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## International aspects of Arms Trade Treaty implementation: Key issues for consideration

*This briefing paper sets out Saferworld's conclusions from a seminar organised in co-operation with the Ministry for Foreign Affairs of Finland held in Helsinki on the 8 & 9 February 2011.*

### Reporting under an Arms Trade Treaty (ATT)

It will be in the interests of all States Parties to show that they are acting responsibly under the Arms Trade Treaty (ATT). A transparent system of reporting will serve this purpose and should help pinpoint if, and in what respects, states require assistance for ATT implementation. As such, there is a logic for reporting to be a legally-binding commitment under the ATT and for reporting commitments to be elaborated in an Annex or Protocol to the Treaty. Some key reporting issues are discussed below.

#### *What should reporting cover?*

National reports under the ATT should contain details of arms transfer licences granted since this information would give the most accurate picture of how states are implementing the Treaty. In this regard, there would need to be a relationship between reporting requirements and the scope of the Treaty. Ideally the scope of reporting will closely reflect ATT obligations regarding the types of weapons and types of transactions that are to be controlled. Furthermore, reporting should allow states to demonstrate that they are complying with their obligations under the ATT through, for example, reporting on national legislative and regulatory provisions for ATT implementation. Reports could also provide details of national points of contact for ATT matters. A clear reporting template should be agreed with minimum requirements for national reporting.

#### *How often should states report?*

Most states that already produce reports on their arms transfer activities publish data on an annual basis. In addition, reporting under most other international arms control instruments takes place annually. It would seem logical, therefore, that there is an annual reporting requirement under the ATT.

#### *To whom should states report, and for what ends?*

There would need to be a repository for national reports—whether an existing body or a dedicated Secretariat/Implementation Support Unit (ISU). This repository could publish national reports online and provide assistance to states in producing their reports. This body could also be required to produce a review or assessment of the information provided by states so as to assess compliance and/or to identify trends and developments in the

international arms trade. Alternatively, such an assessment function could be undertaken by means of a Peer Review Mechanism (PRM). The results of such a review or assessment could be discussed by States Parties in a designated ATT forum. This process would help pinpoint if, and in what respects, states require assistance for ATT implementation.

#### *How to minimise the burden upon states?*

The consolidation of reporting commitments with other international regimes could reduce the burden upon states; but it is not clear how this would be done. The burden of reporting is particularly acute for small states with very limited resources. Accordingly, there is a need to organise reporting in such a way as to minimise the bureaucratic burden while still ensuring that reporting serves its designated purposes. Moreover, for such states, failure to report should not always be considered a *prima facie* failure of compliance.

#### **Consultations in the context of an ATT**

One of the principal potential benefits of an ATT could be the establishment of channels of communication between states on arms transfer control issues. In this regard, bilateral and multilateral consultations under the ATT should be viewed as complementary processes.

##### *Bilateral consultations*

States should be at liberty to consult bilaterally on any matters relevant to the Treaty. However there is an argument for including provision for bilateral consultations within the Treaty so as to legitimise such interactions. This could involve a requirement that states identify a national point of contact for any bilateral approaches. A range of issues could be discussed in the bilateral context. For example, states might wish to consult bilaterally on accessing relevant assistance for ATT implementation. In addition, any discussion of export licence denials that are issued could be undertaken bilaterally between the prospective importing state and the state that denied the licence. Moreover, preventing and combating criminal activities under the ATT may also benefit from bilateral discussions in the first instance.

##### *Multilateral consultations*

Multilateral consultations and information exchange could take place at an annual Meeting of States Parties (MSP) and could be useful in improving standards of implementation and addressing questions relating to the operation of the ATT. For example, it may be necessary for states to consult multilaterally on updating or modifying the categories of equipment that are controlled under the Treaty. In addition states may also wish to discuss the ATT reporting mechanism and/or any substantive issues that arise in relation to the provision of national reports. Beyond this, states may wish to consult on matters relating to the application of ATT transfer control criteria, or on matters such as the need to prevent destabilising accumulations or to combat risks of diversion. Finally, the articulation of specific implementation requirements and the provision of relevant assistance could also benefit from discussion in a multilateral context.

## **Promoting implementation and addressing compliance issues**

All states parties will have an interest in full implementation of the ATT. The operating assumption should therefore be that States Parties will endeavour to act in good faith.

Given that the ATT will be a legally-binding instrument, states' obligations under the Treaty will need to be set out clearly. In addition to legislative and regulatory frameworks, compliance and prosecution mechanisms will be required at national level and government authorities will need to ensure compliance within their own jurisdiction. Where states are unable to fulfil their ATT obligations due to inadequate national systems, appropriate assistance should be made available.

There should be focussed consideration of national implementation; this could take place at an annual MSP. These deliberations could be supplemented by a review process—possibly involving an ISU or PRM—which could seek to identify potential compliance problems and to identify solutions. Any grouping of states involved in a PRM or other committee will need to be balanced in terms of geography, size etc.

While a co-operative approach should always be the point of departure with regard to compliance problems, the potential response of the international community to flagrant Treaty violations needs to be considered and addressed. At the same time, it should be recognised that challenging compliance is a very serious step and states will need to guard against spurious allegations of non-compliance.

## **National implementation and assistance**

The ATT should include basic requirements for ATT implementation—based upon existing export control mechanisms—so as to facilitate the development of common standards. However, since ATT implementation is a national prerogative, the Treaty should not go into great detail as regards how the Treaty is to be implemented at national level. One option would be for the details of national implementation to be specified either through model regulations or a “Users' Guide” in an Annex to the Treaty which can be more easily modified over time.

Different states will require different types of assistance for ATT implementation. While states might be expected to identify their needs through the national reporting process this may be insufficient to enable full assessment of national capacity-building requirements. Such efforts could usefully be supported by dialogue within the context of an annual MSP backed-up by an ISU and/or a PRM.

There is considerable relevant experience in the provision of assistance under other international agreements such as the PoA and UN 1540 Resolution; however, this also places a premium on donor co-ordination so as to avoid duplication of effort and enable the provision of targeted assistance. This could be achieved with the support of an ISU.

Whereas it may not be appropriate to set out time-lines for national implementation of ATT obligations it will be essential that a dialogue is maintained among states regarding progress in meeting internationally-agreed transfer control standards. Moreover, it will be critical for the effective implementation of the ATT that states in a position to do so offer and deliver relevant support as requested by states struggling to meet their ATT obligations.