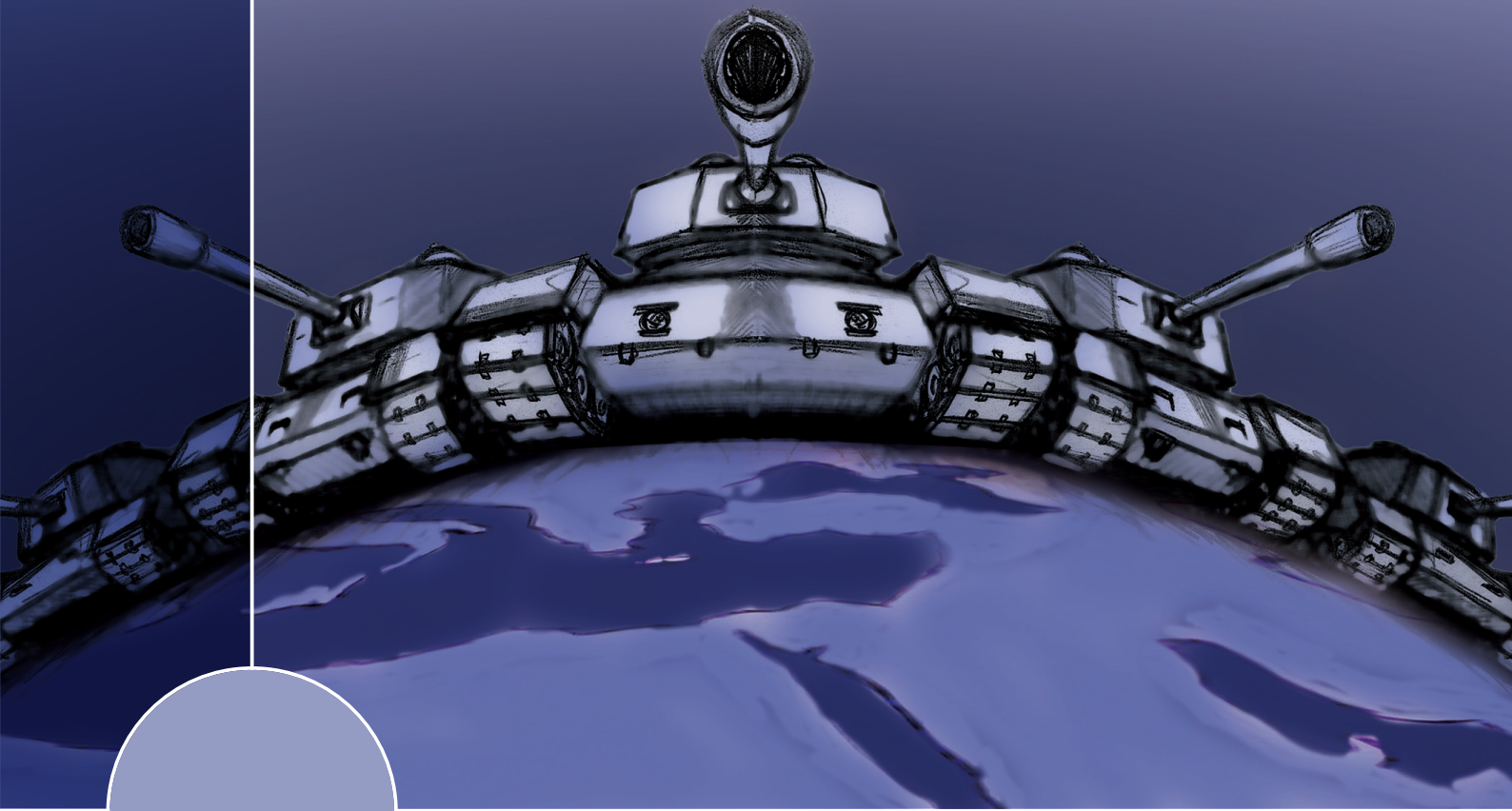




From Word to Deed

**Proposals for an effective Arms Trade Treaty
implementation regime**



July 2012



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Saferworld would also like to thank all the representatives of government, of regional and international organisations, and of civil society that attended each of the six seminars and, in particular, for their constructive engagement contributing to a rich and full discussion. We would also like to thank, in particular, Ambassador Roberto Garcia Moritán, for his valuable contribution to several of the meetings.

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The views and ideas expressed in this Report are those of Saferworld and should not be taken as the official view of those governments, organisations or individuals that have supported or contributed to this process.

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Preface

DRAWING FROM THE DISCUSSIONS that were held during a series of six seminars organised by Saferworld¹ and attended by government and civil society representatives from all world regions as well as by representatives of international and regional organisations, this Report contains detailed recommendations for an effective and workable Arms Trade Treaty (ATT) implementation regime. These proposals are of a comprehensive nature, reflecting both the wide-ranging discussion that took place at each of the six seminars and the view of Saferworld that an effective ATT will require robust implementation provisions. These include *inter alia*: reporting and transparency mechanisms; clear requirements for national implementation; systems for consultation, co-operation and information exchange; international co-operation and assistance to support national implementation and victim assistance; effective institutional support in the form of an Implementation Support Unit; and provisions for follow-up and Treaty review as well as for effective dispute settlement and early entry into force.

In producing this report, Saferworld is seeking to encourage detailed consideration of a comprehensive range of ATT implementation issues during the July 2012 Diplomatic Conference (DipCon) with the aim of encouraging an optimal outcome. Attention herein is focussed upon those issues that are most complex or potentially controversial; those Treaty aspects that are considered relatively standard, such as provisions for withdrawal, have not been addressed.

It is clear that time constraints mean that it is likely to prove impossible to agree on every detail of every implementation provision during the July DipCon. However, Saferworld would urge governments to ensure that all the essential ATT implementation elements are addressed in the Treaty and that future efforts to elaborate on the substance of these commitments are assured by means of a clear, flexible and enabling mandate in each case.

