



**Statement at the Working Group on Effective Treaty Implementation
On Article 6 & 7**

On the Initial Presentation Sweden

Thank you very much Mr. Nord for facilitating this sub-group and to your Swedish colleagues for their very interesting and elaborate presentation.

I would like to draw attention to a resource currently in development by Control Arms' ATT Monitor project called Risk Watch. The ATT Monitor Risk Watch resource aims to synthesise and analyse credible information on arms transfer-related risks in contexts of concern. As States continue to grapple with the concept of risk, we believe this resource will help to create a more balanced knowledge base among States Parties other stakeholders, and will be a guide both to their own comprehensive risk assessments, and more generally to governments and civil society in the analysis of licensing practice.

While I have the floor, Control Arms would like to highlight the ongoing catastrophic humanitarian crisis in Yemen. In the second half of 2017, the number of life-threatening cholera cases quadrupled from 250,000 to more than one million. This is just one statistic of many that could be given on the devastating situation on what has become the world's worst humanitarian crisis. The suffering of civilians in Yemen is directly linked to continued flows of arms to the warring parties, all of whom have committed serious violations of International Humanitarian and Human Rights Law.

Control Arms welcomes the positive steps taken by Norway, Finland, Germany and the Walloon regional authority of Belgium, all of whom announced over the past few months that they are tightening their controls on arms transfers in the context of the conflict in Yemen. For example, the new governing coalition in Germany has announced that "[he]enceforth we will not authorise exports to countries as long as they are directly involved in the Yemen war." We also commend Austria, Netherlands and Sweden for the restraint that they have shown in this regard in recent years. We encourage these States to share the risk assessment process undertaken in respect to arms transfers to the warring parties in Yemen, so that other States may benefit from good practice.

We further renew our call for all States Parties—in particular the UK and France, as well as Signatories, including the US—to live up to their ATT obligations and immediately cease their arms exports to the Saudi-led coalition for use in Yemen, given the continuing reports of serious violations of international law in this conflict.

On Article 6.1:

While all UN member states are obliged to fully implement UN arms embargos, it is critical for ATT States Parties to ensure that they have the requisite legislation, regulations and other provisions in place in order to uphold UN embargos. This should be considered a central element of their ATT implementation efforts.

In addition, the implementation and enforcement of UN arms embargoes should involve numerous government actors including Ministries of Foreign Affairs, Trade and Defence, intelligence and customs agencies and law enforcement. As such, interagency communication is an essential component to ensuring an effective national arms transfer control system that can ensure compliance with UN arms embargoes. Control Arms encourages ATT States Parties to review their national processes, as appropriate, to ensure efficient interagency cooperation.

On Article 7

Turning to the question: **Is it the direct effect or the indirect effect of an export of conventional arms that needs to be assessed?** The Treaty is clear on this point.

Article 7 requires the assessment of the risk of both the commission and facilitation of serious violations or acts set out under Article 7.1.b relating to international human rights and humanitarian law, terrorism and transnational organized crime as well as Article 7.4 relating to gender-based violence. In the context of this question, 'commit' can be regarded as 'direct effect' and 'facilitate' as 'indirect effect'.

This inclusion of facilitation broadens, considerably, the scope and application of the criteria. It means that an assessment must not rest solely on the direct use of the arms or items to commit the violations or acts listed; rather an assessment should also consider that the possession and availability of the arms or items may help to create the conditions or circumstances whereby the recipient feels able to, is encouraged to, commits the violations or acts.

With respect to **mitigation measures**, it is important to remember that full compliance with the ATT will itself help to mitigate the risk of misuse or diversion, as full ATT implementation requires the development of rigorous and responsible systems and practices.

More specifically, Control Arms encourages governments to distinguish between the risks related to Article 7 and those related to Article 11. Because Article 7 addresses recipient misuse, rather than diversion, mitigation in the context of Article 7 is more complicated.

Mitigation measures such as human rights training for abusive state agencies are unlikely to be effective unless they are part of a wider more comprehensive reform process, involving all relevant stakeholders.

Moreover, such mitigation measures will not be effective overnight, but will take time to make an impact.

We therefore urge States Parties to take these factors into account and to consider carefully those mitigation measures adopted in the context of Article 7.

On GBV

While gender-based violence appears specifically in Article 7 of the Treaty as part of its export risk assessment, States Parties must also consider GBV in the context of the imposition of Article 6 prohibitions. Under Article 6.3, GBV, including rape, forced prostitution and sexual violence, can be used in or constitute genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as



such, or other war crimes as defined by international agreements to which it is a Party. Therefore, the risk of GBV must be assessed for all transfer activities i.e. export, transit, transshipment, brokering and importing.

For further information on the implementation of Articles 6 and 7, I would like to draw the attention of the States Parties and other participants to Chapter 1 of the ATT Monitor Annual Report of 2015. Chapter 1.1 offers a step-by-step legal framework for an Article 7 risk assessment. Chapter 1.2 provides a hypothetical exercise on how to implement a risk assessment referencing Articles 6, 7 and 11.

Finally Mr. Chair, I would like to take this opportunity to highlight a short briefing paper that Control Arms has produced concerning the implementation of Article 7 and which was distributed earlier this afternoon.