An Implementation Framework for the Arms Trade Treaty

Compiled by **Saferworld**

July 2011

The views and ideas expressed herein are those of Saferworld and should not be taken as reflecting the official view of those states that have supported this process.

An Implementation Framework for the Arms Trade Treaty

Compiled by **Saferworld**

July 2011

Acknowledgements

Saferworld would like to thank all of those governments and civil society representatives that have participated in three seminars on Arms Trade Treaty (ATT) implementation held between November 2010 and May 2011, the discussions of which have helped shape this Implementation Framework. In particular, Saferworld would like to express gratitude to the governments of Finland, New Zealand, Norway and Switzerland for their generous support of the aforementioned meetings.

Saferworld would also like to thank Dr Owen Greene and Clare da Silva for their constructive comments.

Preface

The purpose of this *Implementation Framework*, compiled by Saferworld, is to set out a range of possible elements for consideration with a view to encouraging and informing structured discussion of Arms Trade Treaty (ATT) implementation issues among government and non-government experts. In taking a comprehensive approach to the issue of ATT implementation, Saferworld is seeking to help identify those provisions that will be required to ensure effective implementation of the ATT, and to build support for the inclusion of these aspects in the eventual Treaty at the July 2011 Preparatory Committee (PrepCom) meeting and going forward to the 2012 Diplomatic Conference.

This Implementation Framework has been drafted by Saferworld following seminars on *International aspects of ATT implementation* held in Geneva on 10/11 November 2010, in Helsinki on 8/9 February 2011 and in Geneva on 24/25 May 2011.[1] Its work draws upon the substance of the discussions that took place during the three seminars and upon the conclusions that were identified by Saferworld in a short policy paper entitled *International aspects of ATT implementation: Key issues for consideration*[2].

1 These seminars were organised by Saferworld in co-operation with a number of governments including that of Finland, New Zealand, Norway and Switzerland.

2 www.saferworld.org.uk/smartweb/resources/view-resource/540 This paper formed the basis for a side-meeting at the third ATT Preparatory Committee (Prep Com) meeting in February–March 2011 co-organised by Saferworld and the Finnish Ministry for Foreign Affairs and held at the Finnish Mission on 28 February.

Introduction

There is a general understanding that the Arms Trade Treaty (ATT) will be implemented primarily at the national level, with decisions on international arms transfers made by individual states. There is little or no appetite amongst governments for licensing or authorisation decisions to be taken by a supra-national body. Accordingly, in order to fully implement the ATT, all states will require a national system for the control of international transfers of conventional arms that includes laws, regulations and administrative procedures and capacities that enable licensing/authorisation provisions, enforcement mechanisms and an external communication function (including, for example, mechanisms allowing outreach to industry, the capacity to produce reports on their international arms transfer activities, and the ability to issue, and respond to, requests for information on international arms transfer matters).

In order to support and facilitate ATT implementation, provision will also be required for international mechanisms and structures that, *inter alia*: ensure meaningful reporting, information-sharing, record-keeping and transparency; allow for dialogue among State Parties on issues relevant to the application of the Treaty; facilitate co-operation among States Parties and the provision and co-ordination of appropriate assistance for implementation; and enable problem solving, dispute management and on-going Treaty maintenance and development. Many of these aspects are interdependent in that the approach that is adopted to any one will have implications for the others. This Implementation Framework seeks to address many of these issues, with all options presented for consideration by interested parties.

1 Reporting

A reporting mechanism will be necessary in order for states to demonstrate that they are meeting their obligations under the Treaty. Reporting will need to be undertaken in a transparent manner that provides accountability at the national level (with regard to parliaments and the public) and at international level (with regard to other States Parties and international institutions).

Purposes of reporting

In general terms, regular reporting by states under the ATT represents a crucial means whereby detailed and comprehensive information can be exchanged on all aspects of their international arms transfer controls systems. More specifically, reporting under the ATT could potentially fulfil a number of important functions, for example:

- facilitating information-sharing, transparency, accountability and confidence-building among and within states thereby helping to promote effective implementation and to enhance the membership and standing of the Treaty
- allowing States Parties to demonstrate that they are implementing the Treaty
- providing States Parties with a basis for discussion of each other's international arms transfers decisions, thereby assisting in the progressive development of a common approach
- helping to identify destabilising accumulations of conventional arms
- providing the basis for an assessment of how the Treaty is functioning including the verification of compliance
- helping to identify gaps in national controls, thereby facilitating identification of needs and promoting international co-operation and assistance.