¹ The first seminar in the series was held in Geneva in November 2010 and was funded by the UK Government. The second seminar, held in Helsinki in February 2011, was organised in co-operation with the Finnish Ministry of Foreign Affairs. The third seminar, held in Geneva in May 2011, was organised in co-operation with the Governments of New Zealand, Norway and Switzerland. The fourth seminar, held in Geneva in November 2011, was funded by the UK Government. The fifth seminar, held in London in February 2012, was organised by Saferworld and the Stockholm International Peace Research Institute (SIPRI) in co-operation with the Finnish Ministry of Foreign Affairs and the UK Foreign and Commonwealth Office. The sixth and final seminar was held in London in May 2012 in co-operation with the UK Foreign and Commonwealth Office. Additional funding was also provided by the governments of Australia, Austria and Luxembourg.

Executive summary

THIS REPORT SUMMARISES THE ARMS TRADE TREATY (ATT) implementation debate so far, in the context of the UN ATT process and also in relation to a series of six informal seminars organised by Saferworld. It also sets out key recommendations for an effective ATT implementation regime. These recommendations are the work of Saferworld and do not necessarily reflect the views of any of the participants in the seminar process.

There are a significant number of issues that will need to be addressed at the July ATT Diplomatic Conference. However, given the very short time available, it may not be advisable to try to agree on the detailed substance of every issue. Instead it may make sense to defer non-essential discussions to the first Meeting of States Parties.

This report highlights key recommendations for an effective ATT implementation regime in the following areas:

Reporting

A clear mandate for an ATT reporting mechanism should be set out alongside agreement on the main substantive focus of national reporting. This should include: reporting on steps taken by States Parties to implement the Treaty; details of States Parties' arms transfers falling under the scope of the Treaty; and details of assistance given and received.

Other key issues that will require consideration in this context include: whether to report on authorisations or deliveries of arms; the need for public transparency; how far the scope of reporting should reflect the scope of the Treaty; and how to alleviate the reporting burden on States.

Finally, recommendations are also made concerning the establishment of a repository for ATT reports, with some potential functions outlined for such an institution.

National implementation

The Treaty should specify minimum requirements for implementing States Parties' obligations nationally. These will need to define key factors such as the nature and extent of national controls on relevant transfers/transactions, the requirement that states conduct a risk assessment as part of the arms transfer authorisation process and that in doing so they solicit and/or issue relevant documentation. States Parties should also be required to criminalise violations of national laws relevant to treaty implementation.

A range of other measures are suggested such as establishing comprehensive national legislation and regulations, systems for record-keeping, and mechanisms for international co-operation. A 'peer review' system could support States Signatories/Parties in the development of effective national implementation systems.

Information exchange and international co-operation

States Parties should exchange information on a multilateral basis and co-operate on a range of Treaty-related issues such as: the development, implementation and enforcement of national control systems; the application of the ATT criteria; identifying States' ATT implementation needs; and meeting requests for assistance.

Consultations on implementation and compliance issues

The ATT should allow for States Parties to consult and raise questions or concerns relating to Treaty implementation or State Party compliance. Relevant issues may include concerns about a particular transfer of conventional arms or difficulties encountered by a State Party in seeking to fully implement the Treaty.

International assistance

The ATT should acknowledge that States Parties may request, receive, offer and provide assistance *inter alia* to identify needs, develop appropriate legislation and train relevant personnel. In addition States Parties should be encouraged to co-operate in providing recompense to victims.

Implementation Support Unit

An Implementation Support Unit should be established so as to carry out a range of possible functions. These include: serving as a repository for national reports; reviewing and analysing data provided; assisting States Parties in the production of their national reports; helping to identify gaps in national arms transfer control frameworks; and serving as a 'clearing house' to match capacity-building needs with sources of assistance.

Meetings of States Parties

The ATT should mandate annual Meetings of States Parties. The Meetings' core functions should include: addressing matters relating to the status and operation of the Treaty; enabling information exchange and facilitating international co-operation; and identifying the need for procedural, technical or administrative changes to the Treaty.

Review Conference

The ATT should provide for a five-yearly Review Conference to ensure a full review of all aspects of the Treaty, to consider future improvements and amendments, and to develop outreach strategies to non-States Parties.

Entry-into-force

The ATT should establish that its entry-into-force is not dependent on ratification by any one country or group of countries. It should take place either two years after the Treaty is established, or following ratification by the minimum number of States necessary for the Treaty to be workable (30 to 40 State ratifications), whichever occurs first.

Dispute settlement

States Parties should make every effort to consult and co-operate with each other to settle any disputes that arise. Where co-operative means have been exhausted the Meeting of States Parties should invoke dispute settlement procedures. This could include enlisting the good offices of the UN Secretary General and/or referring matters to an external body, such as the International Court of Justice.

Relations with States not party to the Treaty

In order to achieve universal adherence, the ATT should encourage States Parties and any institutions established under the Treaty to assist States not party to the Treaty to take all necessary steps for ratification/accession.

1

The ATT implementation discussions in a nutshell

Introduction

IN THE TWO YEARS since the issue of Arms Trade Treaty (ATT) implementation was first raised in the formal UN ATT PrepCom process, the international debate and understanding of this subject has advanced significantly. Initial discussions on this subject during the two week ATT Preparatory Committee (PrepCom) meeting during July 2010 served to indicate the potential breadth and complexity of the ATT implementation agenda. Nevertheless, at that time, there was a clear sense that many of the issues at stake remained unexplored and that there was a relatively limited understanding of them among both governments and civil society.

Between November 2010 and May 2012, Saferworld held six seminars involving governments and civil society representatives from all world regions which sought to address a comprehensive range of ATT implementation issues. Two particular aspects, namely, possibilities surrounding an ATT Implementation Support Unit (ISU) and options for an ATT reporting mechanism, were explored in detail. Exchanges of view across the spectrum of ATT implementation issues also continued through the UN ATT PrepCom process with evidence of an increased engagement on these issues by a significant number of states, particularly during the July 2011 PrepCom where implementation issues were high on the agenda.

This report seeks to offer a brief overview of the ATT implementation discussions both through the formal UN ATT process and in the informal context of the six Saferworld seminars, before presenting a series of broad-based recommendations for an effective ATT implementation regime. NB: These recommendations have been devised by Saferworld and should not be taken as representing the particular views of any of the participants in the aforementioned seminar process.

