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PREVENTING VIOLENT CONFLICT. BUILDING SAFER LIVES

# Ensuring effective implementation of the Arms Trade Treaty

## **A National Assessment Methodology**

**AUGUST 2016**

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## Acknowledgements

This report was compiled and authored by Roy Isbister and Elizabeth Kirkham, Saferworld. Any opinions within should be attributed accordingly.

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# 1

## Introduction

The Arms Trade Treaty (ATT) sets out rules to govern the international transfer of conventional arms. States Parties to the ATT are legally required to ensure that they are in full compliance with all of its binding provisions. For those states with a history of arms trading – especially a significant history of arms exporting – this may prove relatively straightforward if they possess the relevant expertise to easily identify any shortcomings in their national arms transfer control systems and to make the necessary changes.

Other states without significant experience of, and exposure to, the international trade in arms may lack appropriate institutions and mechanisms comparable to those that have developed in major arms trading states. Moreover, they may find that the ATT demands significant change to – or overhaul of – their existing laws and practices, while determining the extent and precise detail of such changes may be further complicated by the lack of internal expertise in this issue area.

The ATT national assessment methodology elaborated in this report, while available for use by all states, is designed primarily with this latter group of states in mind. It will enable current or prospective States Parties to the ATT to gain a full understanding of how their existing laws, regulations, institutions, mechanisms and practices are, or are not, in compliance with the ATT thus helping to identify what steps should be taken, and in what sequence, in order to close implementation gaps in a cost-effective way. This methodology allows for the assessment to be carried out internally, if preferred by the government, or by external experts. Whichever path is chosen, it should be stressed that for the assessment to be effective it will need to be carried out by individuals with a full appreciation of national arms transfer controls and of the detailed implications of the ATT's provisions.

The methodology also provides for the fact that different states will have different requirements and that for those states that have no track record of arms exports and very limited arms imports it makes little sense to build the type of resource-intensive system required by a major arms exporter. This methodology is therefore structured very much with a view to developing an efficient system appropriate to the specific needs and capacity of a particular state.

This report addresses the need for, and key elements of, an assessment; what is required of an assessment team; and the potential make-up of such a team. It then walks through the various steps of the assessment process, from agreeing a Memorandum of Understanding and drafting a Country Situation report, through the conducting of Scoping and Assessment exercises, to the drafting, presentation and finalisation of a National Assessment Report.

The methodology is based on Saferworld's many years of experience of assessing national arms transfer controls generally, and more recently in the specific context of the ATT. It formed the basis of our recent work in supporting the Liberian Government with their national ATT compliance assessment. We recommend consideration of this methodology: by governments that are in the process of complying with the ATT; by governments that are considering providing ATT compliance assistance to other states; by relevant regional organisations and any other stakeholders with an interest in better ATT implementation. Saferworld also stands ready to help any state or organisation seeking to employ this methodology as part of an ATT needs assessment should they require it.

# 2

## A national Arms Trade Treaty needs assessment: ensuring relevance and ownership

It is incumbent upon every State Party to fully implement the ATT, while every state that ratifies or accedes in future will face the same obligations. Yet many states that have ratified or acceded to the ATT, or intend to ratify or accede, do not have a fully-developed national system of arms transfer controls. Such a national system is, however, one of the key requirements of the Treaty (see ATT Article 5 (2)). In order to develop a full understanding of their national obligations, of where those obligations are and are not being met, and of the steps that will need to be taken to become fully ATT compliant, states will be best served by undertaking a systematic assessment of their existing national legal, administrative and policy frameworks.

Just as there is no one-size-fits-all solution to Treaty implementation, the nature and format of a national assessment exercise will vary from context to context as will the identity and affiliation of those who carry out the assessment. States may choose to conduct an assessment ‘in-house’, using officials from within or formerly of their civil service. They may choose to employ non-government consultants from within the country, or experts from other jurisdictions with experience in implementing and/or monitoring arms transfer controls elsewhere. Irrespective of this choice, two critical, overarching elements of the assessment will impact upon its effectiveness and potential impact: expertise and ownership.

## **Expertise**

Assessments should be carried out by a team of two or three experts. The assessment team must have expertise covering all aspects of arms transfer controls including knowledge of: legislation, military and security equipment, risk analysis, record-keeping and reporting, Customs procedures and border controls, and enforcement practices. Equally important will be an appreciation among team members of the perspectives and constraints of states of less capacitated states with limited involvement in the international arms trade and of the need to tailor solutions accordingly. Also important is that the members of the assessment team have the wherewithal and inclination to interrogate and challenge each other's findings and conclusions. Both of these aspects will be fundamental to delivering a robust assessment.