Given the integral nature of comprehensive national reporting to the effective operation and development of the ATT, it will be vital for those national reports submitted under the Treaty to be made public. Such practice would, moreover, be consistent with existing practice under other international agreements relating to conventional arms, such as the *UN Register of Conventional Arms Transfers* and the *UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*. However, given the tendency for the level of submissions under voluntary reporting mechanisms to decline over time, there are strong arguments in favour of compulsory reporting under the ATT.

Types of reporting

A clear distinction needs to be drawn between reporting on steps taken to implement the Treaty (for example through provision of information on national legislation, regulations, administrative procedures and enforcement capacities) and reporting on the application of the Treaty's provisions (for example through the provision of data on international arms transfer licences/authorisations and deliveries). While both aspects should be considered equally important under the Treaty, they may not require the same frequency of reporting. For example, whereas information on transfer licences/authorisations and deliveries would need to be provided regularly (at least annually), information on national implementation could be provided comprehensively in the first instance (a baseline report), with relevant updates provided at subsequent intervals or following significant changes.

Reporting on national implementation

This should include steps taken at national level to implement the Treaty, for example, details of:

- relevant national legislation, regulations, administrative procedures, infrastructure and capacities, including the roles and responsibilities of relevant agencies involved, the steps taken to ensure effective co-ordination between these agencies, and the steps taken to ensure the veracity of information provided during the transfer authorisation and delivery processes
- responsible licensing and enforcement authorities including contact points
- co-operation and assistance requirements
- co-operation and assistance available
- a designated national point of contact for ATT matters.

Reporting on the application of the Treaty

National reports could include the following information on the application of the Treaty:

- details of licences/authorisations for international transfers of conventional arms (including of ammunition, parts, components, technology and related equipment) by means of import/export/re-export/transit/transhipment/brokering/manufacture under foreign licence[3]
- details of actual deliveries of conventional arms (as per previous) that have taken place
- information that will assist other States Parties in conducting better risk assessments, for example, in relation to transfer denials or diversion risks.[4]

Institutional support

Ideally, all states should provide as much relevant information as possible within their national reports on the application of the Treaty's provisions. However, it is important to recognise that, for states with limited experience in providing comprehensive reports on their international arms transfer activities, this may take some time to achieve. Accordingly, an appropriate Treaty institution (such as an Implementation Support Unit (ISU)) should be tasked with assisting states in fulfilling their reporting obligations.

The establishment of an ISU could serve a number of useful reporting-related functions:

- assisting States Parties in developing a standardised, comprehensive reporting template[5]
- assisting States Parties in compiling their national reports
- receiving national reports from States Parties and making them available online
- following-up with any questions of clarification that arise in order to ensure the completeness and correctness of national reports

3 The exact scope of ATT reporting will be dependent to a significant degree on the outcome of the discussions on the scope of the ATT.

4 In order to inform States Parties' application of the Treaty's provisions in a timely manner, details of arms transfer denials could be supported by a denial notification mechanism requiring States Parties to circulate information on denials via an ISU within a specified time-frame.

5 All States Parties should be required to provide a designated minimum amount of information in the first instance, with efforts expected towards providing progressively more information over time. States should be able to file 'nil reports' as and when relevant.

- analysing the data presented by States Parties in their national reports (for example by conducting an analysis of mirror data on exports and imports) and compiling information on trends in ATT implementation and the international arms trade in general
- using information provided by States Parties in their national reports in order to help states identify gaps in national control systems, highlight avenues for co-operation and potential sources of co-operation and assistance and generate lessons-learned.

2

Follow-up provisions

A number of provisions and arrangements could be considered in order to support on-going implementation and review of the ATT, including Meetings of States Parties (MSPs) and Review Conferences, together with appropriate institutional support.