The inception of the UN ATT process and the implementation issue

The issue of ATT implementation was first raised by a number of states in their submissions to the UN Secretary General in 2007 regarding the feasibility, scope and draft parameters of an ATT. Views were mixed and few states went into great detail about the possible implementation measures that would need to be included in an ATT. Transparency was cited as an important goal for the ATT by more than half of state-respondents, while information exchange and reporting were specifically mentioned by a significant number with some also calling for the establishment of a monitoring mechanism. Several states also mentioned the need for some kind of permanent institutional capacity, such as a Secretariat or “Monitoring Committee”, while others

mentioned the need for a Follow-up or Review mechanism. A number of states also raised the issue of how to deal with possible violations of the Treaty and recommendations were made for procedures to be adopted at the national level – including criminalisation of breaches of national laws related to ATT implementation. Suggestions were also made for an international mechanism to be established whereby possible breaches could be investigated and addressed.

The Group of Governmental Experts (GGE) that met during 2008 reflected the previous lack of discussion in that their Report only briefly touched on implementation issues. The Group explored how multilateral and *ad hoc* exchanges could be facilitated among states and also how states could be assisted in implementing and evaluating the Treaty. To these ends the GGE mentioned the possibility of establishing national points of contact, and the “promotion of regular implementation and transparency reports”.² This lack of detailed focus on implementation issues continued throughout the two meetings of the OEWG during 2009 which were largely dominated by discussions of issues relating to scope and parameters of an ATT.

The July 2011 PrepCom

The ATT PrepCom process began in July 2010 with a general discussion of views on issues of scope, parameters and implementation with three scene-setting papers produced by Friends of the Chair. Specific and detailed discussions on the subject of ATT implementation were then held during the first three days of the July 2011 PrepCom. The substantive nature of this discussion was aided considerably by the prior publication by the Chair of the UN ATT PrepCom – Ambassador Roberto Garcia Moritán – of two papers on ATT Implementation and ATT Final Provisions and which addressed the relevant issues in comprehensive terms. These Papers provided considerable food-for-thought as reflected in the broad range of issues that were addressed by delegations in their interventions; these included the following:

- That ATT implementation should be the responsibility of governments and should take place at the national level was widely acknowledged. Further to this, the need for states to establish a national point of contact for implementation matters was also stressed.
- It was suggested that the ATT should support information exchange among States Parties: a few states argued for voluntary exchanges; a small number argued that these should be confidential. The importance of transparency as a goal in the effective functioning of an ATT was also mentioned.
- The inclusion of a record-keeping requirement was seen as important by a number of delegations with several arguing that records should be kept for at least 20 years. There was also significant support for the ATT incorporating a reporting requirement – both in terms of reporting on national implementation efforts and on arms transfers, with support for regular or annual reports. A few states did, however, call for ‘simple’ reporting requirements while the possibility of capacity problems for smaller states was also raised.
- In terms of the focus of national implementation systems, there was support for a comprehensive approach although a few questions were raised with regard to the control of brokering and transit. The importance of end-use certification/end-use checks and the need for law enforcement co-operation was raised.
- The possibility that the Treaty should include a denial-notification provision was questioned by a significant number of states. While this prospect did receive some support, a few states argued that denial notification should be kept confidential or should be voluntary.
- Delegations appeared broadly in agreement that the ATT should make provision for co-operation and assistance to support implementation. Opinion on the issue of

² UN Document A/63/334 www.un.org/ga/search/view_doc.asp?symbol=A/63/334

victim assistance was more divided, however. A number of delegations recognised the importance of the issue, but some questioned whether or not this issue should be addressed under the implementation provisions of the Treaty.

- The important roles that would be fulfilled by a Meeting of States Parties (MSP) and Review Conference were mentioned by several delegations; overall there appeared to be a general recognition that some such arrangements would be necessary. The need for robust dispute-settlement provisions also received some support. A handful of delegations suggested that there should be the possibility of recourse to involvement of an impartial third party in serious disputes. A small number of states also argued for the possibility of sanctions to be imposed in the event of non-compliance.
- The criteria for entry into force of the Treaty (EIF) were debated with the largest number of states favouring a simple numerical threshold in the region of 30-plus state-ratifications. The issue of reservations was raised, with most states arguing that either no reservations be permitted or that no reservations incompatible with the goals and objectives of the Treaty be allowed.
- Procedures for amendment were raised by several states: a few delegations argued that amendments should be considered by the Review Conference; possible modalities for EIF of amendments were also raised.
- The need for specific provisions governing withdrawal from the Treaty was mentioned by a few delegations while the formalisation of relations with non-state parties was raised as an important issue.

Informal discussions at Saferworld seminars

Throughout the course of the six ATT implementation seminars held between November 2010 and May 2012 and at side-events at PrepComs Saferworld sought to facilitate discussion of a range of ATT implementation issues among governments and civil society actors from all world regions. The discussions that took place were detailed and substantive with a range of opinions and views advanced.

Geneva, November 2010 – International Aspects of ATT Implementation: Learning from existing international agreements

Saferworld's first ATT implementation seminar examined the experiences of a range of international treaties and agreements so that future discussions on the ATT could benefit from lessons elsewhere. Experts on regimes including the Chemical Weapons Convention, climate change treaties, biotechnology agreements, international human rights instruments and the World Trade Organisation were invited to set out relevant approaches to a range of issues. These included reporting, monitoring, consultations and dispute settlement, as well as requirements for national implementation and capacity building, institutional arrangements and treaty review. From the discussions it became clear that no two instruments or agreements approached these issues in the same way and that many factors – from the unique characteristics of the treaty, to the availability of resources and the existence of sufficient political will – would shape the form and function of ATT implementation measures.

Helsinki, February 2011 – International Aspects of ATT Implementation: Exploring key issues

Following the Helsinki seminar of early February 2011 an interim conclusions paper³ was produced by Saferworld and circulated at a side-meeting to the February–March 2011 PrepCom, hosted by the Finnish Ministry of Foreign Affairs at their UN Mission in New York. This paper addressed a range of issues including:

³ www.saferworld.org.uk/Saferworlds%20Conclusions%20--%20Helsinki%20seminar%20on%20ATT%20Implementation.pdf.

- the possible scope and frequency of national reporting and how to minimise the reporting burden upon states
- the different roles and functions of bilateral and multilateral consultations under the Treaty
- how to address possible implementation or compliance problems that may arise under the Treaty
- national implementation requirements and possible assistance needs.