## **Ownership**

Central to the success of this undertaking will be a sense of ownership of the overall process and its outputs on the part of the authorities of the state in question including all of the relevant government agencies/departments. Only with strong internal political support at the highest level of government, communicated to all officials within the relevant branches of government – from those involved in licensing right through to enforcement agencies, such as Customs and border management – will the necessary cooperation and engagement be forthcoming that will permit a thorough and complete assessment. For their part, the assessment team will need to treat this cooperation with due respect and be sensitive to any national security issues that may arise in the course of its work.

Sensitivities regarding information may vary depending on the affiliation of those comprising the assessment team. On the one hand, it is likely that certain information regarded as inappropriate for sharing with external experts could nevertheless be shared within government circles. On the other hand, there may also be occasions where officials feel more comfortable talking to outsiders than to other officials, particularly where different departments may identify different priorities. In circumstances where there is a reluctance to share information, the assessment team and the government itself should think flexibly about how this might be addressed. It should be noted, however, that for an assessment exercise of this type, specific information about particular arms holdings or transfers would not normally be required.

Almost by definition, a national assessment will *inter alia* identify gaps in existing national systems, mechanisms and practices. In this context, it will be

important to keep in mind the rationale for the assessment in the first place, and for the assessment team to present such findings not as criticism, but as the basis for future improvements and as potential grounds for engaging with other states that may be in a position to provide material ATT implementation support.

The assessment must be comprehensive, and deliver concrete, realistic, context-specific recommendations for how to move rapidly to effective ATT compliance, taking full account of the need for efficient allocation of resources.

# 3

## The composition and terms of engagement of a national assessment team

While the methodology elaborated here can be applied by all states, for some, typically those with well-developed systems, relatively little change may be required; such states should be well-placed to quickly identify gaps and to manage the necessary changes internally.

By contrast, for those that do not have a well-developed system and whose historical connection to the arms trade has predominantly been as an occasional importer or transit state, an assessment based on the type of methodology set out here will be apposite. In addition, it is less likely there will be the necessary in-house expertise or the resources and time to conduct such an assessment internally, in which case it will make sense for the assessment to be carried out by external experts.

There are a variety of external experts that may have an interest in working with states to conduct assessments. These include: officials or former officials from other states (especially from States Parties) or (sub-) regional organisations; staff from research institutes, think tanks, civil society organisations (CSOs) or independent consultants. Sources of funding for assessments where required may be similarly diverse: states could cover the costs of the assessment themselves; they could seek direct funding or support from multi-donor programmes (e.g. through the ATT Voluntary Trust Fund (as established under Article 16(3) of the Treaty) or the EU ATT Outreach Programme (see EU Council Decision 2013/768/CFSP<sup>1</sup>); they could also build upon existing or

establish new bilateral relationships with individual states. Non-governmental organisations may also seek funding directly from donors and then offer their services to states that require assistance in carrying out a national assessment.

Decisions about who should be engaged to undertake an assessment are important. States are encouraged to assess any offers of assistance carefully, taking into account factors such as expertise, experience and credibility of the prospective partner. The relationship and level of cooperation and openness between the state and the assessing party will be fundamental to the success of the project – it is therefore critical that the government has full confidence in its choice. This is likely to involve a number of discussions between government officials and the prospective partner, possibly including an in-country visit. This would be prior to any scoping exercise as set out below.

Once a decision is taken in principle, the terms of the arrangement will need to be carefully negotiated. A Memorandum of Understanding (MoU) should be agreed between the state and the assessing team, setting out clearly the obligations, responsibilities and rights of the respective parties (for a summary of the type of issues for inclusion in an MoU, see the Annex to this report).

As mentioned above, this team could be drawn from current or former officials from within the country, or could be made up of external experts, or potentially a combination of both. However it is critical that the individuals making up the assessment team have complementary skills, as wide a range of relevant expertise and as much experience as possible in respect of both national arms transfer control systems and the ATT process and content. The methodology is designed to allow for flexibility of approach so that each assessment is tailored to the needs of the state in question. This requires the assessment team to have the skills and capacity to recognise the implications of the fact that ‘one size does not fit all’ and to respond accordingly.

Key areas of expertise include:

- Legal expertise
- International arms transfer policy expertise, including: understanding of the roles of relevant stakeholders in the implementation and oversight of arms transfer control; and, knowledge of systems and processes required for effective arms transfer control
- International arms transfer licensing expertise

<sup>1</sup> ‘EU Council Decision 2013/768/CFSP of 16 December 2013 on EU activities in support of the implementation of the ATT, in the framework of the European Security Strategy’, Official Journal of the EU, 18 December 2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:341:0056:0067:EN:PDF>.