Meetings of States Parties

Most international treaties include provision for regular (often annual) MSPs. In general terms, such an arrangement should help to reinforce the continuing legitimacy and relevance of the Treaty while providing a forum for information exchange and the development of best practices. Specifically, MSPs could monitor implementation and address issues such as:

- the status of the Treaty (for example, progress made towards increasing membership)
- the need for a standardised reporting template to assist reporting, a Users' Guide to assist Treaty implementation and/or model legislation/regulations
- the operation of the Treaty including, for example, mechanisms for reporting and for matching capacity-building needs with the provision of appropriate co-operation and assistance
- matters arising from Treaty implementation including any reports that are produced by an ATT ISU
- the need for procedural, technical or administrative changes to the Treaty including amendments to the list of items/activities controlled under the Treaty
- requests for clarification of compliance

- outstanding disputes or compliance issues, in particular, how to respond to situations of persistent non-compliance, including whether to establish a specific mechanism – such as a Group of Experts or a Peer Review process[6] – to look into any such problems and/or whether to refer matters to a designated third party (such as the International Court of Justice)
- the agenda for any periodic Review Conference (see below).

In addition the MSP should be mandated to establish, as necessary, subsidiary bodies – such as a permanent or *ad hoc* standing committee, or a sub-committee of the MSP – in order to monitor and/or assess matters relating to the on-going operation, application and/or implementation of the Treaty and any potential problems that arise in these respects.

Review Conferences

Most international treaties include provision for regular (often five-yearly) Review Conferences in order to provide periodic analysis and oversight of the functioning of the Treaty. Drawing upon the discussions of any preceding MSP, an ATT Review Conference could *inter alia*:

- review all aspects of the operation of the Treaty
- review implementation of the Treaty by States Parties
- review existing institutional arrangements for Treaty implementation
- review Treaty procedures *inter alia* for reporting, for addressing implementation and compliance issues, and for the assessment of needs and provision of co-operation and assistance
- develop outreach strategies in pursuit of securing the broadest possible participation in the Treaty
- discuss any need for, and processes relating to, substantive amendment of the Treaty and agree on the convening of an Amendment Conference.

Institutional support

Regular MSPs and Review Conferences will benefit from some form of institutional support from a permanent Treaty body, for example an ISU.

6 A Peer Review process is intended as one whereby, at the request of a State Party, other States Parties are engaged, on a voluntary basis, in the review of the requesting State's national system for international arms transfer control. The aims of such a process would be, *inter alia*, to highlight: areas for potential improvement; strategies for tackling any relevant gaps or problems; and sources of possible co-operation and assistance.

This institution would need to be funded by the States Parties. In addition to the support for an ATT reporting mechanism (discussed above) possible roles for such an institution include:

- providing administrative and technical support *inter alia* to the MSP – or subsidiary bodies – and Review Conferences
- facilitating/supporting the implementation of decisions made by the MSP and Review Conferences
- assisting in clarification of matters relevant to the Treaty and its implementation
- facilitating efforts to review and promote fulfilment of Treaty requirements by the States Parties, for example by facilitating establishment of a Peer Review process, development of a Users' Guide and/or by developing model regulations/legislation
- assisting States Parties in identifying sources of appropriate co-operation and assistance and otherwise supporting States Parties in their efforts to implement the Treaty
- acting as a repository for, and disseminator of, Treaty-relevant information provided by States or other approved parties.

3 Consultations

States will always reserve the right to engage in bilateral consultations on any matters as they see fit, however, effective implementation of the ATT would be facilitated and encouraged *inter alia* by the establishment of provisions that support and facilitate consultations between States Parties. Such consultations could help clarify understandings as regards Treaty implementation (thereby promoting effective implementation), increase transparency, and build confidence in the effective functioning of the instrument. Consultations among States Parties could be supported both bilaterally and in a multilateral context.

