooperation, lack of adequate formal and informal networks among key stakeholders across government and in other sectors (e.g. industry), and lack of adequate infrastructure to facilitate information sharing and exchange. This problem has direct implications for implementation, but at the same time hinders efforts towards the achievement of a national consensus across all stakeholders, limiting their opportunity to ‘buy into’ the ATT process and, consequently, slowing down the ratification/accession process.
- **Attitude towards transparency and corruption:** Issues related to transparency and corruption are difficult to measure, assess and, consequently, address. In any case, such issues may pose challenges in the ATT implementation (in the form, for example, of incomplete or inaccurate reporting), but also covertly undermine the progress of national ratification/accession.

Direct impact on implementation

Finally, a subset of identified challenges relates predominantly to the implementation of the ATT. These are mainly the challenges related to adequacy infrastructure (both physical and virtual), availability of equipment and budgetary constraints (which impact the availability of other resources).

6.2. Way forward

The challenges identified in this report are predominantly issues at the ‘system level’, rather than specific capability or capacity gaps that can be addressed by a specific corrective action or specialised training. System-level challenges require a more process-oriented approach in their solution, which has to be contextualised at the national level to ensure validity and sustainability. Nevertheless, it is possible to

identify potential options for actions at the national, regional and international levels:

1. At the **national level**, MS should consider:
 - a. The identification and appointment of an ‘ATT national champion’ (either an agency or a senior figure in the civil service), which could act as a catalyst for the ATT process at the national level by bridging the gaps among different stakeholders, including civil society and industry, and maintaining a positive pressure on the political leadership to ensure that the ATT remains among the national priorities.
 - b. Conducting a full audit of national capabilities and regulations (either internally or with the support of external actors) to identify specific areas requiring further development for which assistance could be requested, as well as areas of particular strength that could be leveraged to provide assistance to other countries in the region.
 - c. Leveraging engagement in regional and international fora dedicated to promoting and advancing ATT universalisation to draw on other MS’ experiences and disseminate lessons learned.
2. At the **regional and international level**, actions to be considered by relevant actors and organisations may include:
 - a. Building on current platforms and fora, or creating new ones, to extend dialogue, sharing of information and best practices and confidence building beyond the realm of MODs or Ministries for Foreign Affairs and reach out to a wider community of relevant stakeholders in ATT matters such as law enforcement, customs and border control forces, trade organisations (e.g. from the shipping sector) and industry.
 - b. Planning and conducting national-level engagements to support the ATT process

in a manner that is better synchronised with political cycles to ensure that the Treaty remains on the agenda of national governments.

- c. Providing assistance to MS by means of both basic and specialist training and capacity building to support both individual upskill and organisational learning. Capacity-building initiatives should be open to the application of novel approaches such as scenario-based exercises (at different levels of

complexity) with the involvement of all relevant national stakeholders.

In conclusion, while overcoming some of the main challenges to ratification or accession identified in this study remains more complex than addressing a specific and well-defined capability or capacity gap (for which several very useful tools/handbooks have been developed), there is scope for all actors involved in the ATT process to take action at a more strategic level to foster the development of system-level solutions.



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Since the adoption and entry in force of the Arms Trade Treaty (ATT), the goal of the international community has been twofold: to support the Treaty's implementation, and to promote its universalisation. In the first case, a number of initiatives, tools and guidelines have been produced to support ATT States Parties in taking decisive steps towards effective and comprehensive implementation of the Treaty. With regard to universalisation, most initiatives have focused on advocacy and training/learning to support ratification by those UN member states (MS) that signed the Treaty before its entry into force and accession by non-signatories. Funded by the United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR), this project aimed to support universalisation of the Treaty by identifying barriers and obstacles (e.g. political, administrative, legal, budgetary, technical) to its ratification or to accession, and by generating a set of proposals for actions to overcome these, be they at the national, regional or international level. The project focused in particular on seven MS from South-East Asia (Cambodia, Indonesia, Malaysia, Republic of the Philippines, Singapore, Thailand, Vietnam), complemented by a small selection of MS from South and East Asia (India, Sri Lanka and Republic of Korea) acting as control group. To meet the objective of this study, the project team employed a mixed-methodology approach that included document review and stakeholder engagement through expert workshops as well as individual interviews. While overcoming some of the main challenges to ratification or accession identified in this study remains more complex than addressing a specific and well-defined capability or capacity gap, this report illustrates that opportunities exist for all actors involved in the ATT process to take action at more strategic level to foster the development of system-level solutions.