- Enforcement expertise
- Understanding of the relevant political, socio-economic, strategic and cultural environment
- Understanding of the background to the ATT including the UN negotiation process
- Understanding of the current and likely future form and direction of the ATT regime

# 4

## The elements of a national assessment

A comprehensive and detailed assessment will involve a number of stages. The process set out below should be regarded as a model around which the precise details of a particular assessment can be built, rather than a series of predetermined, rigid steps that must be followed without deviation. Every country is different, every assessment will be different, and the details of the respective stages should be discussed, elaborated and agreed by the state and the assessment team working together.

The various stages of the assessment should seek to include the following steps or, depending on circumstance, some variation on these steps:

- Country situation report
- Scoping exercise
- Mapping existing legislation and regulations
- Main national assessment exercise
- First draft of the national assessment report
- Follow-up national assessment exercise
- Second draft of the national assessment report
- In-country presentation of draft national assessment report
- Final national assessment report (submitted to government)

Whether the assessment is carried out internally or by external experts may also impact upon the design and process of the assessment. Firstly, an internal assessment can be seen as having the advantage of allowing greater flexibility with regard to timing: for example, interviews with key officials from different

government departments or agencies can be arranged for any mutually-agreeable time. On the other hand, an assessment visit by external experts creates an imperative for officials from across government to be available according to a pre-planned schedule, thus encouraging a certain discipline and focus. Secondly, an external assessment team is also likely to start with a lower level of knowledge of the country in question. In some respects this might be seen as a disadvantage, for example it may require more work at the beginning of the exercise in terms of research and information gathering; moreover issues arising that might be readily understood by someone from within government may require significant additional interrogation by an external team. Nevertheless an external team may be able to view the country's situation from a more objective, disinterested perspective, and is more likely to question potentially long-held and inaccurate assumptions.

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## **i. Country situation report**

### **The geo-strategic, economic, and security situation of the country**

#### **Purpose**

In order for an assessment team to conduct a fully-informed assessment of a state's capacity to implement the ATT, the team will require a good understanding of the geographical, economic, geo-strategic and internal and external security situation of the country in question. This will provide the essential context and background required for subsequent discussions to take place with concerned actors on the ground and ensure that the information subsequently obtained is properly contextualised.

#### **Methods**

This is the first step in the national assessment process. Background desk-based research will be undertaken with regard to the situation of the country in question. Any potentially contentious issues will be explored with relevant local and, where appropriate, international experts to ensure that an objective, fair and fully-informed picture is derived. The resulting information will be

made available to all members of the assessment team. It will also be available to other stakeholders in the process, who will be free to comment on it. The content is nevertheless ultimately the responsibility of the team.

### **Research outline**

Background research will need to give a strong general sense of the country's situation, taking into account:

Geography (physical and social):

- country size and topography
- whether the country is land-locked, coastal and/or an island state
- the length (and security/porosity) of land-borders and coastline; the number of islands
- extent/quality of physical infrastructure
- population, broken down by gender, age, ethnic origin, etc.

Economy:

- type of economy e.g. industrial, primary resource-based, agrarian
- GDP per capita, GDP growth rates, Human Development Index
- income distribution
- level of international debt
- support from, or supply of, international aid

Geo-strategic and internal and external security situation:

- relations with neighbouring states
- recent history of (direct or indirect) involvement in active conflict (internal and international)
- the existence of latent and/or active security concerns (internal and international)
- availability of arms, in particular small arms, and levels of armed violence

## The state's role in the international arms trade

### Purpose

To develop, as far as possible, a clear understanding of the extent and nature of the state's involvement in the international arms trade (e.g. as a manufacturer/exporter, importer, transit state), including the way this has developed over time and may be set to develop further, in order to inform the evaluation of the adequacy of existing arms transfer controls and to help determine what type of system might be appropriate for the future (see below).

### Methods

Relevant information will be obtained through online desk-based searches and through consultation with relevant officials and relevant stakeholders during the initial in-country scoping visit. This will be based on public source information, however to ensure a comprehensive picture, provision of additional information by the state is to be encouraged. A short summary will be produced.

