

FACILITATOR'S SUMMARY ON IMPLEMENTATION AND APPLICATION

22 July 2010

General:

The Preparatory Committee dedicated two informal sessions held on 19th and 21st of July 2010 to discuss issues related to the implementation and application of an ATT. Discussions on issues related to implementation acknowledged the substantive linkage between implementation of an ATT and its "Scope", "Parameters", "Principles" and "Goals and Objectives". For a robust Treaty to come about, all such elements had to be - eventually - coherently interrelated both conceptually and practically.

The discussions touched on a wide range of topics and progress was made in identifying key issues which require further detailed examination taking into account discussions on other related elements of an ATT.

This summary does not attempt to reflect areas of agreement nor those where divergence of views exist, but rather provide an impartial and somewhat structured account of all key issues which delegations have brought forward to the discussion so far. These include the following issues:

I. Concept of an ATT:

While the importance of avoiding simultaneous and overlapping discussions on different variants of ATT models was highlighted, along with a preference to gear discussions towards shaping a single collectively agreed model, expressed views ranged between a preference of a Treaty model which should be implemented solely at the national discretion of its members, on a case by case basis, and a Treaty model which should impose national obligations but rely at the same time on an international secretarial body to assist in its implementation, enforcement, verification and/or monitoring and application. Mechanisms such as national legislation, transparency and international cooperation and assistance were seen as central to implementation.

II. National Obligations:

Under the discussion on national obligations, various views were expressed regarding the following principles:

- ATT should not lower national or regional standards on arms transfers.
- States have a sovereign right to manufacture arms and to authorize or deny their transfer to other States.
- The agreed parameters under an ATT were to represent the basis against which a transfer is authorized or denied.
- ATT should equally take into account concerns of importers and exporters.
- ATT implementation should rely on clear, predictable and unambiguous parameters facilitating the highest possible degree of uniformity of implementation in an objective manner.

- Application of the potential parameters of an ATT should be enacted in cases of grave violations of the parameters and where such violations are confirmed by relevant United Nations bodies.
- Assessing the risk of diversion in the context of an ATT should target substantial risks of diversion and be based on significant and credible evidence of such risks.
- ATT should be centered around criteria promoting the respect of IHRL and IHL.
- ATT should include an arms control aspect to its implementation.
- ATT implementation should take into consideration the capacity of States.

Under the discussion on national obligations, various views were expressed regarding the following practical measures:

- Identify primary (and possibly secondary) national obligations to be imposed by an ATT.
- National legislative and administrative measures to control exports, imports, transits, etc.
- National provisions to prohibit, prosecute and penalize participation in illicit arms trade.
- Criminalize violations on a national level.
- Possible timeframe for the establishment and development of legislative and administrative procedures.
- Establishment of national authorities responsible for controlling and licensing arms transfers in accordance with national legislation under an ATT.
- Establishment of national focal points.
- Creation of entity to address domestic offences.
- End-user and end-use certification.
- End-use and end-user checks on national and/or international level.
- Record keeping, marking and tracing of weapons and reporting on these activities.
- Tracing of diverted weapons in order to determine loopholes and increase accountability.
- Possible obligation to report transfer decisions to a UN or other dedicated international database (to possibly include transfers and/or denials).
- Registration for importers and exporters.
- Possible control lists.

III. Transparency Measures:

Various views were expressed regarding the following issues:

- Reporting, information sharing and information exchange:

- Possible submission of national reports on an annual basis.
- Develop reporting templates/ Standardized reporting forms.
- Build on existing reporting mechanisms including UN Arms Register (without prejudice to discussions on scope or parameters).
- Agree on level of detail, nature and extent of information required for reporting.
- Possible reports on national production and trade stocks.
- Reporting procedures to take into account national administrative capacities.
- Develop means to scrutinize accuracy and completeness of reporting.
- Consider regional/region-based reporting.

- Careful consideration of confidentiality of sensitive information associated with reporting.
- Consultation and Clarification.
- Dispute Settlement.
- Record-keeping.

IV. International Mechanisms and other Measures:

Various views were expressed regarding the following issues:

- An Implementation Support Secretariat either as part of the United Nations System, possibly in connection with ODA or the UN Register on Conventional Arms, or an independent international body. Cost of establishment and operation of the Secretariat would be covered by States Parties.
- A consultation and clarification mechanism, with a possible dispute settlement procedure and follow-up set of measures to address cases of (non-)compliance.
- Meetings of States Parties.
- Monitoring and Verification mechanism.
- Review Processes.
- Possible establishment of a fund to finance victim assistance and other activities associated with the promotion of the purpose of the Treaty.
- International cooperation and assistance:
 - Allow requests for assistance to be initiated by potential recipient.
 - Provide for assistance in implementation.
 - Provide for Victim Assistance.
 - Explore possible nature and mechanism for assistance (Legislative/Legal, Administrative, Technical or Financial..etc.).
 - Exchange experiences in legislation related to an ATT and in its practical implementation.
 - On technical assistance, it can include assistance in implementation of a licensing system, training, technology transfer, industrial cooperation, stockpile management, etc.).
 - Determine loopholes and increase accountability.
- Consider penalties/sanctions associated with non-compliance (would require the identification of what represents a violation).
- Dispute settlement: (Regarding an accusation of a breach of ATT obligations, challenge to a decision to approve or refuse a particular transfer, or a challenge to the adequacy of a State's implementation of an ATT).

V. Discussions on added value/Incentives for Universality:

Various views were expressed regarding the following issues:

- Trust in a robust, transparent and fair Treaty.
- Transparency as a confidence building measure.
- Establishment of fair, high standards for the import, export and transfer of arms.
- Access to cooperation and assistance programmes.
- Preventing diversion of arms from legitimate to illicit market.
- International cooperation and assistance.
- Victim Assistance.

VI. Other Issues:

Various views were expressed regarding the following issues:

- Verification, Compliance and possible Sanctions against non-compliance.
- Entry into Force [qualitative vs. quantitative].
- ATT as an "ISO" standard for international arms transfers/possibly promoting industrial cooperation among its members (also related to the added value of an ATT).
- Relationships with non-State parties.

The Way Forward:

1. Discussions on issues related to implementation and application at this stage took into account the complexity of the issues under consideration, and led to advancing the ability of the Preparatory Committee in continuing to examine such issues in a more structured manner.
2. A more structured discussion on the key themes brought about in the discussions will be required in the future in order to broaden the area where convergence of views can occur in the consideration of an ATT. A general agreement on the structure of future discussions and a more in depth examination of key elements under consideration will naturally facilitate this effort.
3. The next step will also require an attempt to be made by the Preparatory Committee to narrow down the number of elements under consideration in view of the eventual identification of their relevance to a collective perception on the implementation and application framework of an ATT, taking into account progress made on other related elements under consideration.