NZ Statement: Monday 11 July

As strong supporters of an Arms Trade Treaty, New Zealand is grateful, Mr Chair, for the further set of texts put forward by you and circulated recently on your behalf by UNODA. Now that we can add your draft language relating to Implementation and Final Provisions to the text already discussed in previous Prepcom sessions, it is clear that we are far advanced down the path of establishing the text of the draft Treaty which will go forward to next year’s Diplomatic Conference.

That is, of course, exactly as it needs to be - given the short amount of time still remaining to us in this Prepcom process. Our confidence that, notwithstanding these time constraints, we will be ready with a strong Treaty text to go forward to the Conference next July owes much, Mr Chair, to the clarity of judgment and the skill and commitment that you continue to bring to your leadership of our process. We remain grateful also, Mr Chair, for the inclusive and transparent way in which you are conducting our Prepcoms.

Following the timetable you have set us, Mr Chairman, I would like to make some comments today on the text dealing with Implementation. I will defer my remarks relating to Final Provisions until later in the week.

As a general comment, we note, Mr Chairman, that the text on Implementation covers essential matters such as the establishment of national control lists and licensing procedures; requirements for contact points, record-keeping and reporting; the non-diversion of transferred items; and measures to require the imposition of appropriate penalties.

There are some useful innovations put forward such as the welcome suggestion for an Implementation Support Unit (which would indeed, we believe, be an effective means to help realise the goals of the Treaty - including through its ability to act as a clearing house for necessary capacity-building).

That said, Mr Chairman, there are some provisions which we fear could prove stumbling blocks to the fair and effective operation of an Arms Trade Treaty – and I would have in mind here the provisions, for instance, regarding transfer denials, and some of the language framing the obligations on transit states.

At the same time, it is possible that we might be missing an opportunity to establish a balanced and collaborative process for ATT monitoring - and one which might prove a useful means to clarify or address differing views regarding ATT compliance. I shall revert to this point later on.

With that broad overview in mind, I’d like at this point to make a few rather more detailed comments on the text before us in order, I hope, to assist with the “focused and fruitful discussion” envisaged in your covering note of 27 June to us all, Mr Chair, and which seems well underway here today. I would propose
to hand some drafting suggestions relating to my comments today direct to the Secretariat.

Turning, then, to the initial section before us under the heading of **Implementation**, I think it would make for greater coherence in the Treaty overall if the text of subparagraph 2 (which deals with the right of self-defence) were incorporated into the earlier section in the Treaty on Criteria (which we discussed at the Prepcom earlier this year) rather than included in the text here. It could, for instance, be included in the chapeau to Paragraph II of the Criteria text.

I am confident that we all agree that it is very important that the Treaty be clear in its meaning and in its requirements. New Zealand sees scope for considerable misunderstanding as to the interpretation of the phrase “political abuse” in subparagraph 3. There is a very real prospect, it would seem to us, of disagreement between parties as to when decisions (such as those relating to transfers under the Treaty) might or might not warrant the label of “politically abusive” ones. This is a phrase innately capable of meaning different things to different people – yet this is not, I think, an area where ambiguity is likely to be constructive. I note the similar remark made this morning by Mexico on behalf of a grouping of regional states.

With regard to section A on **National Authority and Systems** I would think it might be necessary to define terms such as “export”, “transit”, “transhipment” etc given the focus now built into this section on these concepts. I am conscious that at least some of these terms may well be defined differently under states’ varying domestic customs regimes. I note in the earlier sections of the Chair’s text, that while these terms have been used to assist in the definition of what is a “transfer” under the ATT, they have not themselves been defined.

Second, I think it's fair to say that this section on National Authority and Systems sets some very ambitious standards. The language under ‘Exports’ establishes the important requirement for end-user controls. But subparagraph 4 as presently drafted would require an exporting country to “guarantee” that its arms exports are not diverted.

Of course those of us based in Geneva - and the land of the Rolex and other Swiss watches – are well attuned to the concept of absolute ‘guarantees’ for products. However in the context of an exporting process extending by its very nature beyond one’s national borders, a guarantee against unauthorised diversion will, despite the very best of efforts and intentions, sometimes not be realisable. Language stipulating that states “should ensure…” or “should ensure, as far as practicable…” would seem to us to set a more attainable standard. (I would wish, of course, to make the same point with respect to the “guarantee” language which later appears in subparagraph 3 under ‘Transit’.)
Continuing with the Transit provisions under this section, the current draft would seem to foresee a very ambitious range of controls being exercised by transited states. Yet there will be many (developed, as well as developing) states – mine own included - that would struggle to implement such obligations.

The requirement that states of transit record all arms transfers (and effectively ascertain the correctness of their relevant authorisations) would represent a heavy burden - and one that states of transit may not be well placed to carry out. I am particularly conscious of the brevity - and sometimes unreliability – of the description of goods (including conventional arms) entered in a ship or aircraft’s manifest and which would often be the only source of information a state of transit would have with regard to goods coming into its territory or territorial sea.

In saying this Mr Chair, I am also conscious that, fundamentally, as in any trading context, the basic responsibility, and costs, for secure transportation must lie with those who benefit most directly from the transaction. The costs – including to ensure non-diversion of the goods - need to be factored into the export price – rather than creating an unsustainable burden for transit states.

Perhaps a less burdensome – but arguably more effective – regime for transited states would be a risk-based one: a requirement, for instance, that states of transit should take action with respect to arms transfers (e.g. to check authorisations, or inspect cargo) when they receive information or have cause to suspect that a shipment on their territory may be diverted to the illicit market or to an unintended user. Alternatively, subparagraph 1 under Transit could include the phrase “where feasible”.

I mentioned already, Mr Chairman, that the language (under section B) on Transfer Denials might prove a stumbling block to securing support for the ATT and, subsequently, to ensuring its effective and transparent operation. Given that there are a range of states who are not in favour (for a variety of differing reasons) of such a process, the preferable course might be to make reporting on denials an optional element of the Treaty.

This indeed was the approach recommended in a Non-Paper on Implementation of the ATT which New Zealand put out for discussion purposes in the context of a recent seminar held in Geneva. Copies of this paper are available here at the back of the room. Colleagues will see that it suggests that the ATT might invite those states that wish to do so to report annually on international transfers that they have declined.

Before concluding my comments on monitoring, Mr Chair, I would just like to refer to some alternate possibilities for cooperation between states parties in order to implement the objectives of an ATT. These have indeed been put
forward for discussion in the New Zealand Non-Paper on Implementation which I just referenced.

We explore in that paper both a bilateral, as well as a multilateral, process for promoting implementation of the ATT. Under the bilateral mechanism, we outline a possible “Request for Clarification” and also a “Request for Comment” procedure. The multilateral process which our paper explores is for a “peer engagement mechanism”. I would welcome the opportunity to engage over the coming days with colleagues here on any of these suggestions.

Thank you, Mr Chairman, and I look forward to continuing our discussion of these important issues during the week ahead.