### Research outline

Manufacture and export of conventional arms:

- types and quantities of weapons/ammunition/components produced
- industry ownership structures (state-owned, commercial, relationships with foreign-owned manufacturers)
- export (or internal) markets, e.g. own use, regional and/or international markets
- approximate annual value of arms exports
- potential developments in the future

Import of conventional arms:

- approximate annual levels of conventional arms imports required for legitimate internal security and self-defence purposes e.g. taking into account the size and functions of the military (including role in international peacekeeping operations) and the regional security situation
- approximate annual levels of small arms and light weapons (SALW) and ammunition imports by dealers/private end-users

- sources of conventional arms imports
- potential developments in the future

Transit of conventional arms through national territory:

- the extent of conventional arms transit/transshipment through national jurisdiction
- the types of conventional arms in transit/transhipped
- the origins of conventional arms in transit/transhipped
- the destinations of conventional arms in transit/transhipped
- primary transit routes and means of transit, e.g. land, sea, air
- (historical) cases of illicit transit/transshipment
- potential developments in the future

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## ii. Scoping exercise

### **Purpose**

The objectives of the scoping exercise will be two-fold. Firstly, to identify the relevant actors within government, parliament, from international agencies and from civil society that are concerned with the state's control of international arms transfers and/or ATT implementation; and to arrive at an understanding of the roles of each of the actors in the process. Secondly, is to identify the main structures and processes relating to the control of international transfers and/or implementation of the ATT within the state in question.

### **Methods**

Consultation with known actors in-country as well as relevant regional and international experts.

### **Process**

Consultations will be undertaken with known actors so as to identify officials, parliamentarians and civil society representatives who may be able to assist in providing the information that is required for the national assessment.

Consultations will also be undertaken with regional and international experts that have knowledge and experience of the country in question. This visit will also be an opportunity to gather relevant documentation that is not available online. In the interests of efficiency, the scoping visit would normally be carried out by just one representative from the assessment team.

Consideration should also be given to holding a cross-government introductory meeting where the rationale for and proposed details of the proposed assessment could be explained, with space provided for questions, so as to help prepare the respective agencies, ministries and individuals for what is to follow.

### **Key questions to consider**

1. Which government ministries/departments/agencies are involved in regulation of conventional arms exports/imports/transit/transshipment/brokering?  
E.g. Ministry of Foreign Affairs, Ministry of Trade, Ministry of the Interior, Ministry of Defence/Armed Forces, Customs, Border Security, Police, Attorney General, Ministry of Justice. What are the specific roles of each of these?
2. Which government ministries/departments/agencies are involved in enforcement of controls on conventional arms exports/imports/transit?  
E.g. Customs, Border Agency, Police, Judiciary, Armed Forces. What are the specific roles of each of these?
3. What, if any, is the role of parliament in scrutinising conventional arms transfer control and what committees/parliamentary bodies are involved?
4. What is the engagement of civil society in scrutinising conventional arms transfer controls and who are the principal actors in this effort?
5. What is the role, if any, of regional or international organisations in supporting the regulation of conventional arms exports/imports/transit/transshipment/brokering within the state?

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### iii. Mapping existing legislative and regulatory provisions

#### **Purpose**

To ascertain what arms transfer control legislation, regulations, procedures and policies exist within the partner country and to evaluate these elements in relation to the obligations that flow from the ATT and other regional or multilateral agreements and instruments to which the country is a member or Party.

#### **Methods**

Consultations with informed actors in-country, obtaining official documents, e.g. relevant legislation and regulations, plus desk-based research to ascertain, as far as possible, the extent and content of existing controls.

#### **Process**

Relevant information will be obtained from government officials and, where feasible and relevant, parliamentarians and local civil society partners, during the initial in-country scoping visit. Official documentation including legislation will be reviewed and relevant provisions will be assessed against benchmarks for ATT implementation. Necessary permission will be sought from external experts prior to utilising elements of their work.

Examples of legislation/regulations to be assessed include:

- Firearms legislation
- Import/export control/trade control legislation
- Customs legislation
- Armed forces legislation
- Legislation establishing relevant governmental structures e.g. National Commission on Small Arms
- Legislation to implement relevant obligations arising from membership of regional and international organisations
- Criminal code

Examples of benchmarks relevant for ATT implementation include:

- Saferworld's Matrix of Essential and Desirable ATT Provisions<sup>2</sup>
- Baseline Assessment Project and Survey<sup>3</sup>
- Pacific Model Law to Implement the ATT<sup>4</sup>
- UN Office of Disarmament Affairs (ODA) ATT Implementation Toolkit<sup>5</sup>
- United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC) ATT Implementation Course<sup>6</sup>
- Organisation for Security and Cooperation in Europe (OSCE) Handbook of Best Practices on Small Arms and Light Weapons<sup>7</sup>
- Best Practice Guidelines for the implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons<sup>8</sup>
- International Small Arms Control Standards<sup>9</sup>
- International Ammunition Technical Guidelines<sup>10</sup>

## iv. The national assessment exercise

Following on from the scoping visit and mapping exercise, the full national assessment will be undertaken in the form of an in-country fact-finding exercise that will enable verification and elaboration of available information and preliminary findings.