Bilateral consultations

Bilateral consultations between States Parties could cover a range of issues relevant to ATT implementation, including, for example:

- information contained in national reports
- the development of national legislative, regulatory and institutional frameworks for international arms transfer control
- implementation of international arms transfer controls by authorisation and enforcement agencies (both nationally and through cross-border and international co-operative efforts)
- issues relating to the application of the transfer criteria
- international arms transfer risk assessment, including diversion risks
- issues relating to post-transfer control of international arms transfers
- requests for, and the provision of, co-operation and assistance.

Multilateral consultations

Some of the issues discussed at the bilateral level may also lend themselves to discussion among States Parties at a multilateral level – within the framework of the MSP – along with a further range of issues, for example:

- the development of national legislative, regulatory and institutional frameworks for international arms transfer control
- developments in particular regions or states that may have implications for the application of the Treaty
- issues relating to the interpretation of the scope of the Treaty (both with regard to activities and items covered)
- international arms transfer risk assessment, including diversion risks
- issues relating to the interpretation/application of particular parameters
- enforcement of international arms transfer controls (both nationally and through international co-operative efforts)
- issues relating to reporting under the Treaty and any associated follow-up
- developments with regard to new technologies that may have implications for the application of the Treaty
- requests for, and possibilities for the provision of, co-operation and assistance
- the possible development of a Peer Review process, a Users' Guide or model legislation/regulations in order to inform national implementation of the Treaty.

Institutional support

Bilateral consultations between States Parties on ATT-related issues could take place via normal diplomatic channels, involving designated national points of contact. However, multilateral consultations would, of necessity, require facilitation and support via an appropriate ATT mechanism or institution. For example:

- An annual MSP could provide the forum for multilateral discussion of any issues relevant to the operation or implementation of the Treaty, including the reporting mechanism and any associated follow-up. The embedding of multilateral consultations within the MSP will also facilitate the feedback of relevant conclusions into the on-going process of Treaty monitoring and development.

- A dedicated ATT ISU could provide technical and administrative support to multilateral consultations. As deemed appropriate and necessary by the MSP an ISU could access appropriate expert advice to inform discussions such as those relating to the interpretation/application of ATT parameters.

4

National implementation

While the ATT will be implemented by States Parties at national level, the Treaty will need to set out the basic obligations of states in this regard. These could be specified either within the Treaty itself or within an associated Annex or Protocol.

Basic requirements for national implementation

While the exact manner in which States Parties implement the Treaty will remain at national discretion, the ATT will need to set out certain core requirements that States Parties will be obliged to meet. These should include requirements for States Parties to:

- have in place relevant laws, regulations, administrative procedures and enforcement capabilities that enable fulfilment of all Treaty obligations
- subject all proposed transfers of relevant items to assessment against the parameters of the Treaty by a competent body
- issue, as appropriate, relevant import/export/transit/brokering/transfer licences, authenticated end-user certificates, customs documentation and delivery verification documentation
- have in place procedures to prevent diversion, including through verification of: lawful delivery, effective stockpile security, and authorised end-use of international arms transfers
- criminalise breaches of national law relevant to implementation of the Treaty by entities that are subject to national jurisdiction
- establish legislative, regulatory and enforcement provisions with a view to combating corruption in international arms transfers
- extend mutual legal assistance to other States Parties in addressing possible breaches of national law relevant to implementation of the Treaty

- establish requisite national agencies, systems and capacities to enable data gathering, management and record-keeping at national level
- submit – to an ISU – a report on steps taken to implement the Treaty at national level and regular reports on relevant international arms transfer activities
- address and correct any significant weaknesses or gaps that become apparent in national control systems for international arms transfers and which could raise risks of diversion or ill-advised transfers.

Institutional support

States Parties to the ATT will need to review their international arms transfer control systems to ensure that they are fully comprehensive and effective. To this end, the process of identifying gaps in existing national arms transfer control frameworks could be undertaken, at the request of a State Party, by means of a Peer Review mechanism which could be established with the assistance of an ISU. At the same time, requirements for national implementation could be clarified and elaborated through the development of model legislation/regulations and/or a Users' Guide, also with the assistance of an ISU.

