Arms Trade Treaty
Second Conference of States Parties

The ATT Working Group on Reporting Templates
- the Issue of initial reporting deadlines

The Chair of the Second Conference of States Parties to the ATT (CSP2), Ambassador Enaruna Imohe, has requested that the ATT Working Group on Reporting Templates prepare an additional set of issues for decision at this Conference - those related to initial reporting deadlines for States that ratify or accede to the Treaty.

The Treaty contains clear language on when a State Party’s initial report is due: “within the first year after entry into force of this Treaty for that State Party, in accordance with Article 22” (see Article 13.1).

Likewise, there is clear language regarding when a State Party’s annual report is due: “Each State Party shall submit annually to the Secretariat by 31 May a report for the preceding calendar year” (see Article 13.3).

Nevertheless, some issues of interpretation remain - different for the two types of report.

- For initial reporting, the Treaty provides each State Party with a grace period of one year to provide its initial report, plus a minimum extra 90 days related to entry into force provisions. Due to the wording of the entry into force provisions, eight States Parties do not get the extra 90 days.

- For annual reporting, the wording of the relevant Treaty provision is such that the first annual report could cover a period before the Treaty’s substantive provisions entered into force for the State Party in question, or alternatively that the first annual report would be for a shorter period that one calendar year.

The initial report
Article 22 of the Treaty defines a time of entry into force for most States, but not for all.

Article 22.1 states: “This Treaty shall enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depositary.” The date of the deposit of the fiftieth instrument of ratification was the 25th of September 2014 (actually, 53 ratifications had been deposited by the end of that particular day). For these 53 States, the Treaty entered into force ninety days later on the 24th of December 2014 - the same day that the Treaty itself entered into force.

Article 22.2 states: “For any State that deposits its instrument of ratification, acceptance, approval or accession subsequent to the entry into force of this Treaty, this Treaty shall enter into force for that State ninety days following the date of deposit of its instrument of ratification, acceptance, approval or accession.” Thus, for States that deposit their instrument
after the date of entry into force of the Treaty itself, i.e. after the 24th of December 2014, the Treaty enters into force 90 days later.

The Treaty text does not provide any clear guidance for those eight States that deposited their instruments after the 25th of September 2014, but before the 24th of December 2014. Three practical examples to illustrate the situation:

- Iceland was the first State to ratify the Treaty, on the 2nd of July 2013. Argentina belongs to the group of States that ratified the Treaty more than a year later on the 25th of September 2014, when 50 ratifications was attained. For both these countries the Treaty entered into force on the 24th of December 2014 according to Article 22.1. Both these States received a minimum of 90 extra days before the one-year grace period for their initial reports started to count down (Iceland, due to very early ratification, had almost 1-1/2 years over and above the one-year grace period to produce its initial report, Argentina only the 90 days provided by Article 22.1).

- Switzerland ratified the Treaty on the 30th of January 2015, the first country to do so after the Treaty itself entered into force. For Switzerland, the Treaty entered into force 90 days after its date of deposit, in accordance with Article 22.2. Thus, Switzerland (and all other countries that accede thereafter) receive 90 days over and above the calendar year provided as grace period for their initial reports.

- In chronological order, eight countries - Guinea, Serbia, St Kitts and Nevis, Liechtenstein, Poland, Lithuania, the Netherlands and South Africa - ratified the Treaty between the date when 50 ratifications were attained and the date when the Treaty itself entered into force. Since they ratified before the Treaty entered into force, Article 22.2 cannot apply. That being the case, the Treaty offers no other alternative than Article 22.1, which would lead to the conclusion that the Treaty entered into force on the 24th of December 2014 for all eight countries. None therefore received the extra 90 days built into the text of the Treaty, since they ratified during the applicable 90 day period. Guinea, depositing its instrument on the 21st of October, in practice received an extra 63 days. South Africa, depositing its instrument on the 22nd of December, received only 2 extra days before the start of the one-year grace period for its initial report.

Thus, due to a drafting oversight, the eight countries enumerated above receive a lesser amount of time to produce their initial reports than all other States Parties. As a matter of equity, it would seem reasonable that these eight countries should benefit from the minimum 90 extra days for the production of their initial report that the Treaty grants all other States Parties.

A decision by the States Parties to correct this oversight would not have any practical effect, as six of the eight affected countries have already submitted their initial reports, and for the remaining two the 90 extra days have already been exceeded.

Therefore, it is proposed that States Parties at CSP2 take note of this issue.

**Annual reports**

Article 13.3 stipulates that States Parties are to provide by 31 May a report for the preceding calendar year. A strict reading of this Article would imply that a country that ratified/acceded to the Treaty on June 1st 2014 would have to provide its first annual report by 31 May 2015, covering the calendar year 2014, including the first sixth months when the country in question was not bound by the Treaty's substantive provisions.
The reporting obligation in Article 13.3 is quite clear and unambiguous, but the Treaty’s substantive obligations related to the control of transfers do not take effect before its formal entry into force (not even a Declaration of Provisional Application can correct for this, unless the national instrument of ratification, acceptance or approval is deposited on January 1st).

This problem was recognized in the discussions on reporting that took place before CSP1, and a general understanding was reached that a first annual report was only due for the first full calendar year after entry into force of the Treaty for the individual State Party. If Country A ratifies on June 1st 2016, the first annual report will according to this understanding not be due until 31 May 2018, and cover the calendar year of 2017.

This is in fact how the States Parties for whom the Treaty entered into force on 24 December 2014 have interpreted their obligation. A first annual report was not provided on 31 May 2015, covering transfers during 2014, but is instead provided on 31 May 2016, covering transfers during 2015.

Apart from the limited relevance of a report including transfers not covered by the substantive obligations of the Treaty, it was considered that the alternative - a report covering only a part of a calendar year - represented an unwarranted extra effort since the requisite data is normally collected and compiled on an annual basis. From the point of view of universalization, such a first annual report was seen as a potential disincentive for States to join the Treaty.

As no decision was taken on an annual reporting template at CSP1, the general understanding on when a first annual report is due was never formalized. This has not proved to be a problem in practice, but for the sake of clarity for future States Parties, it is desirable that CSP2 adopt an explicit ruling on this point of interpretation.

The following wording is proposed for consideration at CSP2:

“Regarding Article 13.3 of the Treaty, States Parties recommend that a new State Party’s first annual report should cover the first full calendar year after entry into force of the Treaty for that State Party, and be submitted by 31 May the following year. In the spirit of Article 5.3 of the Treaty, nothing prevents a new State Party wishing to contribute further to transparency and accountability from reporting the time period from entry into force of the Treaty and up to the start of the first full calendar year, as long as that additional period is reported separately.”

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