2 See Annex to *Implementing the ATT: Essential elements of an effective arms transfer control system* pp 14–33 [www.saferworld.org.uk/resources/view-resource/1081-implementing-the-att-essential-elements-of-an-effective-arms-transfer-control-system](http://www.saferworld.org.uk/resources/view-resource/1081-implementing-the-att-essential-elements-of-an-effective-arms-transfer-control-system).

3 'Arms Trade Treaty Baseline Assessment Project', [www.armstrade.info/](http://www.armstrade.info/).

4 'Arms Trade Treaty: Model Law', *New Zealand Government and Small Arms Survey*, <http://bit.ly/2b5yHja>.

5 'ATT Implementation Toolkit', *UN Office of Disarmament Affairs*, <https://www.un.org/disarmament/convarms/att/>.

6 'Arms Trade Treaty Implementation Training Course', *United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC)*, [www.unlirec.org/documents/FactSheetATT\\_Course-ENG.pdf](http://www.unlirec.org/documents/FactSheetATT_Course-ENG.pdf).

7 'Handbook of Best Practices on Small Arms and Light Weapons', *Organisation for Security and Co-operation in Europe*, 19 September 2003, [www.osce.org/fsc/13616?download=true](http://www.osce.org/fsc/13616?download=true).

8 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons', *Regional Centre for Small Arms (RECSA)*, 21 April 2004, <https://www.issafrica.org/uploads/SAAF12.PDF>.

9 *International Small Arms Control Standards (ISACS)*, [www.smallarmsstandards.org/](http://www.smallarmsstandards.org/).

10 *International Ammunition Technical Guidelines (IATG)*, <https://www.un.org/disarmament/un-safeguard/>.

## **Purpose**

The aim of the national assessment exercise is to build a complete picture of the arms transfer control policies, legislation, regulations, procedures, capacities and infrastructure that exist within the partner country, and to review the strengths, weaknesses, gaps and inconsistencies that exist. An assessment of how the system operates in practice will be undertaken, including the effectiveness of relevant internal communication/coordination mechanisms and available enforcement capacity.

## **Methods**

An assessment team of two to three individuals will hold consultations with relevant stakeholders from government, parliament and civil society in order to fill in gaps in the information already obtained and, crucially, to clarify how the system operates in practice.

Where feasible, visits to appropriate sites e.g. ports and border crossings, will be undertaken to examine how arms transfer controls are enforced. As appropriate, seminars and workshops may also be held to bring together a range of actors to compare understandings. In this regard a multi-agency workshop exploring licensing and enforcement scenarios or case studies can be extremely useful in developing a proper understanding of how the system works in practice.

## **Process**

The assessment team will undertake a series of in-depth interviews/ consultations with representatives from all relevant institutions in-country.

A schedule of meetings and visits should be drawn up in advance in cooperation with the authorities and stakeholders in-country. A list of tailored questions/ issues will be developed for each engagement so as to maximise the potential for a positive outcome. Where appropriate a list of questions may be sent in advance to relevant individuals. The assessment team should also be accompanied by a representative of local civil society in order to build capacity and knowledge in this area and enhance the depth and quality of ongoing in-country engagement in ATT implementation.

## Schedule of meetings with relevant authorities and stakeholders

In order to gain a full picture of the capacity for ATT implementation within a particular national context, all relevant stakeholders will need to be consulted. These stakeholders will vary from country-to-country, as no two national systems are the same. The following template should therefore be used as a guide only. In each case, the assessment team will need to work out its own, country-specific schedule.

Ministry/Agency	Point of contact and contact details	Time and date of meeting	Participants
Ministry of Foreign Affairs			
Ministry of Trade/Economy			
Ministry of Defence/ Armed Forces			
Ministry of Interior			
Ministry of Justice			
Arms transfer licensing authority			
Customs			
Police			
Border agency			
Relevant parliamentarians and committees			
Civil society organisations			

If the assessment is to go into sufficient depth, it is critical that distinct meetings are held with individual ministries/agencies, and that effort is made to meet with the personnel with the greatest knowledge of the subject matter, including both senior officials and those concerned with the day-to-day operation of

any existing system. This is also relevant because different questions will be asked of different stakeholders (see below).

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## Issues to be explored with different actors

One of the key tasks of the assessment exercise will be to verify the information already obtained from the mapping exercise and the legislative review and to fill in any gaps that exist. As such a variety of issues relating to ATT implementation, and arms transfer controls in general, will need to be explored with governmental and non-governmental actors.

For the purposes of identifying the nature of questions to be asked, these actors can be sub-divided or grouped according to their potential role in the regulation of international arms transfers; however each should be consulted individually. Moreover, the questions listed below should be seen as the start point for information-gathering; the assessment team can be expected to elaborate on these questions based on answers received. Note also that not all of the questions listed will necessarily be appropriate for each ministry/agency in a given group, so once again judgement on this point will need to be exercised by members of the assessment team.