Geneva, May 2011 – An Implementation Framework for the ATT: Considering key elements

The third seminar, held in Geneva in May 2011, represented the end of the first phase of the seminar process with key issues having been explored in some depth. A “Draft ATT Implementation Framework” was circulated by Saferworld for discussion at the seminar and, following the meeting, this document was finalised and launched at a side-meeting to the July 2011 PrepCom⁴. Key conclusions from the seminar can be briefly summarised as follows:

Reporting: Reporting was considered to be a crucial part of ATT implementation. Whereas a comprehensive reporting framework was seen as potentially useful, the need to avoid duplication of effort in related areas was raised. The need for reporting on national systems and procedures and reporting on transfers was widely accepted; the extent and specificity of reporting on transfers was less clear.

An Implementation Support Unit (ISU): An ISU was seen as essential to an effective Treaty. It was considered that any ISU should be more than just a ‘post-box’; it should be substantial enough to fulfil all necessary administrative functions, including supporting Review Conferences and MSP and interacting with any of their subsidiary bodies or committees. It was also suggested that an ISU would be required to fulfil a number of substantive tasks such as conducting an analysis of national reports.

Monitoring: It was considered that the word ‘monitoring’ carries with it certain connotations that demand caution. It was suggested that the emphasis in any monitoring effort should be more on review and consultation to enhance co-operation and reduce the scope for illegal transfers.

Consultations: It was thought to be important for the ATT to establish a framework for consultations in order to encourage States Parties to respond to a request for information or clarification. It was suggested that multilateral discussions could take place via the MSP or through a dedicated peer-review or peer-engagement process.

Meetings of States Parties (MSP) and Review Conferences: It was suggested that Review Conferences could play an important role in continued Treaty development and updating various provisions, particularly given that there are a number of Treaty elements that are dynamic in nature. It was suggested that MSP could facilitate information exchange and consultation on Treaty implementation matters among States Parties. It was also considered that the MSP could establish subsidiary bodies, standing committees and/or working groups to address specific issues or concerns shared among groups of states.

National implementation: There was an acute awareness of the different situations of various countries and of the need to take into account different national contexts. Nevertheless it was agreed that the specific core obligations that are set out in the ATT should be universal and clear and that all states should be expected to implement them. The manner in which states implement their obligations under the Treaty would, however, be a matter for individual states.

⁴ www.saferworld.org.uk/downloads/An%20Implementation%20Framework%20for%20the%20ATT.pdf

Entry into force (EIF): Suggestions for a numerical threshold for EIF range from two to 60 or 70. The prevailing view was that early EIF would help create momentum behind the Treaty, and that therefore the threshold should be the lowest reasonable number of ratifications – around 30 to 40.

Co-operation and assistance: It was considered that it is in every country's interest to provide assistance if they can. It was considered that needs could be identified by means of National Action Plans etc. and that synergies should be explored with regard to existing capacity-building efforts in related fields, possibly linking with regional or international organisations.

Geneva, November 2011 – Implementing the ATT: Prospects for an Implementation Support Unit

The fourth seminar in the series was held in Geneva in November 2011 and focussed specifically on the prospects for an ISU under the ATT. There was a general acceptance among participants that there should be an ISU established. Most agreed, however, that establishing an ISU by including a flexible and enabling mandate within the Treaty would be the most tactical and favourable course of action. Other points of discussion included:

- The issue of 'independence' was raised on several occasions. The general view was that any ISU would need to be a creature of the Treaty and therefore should be answerable to, and serve only, the States Parties – 'helping States Parties to help themselves'.
- There was little appetite for an ISU to play an 'intrusive' or verification role and opinions differed as to whether the ISU should be tasked with undertaking an analysis of States Parties reports; there was some support for the ISU playing a role in encouraging and supporting universalisation of the Treaty.
- While the importance of a 'lean' and 'efficient' ISU was stressed by many, it was also observed that even 'simple' administrative tasks can be relatively burdensome. It was considered that the more that is expected of the ISU, the more difficult it will be for the ISU to remain small.

London, February 2012 – Implementing the ATT: Options for reporting

The fifth seminar was held in London in February 2012 and focussed specifically on options for reporting under the ATT. Key discussion points included the following:

- It was noted, that if an ATT were established with no reporting requirements then there would be no means whereby states could properly demonstrate Treaty implementation and compliance. It was argued that the substance of ATT reporting should serve the objectives of the Treaty itself.
- While it was suggested that the traditional concerns and arguments around state confidentiality would need to be addressed it was thought that commercial confidentiality issues need not present a barrier to reporting as all reporting would be retrospective.
- The issue of whether reporting should centre on arms transfer authorisations or on deliveries was much discussed. It was noted that, rather than reporting on deliveries as requested under the UN Register of Conventional Arms (UNRCA), a number of states actually report on authorisations because this is easier to do.
- It was suggested that some states might be nervous about reporting on ammunition transfers over concerns that this could indicate the war-fighting capability of a state. Nevertheless it was recognised that some states already report on ammunition transfers at national level and that this would be likely to continue, and again, the fact that reporting would be retrospective should help assuage these anxieties.
- It was argued that minimum requirements for reporting should be set out in the Treaty text however the task of elaborating on the detail of ATT reporting requirements could be put on the agenda of the first MSP.

- The capacity problems of small states were acknowledged along with the need to think creatively about the impact of reporting demands. A range of options were discussed from the possibility of 'nil reporting', to the development of a simplified reporting template.

London, May 2012 – Preparing for the ATT: Key implementation priorities and challenges

This final seminar explored key implementation issues and challenges facing states during and after the ATT negotiations with a view to developing understandings as to how states may be able to 'hit the ground running' on ATT implementation once the Treaty enters into existence. Attention also focussed on the potential role of a range of other actors – including from international organisations, regional organisations and civil society organisations – in supporting ATT implementation efforts. Key discussion points included:

- the desire to ensure that all the negotiations would be held in a transparent manner with a view to achieving the consensus necessary within the limited time available
- the need for the ATT to be a 'floor' and not a 'ceiling' so that states would be at liberty to implement more stringent controls, should they wish
- the general sense that the main Treaty elements were now understood but that, given the dangers of getting lost in the detail, efforts should be made to draw upon established practices and existing definitions
- the need to outline the minimum requirements for ATT implementation in simple terms so that states are left to work out what they will need in order to implement the Treaty along with the possibility of developing best practice guides and other supporting architecture
- the need to ensure co-ordination and synergy with existing assistance and capacity-building programmes in related fields so as to avoid duplication of effort
- the importance of drawing upon the significant experience in developing and strengthening international arms transfer controls among governments, regional and international organisations and civil society experts.

