

Promoting Implementation of the ATT

The Arms Trade Treaty (ATT) should suggest minimum requirements for national implementation, although the practical details will remain the prerogative of States Parties. There should be provisions for transparency, and mechanisms for monitoring, review and amendment. Procedures should be specified relating to possible implementation problems, such as the identification of States Parties' needs and provision of technical co-operation and assistance, and for the clarification of compliance issues and resolution of disputes. Specific criteria should also be laid down for the Treaty's entry into force.

1. National Implementation

Practical day-to-day implementation of the ATT will be carried out by national authorities. The ATT will require effective national control mechanisms for international transfers of arms including:

- clear and comprehensive national legislation and systems fulfilling all Treaty obligations which define legal powers (including extra-territorial jurisdiction and universal application), criminalise breaches and define sanctions and penalties;
- administrative systems for assessing and authorising/refusing proposed international arms transfers in accordance with the provisions of the Treaty;
- effective mechanisms, including resources and capacity for monitoring and enforcing compliance of the treaty, including customs, border controls and other enforcement and judicial entities;
- national systems for collation, storage, and retrieval of comprehensive data on international arms transfers and licence authorisations/denials within States Parties' jurisdictions;
- authenticated end-user documentation and follow-up procedures to prevent diversion through verification of lawful delivery, effective stockpile security and authorised end-use.

2. Transparency Mechanisms

An ATT should oblige States Parties to publish accurate, comprehensive national reports on international transfers of conventional arms and steps taken to implement the Treaty. Information relating to the former should be produced, at a minimum, on an annual basis; information relating to the latter would be provided in comprehensive terms in States Parties' first national reports with updates and changes notified subsequently when relevant.

Data in national reports should enable meaningful independent scrutiny of implementation, through information on individual transactions as well as on national systems. Specifically, national reports should include retrospective data on licences/authorisations issued and denied and deliveries made under the ATT. This should include, as appropriate, information on dates of issue/denial and delivery, types and quantities of the relevant items and the end-users.

States Parties should report on steps taken nationally to implement the Treaty including details of all relevant legislation, regulations and administrative procedures, and on details of capacity-building needs and specific requests for assistance, notification of willingness to provide assistance generally or in specified areas, and information regarding assistance provided and/or received (including assistance for victims of armed violence). Sufficient information should be provided in national reports to allow assessment of whether the Treaty is being applied in full.

3. Monitoring and Review Mechanisms and Institutions

A minimum international institutional requirement would be for an annual Meeting of States Parties (MSP) as the main Treaty oversight and decision-making body. The MSP would address matters of status or implementation of the Treaty, either in annual plenary session or through meetings of specially-convened subsidiary committees.

Provision should also be made for a formal Treaty Review Conference (RevCon) every five years. The possibility of future amendment to the Treaty should be enabled through Amendment Conferences or other procedures as agreed by the MSP.

An independent Treaty institution, such as an ATT Implementation Support Unit (ISU), should be established in order to fulfill Treaty-related functions as mandated by the MSP such as:

- serving as a repository for national reports;
- reviewing and analysing data on relevant transactions provided by States Parties and assisting them in addressing discrepancies;
- supporting and guiding States Parties in the production of national reports, e.g. through development of a reporting template;
- providing technical and administrative support to the MSP and RevCon;
- developing legal and administrative templates for national implementation of the Treaty;
- at the request of a State Party, assisting in identifying gaps in national arms transfer control frameworks, e.g. by facilitating peer engagement in the review of national systems;
- helping match assistance needs with sources of appropriate assistance, including for the purpose of facilitating assistance to victims.

The ISU would be available to help the MSP to monitor compliance, thereby building confidence in the Treaty. The ISU should not interfere with states' lawful decision-making procedures on international arms transfers. In addition, civil society should be encouraged to make a positive contribution to the ATT regime by providing information relevant to Treaty implementation to the appropriate state authorities.

4. Consultation, compliance clarification and dispute-settlement provisions

All States Parties would be able to raise questions or concerns relating to Treaty implementation at the annual MSP. In addition, the Treaty should codify States Parties' right to consult bilaterally on any issues relevant to Treaty implementation, including on decisions relating to specific transactions. Every effort should be made to address implementation issues on a case-by-case basis in a co-operative manner.

The ATT should provide means for clarifying and addressing problems of compliance. The MSP should be at liberty to mandate a subsidiary committee, group of experts, the ISU, or other body to investigate questions of serious implementation failure. Once that body establishes the relevant facts, the MSP would decide an appropriate course of action.

Where all co-operative means to resolve an implementation failure have been exhausted and a State Party is confirmed to be in persistent and flagrant violation of an ATT, recourse to dispute-settlement procedures may be necessary. This should include the possibility of referral to an external body, such as the International Court of Justice; the ATT should specify the roles and responsibilities of the different institutions that may be involved. To ensure confidence is maintained in the operation of the Treaty, the outcome of any compliance investigation must be made public.

5. Technical co-operation and assistance

The ATT should include a comprehensive framework for international co-operation and support, whereby states can request and receive implementation assistance from other states and relevant international, regional, and sub-regional bodies. ISU functions would include helping states identify and articulate specific needs by, for example, facilitating assessment of implementation capacity, and helping match requests for and provision of assistance in areas such as:

- development or review of legislation and administrative procedures;
- development or strengthening of States Parties' international arms transfer control systems;
- enhancing the capacity of law-enforcement agencies;
- development of international arms transfer data-management;
- development of the capability to produce an annual report;
- development of capacity to prevent diversion;
- training of relevant personnel;
- victim assistance.

States should be encouraged to participate in the formulation and delivery of capacity-building and assistance programmes. Where appropriate, existing development-assistance mechanisms could be used to channel additional resources in support of institutional capacity-building, e.g. for training customs officials or strengthening oversight mechanisms. Priority should be given to requests from states that sign the Treaty.

6. Entry into force

Entry into force should not be dependent on ratification by any one country or specific group of countries. It should be based on the minimum number necessary for the Treaty to be workable, for example, 30 state ratifications.