### **Group 1: Ministries of Foreign Affairs, Trade, Defence, Justice, Interior; Arms Transfer Licensing Authority; National Commission on Small Arms**

- Does the industrial manufacture of arms, ammunition, parts and components take place within state jurisdiction? If so, are these arms, ammunition, parts and components exported to other states?
- What legislation exists to establish the Ministry's role in the regulation of arms transfers? How is this role defined?
- Who is the competent authority charged with assessing transfers (defined as import, export, transit, transshipment, brokering) of: (1) firearms/SALW, parts, components and ammunition; and (2) major conventional arms, parts components and ammunition?
- Is there an official control list of conventional arms, parts and components and ammunition? What items are included on the list; how comprehensive is it?

- Which activities of the international arms trade are regulated under national law – export, import, transit, transshipment, brokering?
- In respect of each type of transfer regulated: What is the nature of the regulation requirement e.g. prohibition; case-by-case evaluation; registration?
- Do any prohibitions exist in national law relating to specific types of arms transfers e.g. in relation to arms transfers that may violate: (1) national laws and regulations; (2) bilateral or multilateral agreements with other states; (3) international law, such as UN arms embargoes?
- Is there a risk assessment procedure involved in assessing potential arms transfers? Who undertakes the risk assessment? What criteria are incorporated into the risk assessment?
- Who is ultimately responsible for making the decision to permit or refuse a transfer?
- What documentation is required in support of/pursuant to an arms transfer application e.g. licence application, end-use(r) certificate; delivery verification certificate; import certificate?
- What mechanisms are in place to verify the authenticity of supplied documentation?
- What documentation is issued on approving or denying authorisation to a potential arms transfer?
- What information sharing mechanisms exist among the ministries and agencies involved in arms transfer control? What is each ministry's role in any such inter-agency cooperation structure? How is cooperation with enforcement agencies on implementation of arms transfer controls organised and managed?
- What provision exists for keeping of records relating to arms transfers within state jurisdiction? Who is responsible for the maintenance of these records?
- Who is responsible for producing reports pursuant to the state's international commitments, e.g. under the UN Register of Conventional Arms Transfers, the Cluster Munitions Convention, the Anti-Personnel Mine Ban Convention, the UN Small Arms Programme of Action, etc.? Is there a legal requirement that all relevant government ministries should contribute as necessary to these reports?
- Who is responsible for producing reports to parliament on arms transfer matters? How regular are these reports? What information may be contained therein?

- What are the principal amendments that will be required to national legislation/regulations in order to ensure compliance with the ATT? What will the process involve?
- What role, if any, does the Ministry play in international discussions relating to ATT implementation e.g. with regard to the ATT National Point of Contact or Conferences of States Parties?

### **Group 2: Customs, Police, Border Agency**

- What is the legislative basis for the Agency's role in the regulation of arms transfers? How is this role defined?
- What powers does the legislation confer *vis a vis* the Agency's role in enforcing arms transfer controls? Can the Agency seize shipments that it considers may violate: (1) national laws and regulations; (2) bilateral or multilateral agreements with other states; (3) international law, such as UN arms embargoes?
- How does the agency fulfil its role in arms transfer controls enforcement on a day-to-day basis, e.g. documentation checks, cargo inspection? With which other agencies and ministries does it cooperate in the execution of this function?
- What capacity exists for the agency to carry out its work in respect of enforcing arms transfer controls? What specific capacity constraints does it face?
- What information sharing mechanisms exist among the ministries and agencies involved in arms transfer control? What is each agency's role in an inter-agency cooperation structure?

### **Group 3: Parliamentarians and Parliamentary Committees**

- Is the effective control of arms transfers a matter of significant interest within parliament? How often does parliament debate these matters? Who leads such discussions?
- Is their widespread awareness of and understanding of the ATT in parliament? Are attitudes towards the ATT positive overall?
- What role does parliament/parliamentary committees play in scrutinising: (1) arms transfer control legislation/regulations; (2) arms transfer control policy; (3) arms transfer control practice (data on arms exports and imports)?

- Does parliament play an appropriate role in holding the government to account for its arms transfer policies and practices? How could this role be developed?

#### **Group 4: Civil Society Organisations (CSOs)**

- What work do CSOs undertake in relation to arms issues within the country?
- Is your organisation involved in monitoring government policy and practice in relation to conventional arms transfers? If so, how does it do this and how many people are involved?
- Is information relating to the development and implementation of arms export controls readily available? If not, what are the obstacles to accessing relevant information?
- What level of access do CSOs have to relevant government ministries and agencies?
- What level of access do CSOs have to relevant parliamentarians and parliamentary committees?
- What resource, capacity and/or skills constraints does your organisation face in undertaking its work on arms-related issues?