Conclusion

From the discussions that have taken place in the context of the UN ATT process and at the six Saferworld seminars, it is clear that a wide range of ATT implementation issues will need to be addressed at the DipCon. One of the biggest challenges will be reaching agreement on how provisions for implementation – both at the national level and in terms of the international apparatus that will be required to support implementation – should be set out in the Treaty. Given the very short time that is available and the plethora of issues that will need to be resolved, it may not be necessary or desirable to agree on every detail of the implementation mechanisms in text of the Treaty itself; it may make sense to defer non-essential discussions to the first MSP, for example. Clearly, however, this will mean that provision for a MSP will need to be included within the Treaty text along with an enabling mandate that indicates the intended function of the institution and the responsibilities that are to be assumed. Comparable deliberations will need to take place with regard to requirements for national implementation, record-keeping and reporting requirements, transparency provisions, international co-operation and information exchange, international assistance, an ISU, and a range of final provisions including dispute settlement and criteria for entry into force of the Treaty.

2

Recommendations for an effective ATT implementation regime

Introduction

STATES PARTIES TO THE ATT will be required to have, and to fully implement, effective national controls on the international transfer of conventional arms and related technology, as set out in the agreed scope of the Treaty. While many States already possess comprehensive controls, in acceding to the ATT all States should be prepared that they may be required to make some adjustments to their national legislation, policies and/or systems. At the same time, it will be vital that the ATT explicitly allows States to implement additional or tighter controls on international arms transfers than those that are required in order to comply with Treaty obligations.

Based upon the discussions and deliberations at the six seminars co-hosted by Saferworld from November 2010 to May 2012, Saferworld is advancing the following recommendations for an effective and comprehensive ATT implementation regime. While recognising that not all of the issues outlined below will be addressed in the Treaty, the aim is to highlight key issues that – if not addressed within the text of the ATT itself – will require prompt discussion and agreement upon entry into force of the Treaty.

Section A: Implementation provisions

Reporting

A comprehensive and robust system of reporting will be an essential pre-requisite for an effective ATT; without this it will be extremely difficult for States to demonstrate that they are implementing the Treaty and complying with their obligations therein. Moreover, reporting can help in the context of efforts to strengthen States' domestic regulatory frameworks in that it can assist States Parties in reviewing the adequacy of their own national systems.

The purpose of reporting will dictate its form and substance. Successive UNGA Resolutions *Towards an Arms Trade Treaty* in 2006⁵, 2008⁶ and *The Arms Trade Treaty* in 2009⁷ acknowledged and encouraged initiatives that have sought to “enhance

⁵ UN General Assembly Resolution 61/89

⁶ UN General Assembly Resolution 63/240

⁷ UN General Assembly Resolution 64.48

cooperation, improve information exchange and transparency and implement confidence-building measures in the field of responsible arms trade”. Reporting under the ATT should therefore serve these ends of information exchange, transparency and confidence-building and in so doing should help to ensure the effectiveness of the Treaty.

The ATT should include a clear mandate for an ATT reporting mechanism and should outline the main substantive focus of national reporting under the Treaty. The detailed requirements in each case should be established by the MSP (see below).

The substance of reporting

ATT reporting should primarily seek to address three distinct types of issues:

- **Steps taken to implement the Treaty:** This will help States to demonstrate how they are fulfilling their obligations to put in place the requisite infrastructure and procedures to effectively control international arms transfers and prevent illicit trafficking. Information reported, or missing from reports, could also be used to identify areas where international assistance may be required. This type of reporting would require the provision of information on, *inter alia*, relevant national legislation, regulations, administrative systems, accountability mechanisms and enforcement capacities. An initial report should be submitted by all States Parties within a year of ratification of the Treaty; relevant updates should be provided as necessary.
- **Information on arms transfers:** This will provide an important means whereby States may demonstrate that they are in compliance with their Treaty obligations; the information provided could also form the basis for exchanges of information and discussions between States Parties on how to interpret/apply the Treaty’s provisions. This type of reporting would require the provision of qualitative and quantitative data relating to authorisations for, and/or deliveries of, international arms transfers during a specified period of time. Reporting on arms transfers should take place on an annual basis.
- **Details of assistance offered, rendered, requested or received** in the context of facilitating implementation of the ATT. Information on this aspect of Treaty implementation should be provided annually.

Beyond this, States Parties should also be encouraged to report on other pertinent issues as they wish, for example:

- **problematic actors or trade routes**
- **seizures of illicit shipments**
- **prosecutions of individuals or legal entities** under national laws relating to ATT implementation
- **denials** issued pursuant to the application of the ATT’s provisions.

Further issues for ATT reporting

There are a number of important reporting-related issues on which agreement will be required. If it is not feasible to secure agreement on all of these issues at the July 2012 negotiations, any outstanding issues should be addressed as soon as possible by MSP:

- **Reporting on authorisations and/or deliveries:** A harmonised reporting system should be established under the ATT that requires all States Parties to report on authorisations and deliveries. By means of the former States will be able to demonstrate that they are rigorously applying the ATT transfer criteria; by means of the latter, the quantities of arms and related items that have actually been transferred will be more accurately recorded. For an initial period following entry into force of the Treaty, however, States should be able to report on either authorisations or deliveries as their national systems allow.

- **The scope of reporting:** States should be required to report upon all transfers and transactions that fall within the scope of the Treaty. A variety of concerns that have been aired should be considered as insufficient cause to limit the scope of reporting under the ATT. For example:
 - **issues of commercial confidentiality** can be largely met through retrospective reporting and the avoidance of specific technical or pricing information
 - **national security concerns** should not be seen as inhibiting comprehensive reporting under the ATT given that several major exporting States already publish regular national reports on arms transfers licensed and/or delivered and given the potential for confidence-building among States, as acknowledged in the context of the UNRCA
 - **reporting on components** must be included under the ATT given that a complete failure to do so would create a very serious loophole; reporting on authorisations should be the start-point for components, as the relevant information should be collected by states through the authorisation process itself
 - **reporting on international ammunition transfer** authorisations and/or deliveries is something that is already done by a number of States, including several major exporters; there is no suggestion of any attendant requirement for marking and/or tracing of ammunition under the terms of the ATT.