5 Assistance

Many states do not currently have all the requisite systems and controls in place that will be necessary for ATT implementation at national level. The long-term credibility of the Treaty and the prospects for effective implementation of its provisions will be significantly improved, therefore, if the ATT provides that States Parties may request and access appropriate co-operation and assistance to facilitate Treaty implementation. The Treaty should therefore enable processes that lead to the identification of specific needs including, for example, through establishment of a Peer Review process and/or the development of National Action Plans. These processes could be facilitated by an ISU possibly in co-operation with relevant regional organisations. For states that lack effective international arms transfer controls, while co-operation and assistance will need to be context-specific, it will also need to be holistic in approach and co-ordinated with other co-operation and assistance mechanisms.

Types of international co-operation and assistance

In response to a request from a State Party/Signatory, the ATT should facilitate and promote the identification of needs and provision of appropriate co-operation and assistance including:

- development of relevant legislation or regulations
- development of an appropriate international arms transfer licensing/authorisation system
- development of capacity for implementation and enforcement of ATT provisions at national level (including *inter alia* the wherewithal to conduct investigations, undertake tracing requests, prevent diversion and engage in international co-operation in support of ATT implementation)

- development of systems for international arms transfer data-gathering, storage and retrieval
- development of the capability to produce an annual report
- training of relevant personnel including in the application of the ATT provisions
- any other aspect deemed relevant to the implementation of states' obligations under the ATT.

Given that states will be expected to implement the Treaty in full immediately upon ratification/accession, particular attention could be given to the requirements of states that have signed but not yet deposited their instruments of ratification or accession.

Institutional support

Under the ATT States Parties should be free to request, provide and receive co-operation and assistance as they choose, including on a bilateral, regional or multilateral basis. States Parties could give a preliminary indication of possible needs and areas where co-operation and assistance may be required through their national reports. However it could also prove beneficial if the ATT were to provide a level of institutional support and co-ordination for the articulation of needs and provision of appropriate co-operation and assistance. This institutional support could be provided, as appropriate, by an ISU *inter alia* in the following areas:

- facilitating Peer Review of national systems for international arms transfer control
- undertaking, at the request of States Parties, and with assistance from relevant experts, the mapping of existing national controls and levels of manpower and resources so as to assist in the identification of gaps and priorities
- undertaking, at the request of States Parties and with assistance from relevant experts, the development of National Action Plans
- reviewing existing sources of relevant co-operation and assistance
- facilitating the matching of needs with sources of appropriate co-operation and assistance including ensuring co-ordination with existing mechanisms and processes.

6

Entry into force

The ATT should specify the terms under which the Treaty will enter into force. Signatory States can deposit instruments of ratification, acceptance, approval or accession; entry into force (EIF) can take place after a certain number of these instruments are deposited.

The ATT should specify when the Treaty is to be open for signature and at what point EIF will occur. In the interests of early EIF and of establishing momentum behind a credible Treaty, EIF should be based on the minimum number necessary for the Treaty to be workable, for example, 30 State Party ratifications, acceptances, approvals or accessions.

7 Amendment

Treaties usually make provision for their subsequent amendment. Accordingly states should consider the inclusion of clear provision for Amendment of the ATT. Furthermore, in the interests of maintaining on-going support for, and confidence in, the Treaty, the ATT should specify that no reservations may be made as part of states' ratification/approval/acceptance of, or accession to, the Treaty.

Saferworld works to prevent and reduce violent conflict and promote co-operative approaches to security. We work with governments, international organisations and civil society to encourage and support effective policies and practices through advocacy, research and policy development and through supporting the actions of others.

This Implementation Framework has been compiled by Saferworld. It draws upon the substance of the discussions that took place at three seminars on *International Aspects of ATT Implementation* held in: Geneva, November 2010; Helsinki, February 2011; and Geneva, May 2011; and which were attended by representatives of governments and civil society from all world regions.

Saferworld
The Grayston Centre
28 Charles Square
London N1 6HT
UK
Phone: +44 (0)20 7324 4646
Fax: +44 (0)20 7324 4647
Email: general@saferworld.org.uk
Web: www.saferworld.org.uk

Registered charity no. 1043843
A company limited by guarantee no. 3015948