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### **Cross-governmental case study workshop**

The assessment should include a half- or one-day cross-governmental case study workshop, at which various scenarios involving potential arms transfers, developed on the basis of the assessment team's findings to that point, would be presented. The scenarios would seek to explore those issues and circumstances where there appear to be gaps in the system or uncertainties over how to respond. A workshop of this type has the twin benefits of: (1) alerting officials of possible problems with the existing system (and therefore should help sensitise them to the ATT); and (2) filling in gaps in knowledge and clarifying potential misunderstandings concerning the work of the assessment team.

As the workshop case studies will be developed on the basis of relatively detailed knowledge of the national system, the workshop will need to be held towards the end of the assessment exercise. If this is not possible, e.g. for logistical reasons, it could alternatively be held during the follow-up visit/exercise (see below).

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## v. Production of a draft National Assessment Report

### **Purpose**

Following the national assessment exercise a draft report will be compiled that sets out the information obtained through desk research, through the scoping exercise and through the national assessment exercise in a structured way. This will facilitate a clear appreciation of any knowledge gaps that exist or of any issues that require clarification.

### **Methods**

Desk-based drafting with possible follow-up, by telephone/email, with particular individuals on specific issues.

### **Process**

One member of the assessment team will lead on the production of the report with support from other team members.

### **Contents**

The draft National Assessment Report will identify the elements of the national system that already meet the requirements of the ATT, identify any compliance gaps, and, crucially, make recommendations as to how those compliance gaps can best and most efficiently be filled. The precise contents of the report will be dependent, to a degree, upon each state's particular circumstances and the range of pertinent issues that will need to be addressed. However some elements will be common to all reports including the following:

- Background to the ATT
- In-country situation overview
- Current state of legislation and regulations on arms transfer controls
- Responsibilities of the various stakeholders
- Arms transfer licensing system
- Documentation
- Information management and transparency
- Government arms procurement and management processes

- Border controls
- Recommendations
- Conclusions

It is likely that some knowledge gaps and questions will remain following the first round of consultations and the production of the draft report. These can be highlighted in the draft and addressed in a subsequent follow-up assessment exercise.

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## vi. National assessment follow-up exercise

### **Purpose**

This will enable gaps in the information obtained during the main assessment exercise to be addressed and any inconsistencies and misunderstandings to be clarified. It will also allow an opportunity for additional interviews and visits to sites of interest that were not feasible during the initial fact-finding exercise. This stage in the process may also provide an opportunity to build broader support for and encourage wider ownership of the project across government.

### **Methods**

Interviews and consultations with relevant actors in-country; visits to appropriate sites in order to examine how arms transfer controls are implemented in practice.

Depending on how complete the draft report is at this stage, it may prove useful to present initial findings at a relatively small cross-governmental meeting, as a way of sensitising key officials to the overall content and tenor of the report and of giving them an opportunity to make initial comments. As noted above, national ownership of the assessment findings is critical to the success of the project, so it will be important to create opportunities to build understanding of and support for the project.

Any additional information gathered and the feedback provided will be incorporated into a second draft of the report.

## **Process**

A representative from the initial assessment team will conduct follow-up meetings, interviews and undertake visits and meetings that were not previously possible. However, in the event that a significant number of questions were left unanswered after the main assessment exercise, it may be decided to involve the whole assessment team for follow-up. As with the main exercise, every effort will be made to arrange meetings and visits in advance and relevant preparatory work – including drafting of questions – will also be undertaken.

Any necessary redrafting of the report will be carried out at the conclusion of in-country follow-up.

## **Schedule of meetings with relevant authorities and stakeholders**

As per the full national assessment visit, a schedule of meetings, including any cross-government meeting, will need to be arranged in advance. However, the number of meetings required and with which stakeholders will be dependent upon the issues and questions that remain outstanding from the first national assessment visit.

## **Issues to be explored**

The questions outlined for the original national assessment exercise should be revisited with a view to identifying those issues which require further enquiry.

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# **vii. Presentation of National Assessment Report to national stakeholders and international donors**

## **Purpose**

To present the findings from the national assessment in the form of the second draft of the report, with a particular emphasis on the recommendations. This should take place at a meeting of key in-country stakeholders and, where appropriate, representatives from the international donor community, to enable discussion of specific ATT implementation requirements and strategies for addressing them.

## **Methods**

Organise a one-day workshop for relevant government officials, interested parliamentarians and civil society along with key representatives from donor governments and regional/international institutions.

## **Process**

Meeting to be organised by the leader of the assessment team in cooperation with the point-of-contact from within government, and ideally with local civil society partners.