- **Public transparency:** Public transparency will be vital to the effective functioning of the ATT and to building confidence in the effective operation of the regime. National reports submitted under the ATT should therefore be publicly available. Concerns regarding the implications of public transparency for national security or commercial confidentiality, such as those addressed above, should also be set against the fact that there is already a great deal of information relating to international arms transfers in the public domain, including States' submissions to the UNRCA. Furthermore, misinformation and potentially damaging misperceptions can be effectively countered through the publication, by States, of comprehensive and accurate information on their arms transfer activities.

- **Alleviating the reporting burden on States:** The main burden of reporting for major arms-exporting States centres upon the scale of the task of data collation and analysis as well as the task of presenting information in an organised and accessible format. Different problems have been presented by States that are not major exporters. Many smaller States with limited involvement in the international arms trade do not possess systems for arms transfer data-gathering and report-production and so may require assistance to establish the requisite technical capacity and expertise; this may take some time to achieve. Given these realities, provision should be made for the establishment of flexible reporting requirements and for relevant support and assistance to be rendered to those that require it. Such provisions could include:
 - **allowing for 'phased reporting'** whereby some States are permitted additional time before they are required to produce their first report, so as to allow for the establishment of new systems and processes
 - **a standardised reporting template** that reflects the reporting requirements under the Treaty and the production of relevant guidelines to help inform States practices in the collation and presentation of information
 - **allowing for submission of 'nil reports'** by States, as appropriate
 - **provision for mandatory and voluntary reporting requirements** in relation to steps taken to implement the Treaty: a detailed reporting template could be developed with "core" reporting requirements for all States Parties and the possibility to provide additional information
 - **exploring synergies with other instruments**, for example, whereby States providing comprehensive reports on their arms transfer activities under the ATT would not be required to also submit a return to the UNRCA.

A repository for ATT reports

The ATT should require States Parties to submit their national reports to an ISU (see below). Beyond acting as a mere repository for national reports the ISU's role in the ATT reporting system could include:

- **drafting standardised reporting templates** for reporting on arms transfers and reporting on steps taken to implement the Treaty
- **making the national reports publicly available online**
- **checking the national reports** for timeliness, completeness and accuracy and following up States Parties with any questions in this regard
- **identifying good practice** and lessons learned with regard to ATT reporting (and implementation in general)
- **assisting in the identification of States Parties' reporting assistance requirements**, for example, by arranging for a 'peer review' of relevant national systems, as required
- **identifying sources of appropriate assistance** for States that require help in the production of their national reports
- **conducting an analysis of the data provided** by States Parties in order to provide a report on trends and developments in the international trade in conventional arms for discussion at the MSP (see below)
- **raising any issues** with regard to the effective functioning of the ATT and of the reporting system on the agenda of the MSP (see below).

National implementation

The ability of States Parties to implement the ATT's provisions through their national transfer control systems runs to the very core of the potential effectiveness and impact of the Treaty. It will thus be important for the Treaty to specify the type of national implementation provisions that will be required in order for States to deposit their instruments of ratification; failure to elaborate these provisions will present the risk of States signing and ratifying a Treaty that they are unable to implement.

National requirements for ATT implementation

Given that the ATT will be implemented at national level it will be vital that the Treaty specifies minimum requirements for national implementation of States Parties' obligations. Accordingly the ATT should establish States Parties' responsibilities including in terms of:

- **the nature and extent of controls** including on the import, export, re-export, transit, transshipment and brokering of conventional arms and related equipment
- **the requirement to incorporate a risk assessment** as part of the international arms transfer assessment process
- **ensuring the provision of relevant documentation** so as to facilitate proper assessment of proposed international arms transfers
- **the criminalisation of violations of national laws** relevant to Treaty implementation by actors operating within a State Party's jurisdiction.

In addition, the ATT should require that, on ratification, States Parties are capable of exercising effective national control over all international transfers of conventional arms as required by the Treaty. This should be enabled through the establishment/ adoption/maintenance of:

- **a national point of contact** for ATT-related matters
- **adequate national record-keeping systems** providing for the collation, storage and retrieval of data relating to all authorisations/deliveries of international transfers

of conventional arms and related material covered by the scope of the Treaty, and a requirement that such records be kept for a minimum of 20 years

- **clear and comprehensive national legislation** fulfilling all Treaty obligations and defining legal powers, criminalising breaches and setting out sanctions and penalties
- **administrative systems** including a dedicated authority responsible for: assessing and authorising/refusing international arms transfers in accordance with the Treaty; ensuring a co-ordinated and consistent approach among all relevant agencies operating at national level; and for fulfilling record-keeping and reporting requirements under the ATT
- **appropriate regulations** including a control list of conventional arms and security equipment as required under the scope of the Treaty and to which the Treaty's provisions should apply
- **internal transparency and accountability provisions** including through regular reports to the national legislature
- **resources and capacity for monitoring and enforcing compliance** of the Treaty including customs, border controls and judicial entities and for ensuring the security of conventional arms and related materials imported into, exported from, or in transit through national jurisdiction
- **industry-outreach programmes** commensurate with a States' role in the international transfer control chain including awareness-raising of transfer control issues and of national laws and regulations
- **mechanisms allowing for international co-operation** on ATT implementation including the exchange of relevant information and best practices for international arms transfer control and the provision of mutual legal assistance
- **a requirement that importing States provide end-user documentation** and that exporting states take steps to authenticate this and consider the use of follow-up checks to prevent diversion and ensure lawful delivery, effective stockpile security and authorised end-use.

The elaboration of detailed guidelines for national implementation could be undertaken through the development of an associated 'Implementation Guide' (see *Implementation Support Unit* below).

Peer review

The ATT should include provision for 'peer review' of national systems for international arms transfer control so that States Parties and States Signatories requiring support in the development of effective national legislation, systems, procedures and capacities for international arms transfer control may enlist the help of other States in identifying priority needs and possible sources of assistance. Such a 'peer review' system should be open to all States Signatories/Parties to the ATT given that this would provide a valuable means for comparative international review and lesson-learning among different States' national control systems, enabling the clarification of relative strengths and weaknesses to guide national reforms and international co-operation and assistance.

Information exchange and international co-operation

Within any multilateral regime there is an inherent need for States to exchange information and to co-operate on Treaty implementation. This was recognised in the Report of the 2008 ATT GGE which noted that the Group had explored "how a potential Treaty might promote multilateral and *ad hoc* exchanges between States".⁸ Accordingly, it will be important for the ATT to establish the requirement for States Parties to exchange information and to co-operate with each other so as to develop common understandings and to support Treaty implementation.

⁸ UN Document A/63/334 www.un.org/ga/search/view_doc.asp?symbol=A/63/334

In addition to endorsing *ad hoc* bilateral exchanges the ATT should outline a non-exhaustive list of aspects of Treaty implementation on which it would be beneficial for States Parties to exchange information on a multilateral basis, for example in the context of the MSP, and to co-operate. This could include in relation to:

- **the development, implementation and effective enforcement of national systems** for controlling international transfers of conventional arms including legislative and regulatory provisions
- **application of Treaty criteria** in arms transfer decision-making processes
- **risk assessment** in the international arms transfer assessment process
- **interpretations of the scope of the Treaty** in relation to items covered and types of transactions
- **technological developments** that may be relevant to Treaty scope or in terms of its general implementation
- **problematic actors or trade routes, seizures of illicit shipments** of arms, and prosecutions of entities under relevant national laws
- **increasing national, regional and international tensions** and potential and on-going conflict situations
- **potentially destabilising accumulations** of conventional arms and related equipment.
- **denials issued** pursuant to the application of the ATT's provisions
- **states Parties affording one another the widest extent of mutual legal assistance** in the investigation, prosecution and enforcement of the Treaty's provisions
- **identifying States Parties' ATT implementation needs and meeting requests for assistance, including victim assistance**
- **any other matters regarding the implementation and application of the Treaty.**

Consultations on implementation and compliance issues

Consultations that enable the clarification of implementation and compliance issues are an important part of many international instruments. Accordingly the ATT should allow for States Parties to consult and to raise questions or concerns relating to Treaty implementation or State Party compliance. Such questions or concerns may arise in relation to information that is provided in States Parties' national reports or elsewhere and could be indicative of a range of circumstances, from lack of national capacity for effective ATT implementation to wilful non-compliance.

States Parties wishing to clarify relevant issues should seek, firstly, to raise the issue bilaterally with the State Party concerned. Thereafter, should concerns persist States Parties should be free to raise questions or issues relating to Treaty implementation or State Party compliance to the attention of MSP. Such issues could include questions regarding:

- **a particular transfer** authorised by a State Party
- **a perceived lack of action by a State Party to address conduct that may undermine the goals and objectives of the Treaty** on the part of actors within their jurisdiction
- **difficulties encountered by a State Party in fulfilling its reporting obligations** under the ATT
- **difficulties encountered by a State Party with regard to fully implementing the Treaty**
- **concerns as to whether a State Party has followed due process** in the arms transfer assessment process
- **the perceived failure of a State Party to afford the necessary co-operation** to other States Parties in the implementation of the Treaty's provisions
- **concerns over whether a State Party has fulfilled its end-use undertakings.**

Every effort should be made to address issues of implementation or compliance on a case-by-case basis and in a co-operative manner. The MSP should be at liberty to mandate a subsidiary committee, a group of experts, a peer-review exercise, or other body/mechanism so as to fully investigate questions of serious implementation failure. Once the relevant facts are established, the MSP should decide an appropriate course of action.

International assistance

International assistance to promote effective implementation is a feature of many international instruments. Given that some States may not, from the outset, have all the requisite systems and controls in place for ATT implementation, the long-term credibility of the Treaty and the prospects for its effective implementation will be significantly enhanced if the ATT provides that States may request and access appropriate assistance. This should also act as a spur to the Treaty's eventual universalisation. Accordingly, the ATT should acknowledge that States Parties may request, receive, offer and provide assistance with the aim of building capacity and facilitating or supporting Treaty implementation at the national level. In doing so, the Treaty should also recommend a holistic and co-ordinated approach to assistance and the designation of national points of contact for the purposes of managing requests for, or the provision of, assistance. The Treaty should also allow for the rendering of appropriate assistance by international, regional, multilateral and non-governmental organisations.

A variety of types of assistance could be requested and provided, including:

- **assistance in the identification of needs**, for example through peer review or the development of National Action Plans
- **legal/legislative assistance** to develop laws or regulations
- **technical assistance**, including the sharing of best practices for the development of national systems for effective international arms transfer assessment, for information management and national-report production, and in support of customs and law-enforcement capacities and operations
- **material assistance** including the provision of hardware and software systems that facilitate *inter alia* efficient processing of international arms transfer assessments, record-keeping, reporting and information exchange, and of effective stockpile management and other measures to prevent diversion
- **financial assistance** including facilitating the attendance of representatives from developing countries at annual MSP and periodic Review Conferences
- **assistance in the training of relevant personnel** at national level.

Victim assistance

The humanitarian principles that continue to drive efforts to establish an ATT demand recognition of the rights of victims of the irresponsible and illicit trade in conventional arms and related materials. These rights are acknowledged in a range of other contexts including in relation to transnational crime, human trafficking and gross violations of human rights. Accordingly, the ATT should reinforce the existing rights of victims and encourage States Parties co-operate in providing recompense to victims and support for their rehabilitation and inclusion in society.

Implementation Support Unit (ISU)

The experience of other international treaties strongly suggests that some form of dedicated functional institution – such as an ISU – is an essential requirement for the promotion and facilitation of effective Treaty implementation. Accordingly the ATT should provide a clear mandate for the establishment of an ISU under the purview of MSP (see below) and funded by means of 'assessed contributions'. It should be tasked

with assisting States Parties in their efforts to implement the Treaty, with an indicative list of its core functions set out, as follows:

- **to serve as a repository for national reports** provided by States Parties
- **to review and analyse data** on arms transfers and implementation provisions provided *inter alia* in national reports and to disseminate relevant information to States Parties
- **to manage the ATT reporting process and support States Parties in the production of national reports** e.g. through development of a reporting template and identifying best practice and lessons learned
- **to report on the functioning of the ATT reporting mechanism to the MSP**
- **to provide technical and administrative support to the MSP and Review Conferences** and to implement, as required, the decisions of these bodies
- at the request of a State Party, **to assist in identifying gaps in national arms transfer control frameworks**, possibly through the facilitation of a peer review process or support for the development of a National Action Plan
- at the request of the MSP, **to develop an 'Implementation Guide' and/or legal and administrative templates** to support national implementation
- **to ensure co-ordination with regional organisations, international organisations and non-government organisations** and facilitating their involvement, as agreed by the MSP, in supporting ATT implementation activities
- **to serve as a 'clearing house'** in helping to match capacity-building needs with sources of appropriate assistance
- **to explore and encourage synergy and co-ordination** with relevant programmes in related fields
- **to conduct outreach and awareness-raising** so as to promote universalisation.