## **Key objectives and intended outcomes**

The key objective of the meeting to present the National Assessment Report to national stakeholders will be to seek and obtain the approval of the state authorities for the conclusions and recommendations of the report. To maximise the value of the report, the recommendations need to be structured to highlight those issues that are of highest priority and the relationships between them, so as to begin to mark out the steps that need to be taken to move towards full compliance as quickly as possible but with the most efficient use of resources.

Building on this, agreement will be sought on next steps, which will ideally include reference to developing an implementation plan based on the report recommendations and a strategy for engaging with other actors who may be in a position to provide required assistance.

## **Agenda**

The assessment team leader will present an overview of the assessment process, the report and its findings to the meeting and will explain how and why certain conclusions were reached. Questions of clarification will be taken from participants and discussions will be held regarding options for taking forward the recommendations, including how to access potential sources of assistance for specific activities as appropriate.

## **Participants**

The participants at the meeting will include representatives of all stakeholder ministries and agencies that were consulted during the assessment, together with representatives of parliament, industry and civil society.

### **'Ownership'**

The nature of the presentation of the report may vary depending on the make-up of the assessment team, the relationship of the team to decision-makers within government and/or the level of agreement or acceptance of the government with the content of the report. Referring again to the critical question of ownership, if the government as a whole is already in a position to endorse the report findings then, if feasible, it will be useful to organise the presentation of those findings on that basis. In other words, a conference or seminar would be organised by the in the national assessment process, in order to present its own ATT national needs assessment report. This may be easier in the event that the assessment has been carried out by officials from within the government, but should still be considered if the assessment is carried out by external experts. In this the role of the aforementioned lead government department or agency will be very important.

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## **viii. Finalisation of National Assessment Report**

### **Purpose**

To make any final adjustments to the National Assessment Report required pursuant to the meeting with national stakeholders and international donors.

### **Methods**

Desk-based work to make any final adjustments to the Report before printing.

### **Process**

The assessment team will be responsible for making any final adjustments to the Report and for overseeing the production of the finished article. Once the report is finalised it will be printed and circulated according to the wishes of the government authorities.

# 5

## Follow up to national assessment

Once the report is agreed and finalised, it becomes the property of the government. It will then be up to that government how the report is used, taking into account the relevant provisions in the MoU.

Ideally, it will be the basis for developing a national implementation plan, and for interacting with those who may have an interest in providing ATT implementation assistance. If the assessment is conducted by external experts, it may well prove beneficial to take advantage of their expertise and in-depth knowledge of the situation in, and requirements of, the assessment country to work with the authorities in the development of the implementation strategy. This will of course, however, be entirely at the discretion of the state authorities.

# 6

## Conclusion

Many states that are or are considering becoming States Parties to the ATT are not in a position to fully implement the ATT, however it is incumbent on every state that has ratified or acceded to the Treaty to implement all of its articles. Identifying exactly where the implementation gaps lie, and thus how best to allocate limited resources, is not necessarily a straightforward task. It is therefore in the interests of everyone – from the states that are seeking to make changes to the way in which they regulate arms transfers, to those international partners who may be in a position to provide support – that decisions are being taken on the basis of well-researched and authoritative information.

The national assessment methodology elaborated in this report sets out an effective and efficient way of ensuring a state has full knowledge and understanding of its current system as compared to the requirements of the ATT, and a clear appreciation of what needs to happen and when, in order to maximise Treaty compliance quickly and efficiently. This methodology acknowledges that all states are different and is premised on the understanding that, especially for states with serious capacity challenges the goal should be appropriate practice rather than (necessarily) best practice; as such it has flexibility built in. For those states looking to provide ATT implementation assistance, adopting the approach herein should provide confidence that requests for support are well thought-out, well structured, and will provide value for money.

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## **ANNEX 1: Elements of a Memorandum of Understanding between the state and the assessing party**

Where the assessment is not carried out by individuals from within the government of the country of assessment, it is highly recommended that before any work begins, a Memorandum of Understanding (MoU) is agreed between the organisation or individuals carrying out the assessment work and the government of the state undertaking the assessment. The MoU should include information on the following:

- Naming of parties
- Sources and acknowledgement of funding
- Purpose of assessment
- Timeframe
- Principles
- Scope of the assessment
- Identities and roles of relevant stakeholders
- Access to
  - materials (legislation, regulations etc.)
  - actors
  - facilities
- Rules on confidentiality and limitations on access
- List of activities, which may include
  - preparatory research
  - in-country visits
  - interviews
  - workshops and seminars
  - production of national assessment report
- Financial arrangements
- Monitoring, reporting and review requirements
- Copyright arrangements
- Rules on external representation
- Dispute resolution
- Changes to the MoU
- Termination of MoU
- Contact information

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