Section B: Final provisions

Meetings of States Parties (MSP)

Most international treaties include provision for regular (often annual) MSP. Under the ATT regular MSP will be essential to ensuring the on-going effectiveness and relevance of the instrument. The overall purpose of the MSP should be to improve the capacity of States Parties to implement the Treaty. However, it should also fulfil vital roles in terms of allowing States to engage in information exchange and dialogue on a range of Treaty-relevant matters and in serving as the primary body responsible for addressing concerns relating to Treaty implementation and State Party compliance.

The ATT should provide a clear mandate for the holding of annual MSP outlining its core functions, including:

- **to address matters relating to the status of the Treaty**, including its membership and progress towards universalisation
- **to enable the exchange of information and to facilitate international co-operation** among States Parties with regard to Treaty implementation including through identification of lessons-learned and best practices in national implementation (see *Information exchange and international co-operation* above)
- **to agree upon the detailed requirements for ATT reporting** (see *Reporting* above)
- **to address matters relating to the operation of the Treaty** including the ATT reporting mechanism and the matching of capacity-building needs with the provision of appropriate assistance
- **to address concerns relating to the implementation of the Treaty and/or of State Party compliance** and, as appropriate, to mandate a subsidiary committee, a group of experts, a peer-review exercise, or other body/mechanism so as to fully investigate questions of serious implementation failure (see *Consultations on implementation and compliance issues* above)

- **as necessary, to decide on the need to invoke dispute settlement procedures** under the Treaty (see *Dispute settlement* above)
- **to agree on all outstanding matters relating to the establishment, functions, resourcing, staffing, funding and location of the ISU** and to oversee and ensure the effective functioning this body (see *Implementation Support Unit* above)
- **the need for procedural, technical or administrative changes to the Treaty** including amendments to the list of items/activities controlled under the Treaty
- **to agree on the respective roles of Observer States, State Signatories, International Organisations, Regional Organisations and Non-Government Organisations** consistent with the above provisions
- **to manage relations with States not party to the ATT** consistent with the provisions set out in the Treaty
- **to agree on the agenda for ATT Review Conferences** including possible requirements for amendment of the Treaty (see below).

Review Conference

It is commonplace for international treaties to include provision for regular Review Conferences in order to provide an opportunity for States Parties to review and analyse the operation of the Treaty. Such Review Conferences tend to be most effective when in addition to conducting a retrospective assessment they are also given a forward-looking mandate and are enabled to examine the implications of the review for the future form and function of the instrument. Building on the deliberations and experiences of MSP the ATT should establish provision for a five-yearly Review Conference process as follows:

- **to ensure full review of all aspects of the ATT** including its operation, implementation and institutional arrangements and mechanisms, not least in relation to the goals and objectives of the Treaty
- **to consider the possibility of future improvements and amendments** to the Treaty including the possibility of convening an Amendment Conference
- **to develop outreach strategies** in pursuit of securing the broadest possible participation in the Treaty.

Review Conferences should be preceded by preparatory meetings to *inter alia* agree on the objectives and modalities of the Review Conference, including the roles of Observer States, State Signatories, International Organisations, Regional Organisations and Non-government Organisations consistent with the above provisions. In the years when there is a Review Conference scheduled there should be no MSP.

Entry-into-force (EIF)

EIF provisions are generally included in international treaties in order to clarify upon which States the obligations of the Treaty are binding. The ATT should establish that:

- **EIF is not dependent on ratification by any one country or specified group of countries**
- **EIF to take place either two years after the Treaty is established or following ratification by the minimum number of States necessary for the Treaty to be workable**, for example, 30 to 40 State ratifications – whichever occurs first
- **once the Treaty has entered into force EIF for a State subsequently ratifying the Treaty should be 30 days from the date on which the instruments of ratification are deposited.**

Dispute settlement

Under any international Treaty, dispute-settlement mechanisms are essential for addressing issues which can occur among States Parties concerning the interpretation and application of the Treaty; in addition they also serve as a means of promoting effective Treaty implementation.

States Parties should make every effort to consult and co-operate with each other to settle any dispute that may arise (see *Consultations on implementation and compliance issues*, above). Where all co-operative means have been exhausted the MSP should invoke dispute settlement procedures. This could include the possibility of enlisting the good offices of the UN Secretary General and/or referring matters to an external body, such as the International Court of Justice. To ensure confidence is maintained in the operation of the Treaty, the outcome of any dispute-settlement procedure should be made public.

Relations with States not party to the Treaty

It will be important for all States Parties to encourage States that are not party to the ATT to ratify or accede to the Treaty with the goal of achieving universal adherence. The ATT should therefore encourage States Parties and any institutions established under the Treaty to assist States not party to the Treaty towards this goal.

Reservations

It will be vital that all States Parties fully support and uphold all aspects of the ATT and commit to its full implementation. Accordingly, the Treaty should state that no reservations should be permitted.

Conclusion

COMPREHENSIVE AND ROBUST PROVISIONS for ATT implementation will help to ensure the health, longevity, and effectiveness of the Treaty in the decades following its entry into force. While there is clearly a significant amount of detail to be worked through, as noted above, not all of these issues require resolution at the July 2012 DipCon. Furthermore, once the Treaty has entered into force, the task of establishing an effective ATT implementation regime is not likely to be achieved overnight and continued political will and commitment will be required. However, the establishment, in due course, of the provisions set out in this report – if coupled with a comprehensive scope and transfer criteria that are based on States obligations under international law – will go a considerable way to creating a Treaty with the real potential to enhance State and Human security and, in doing so, to save lives and livelihoods.

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.

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