

**Working Group on Effective Treaty Implementation**

**Sub-working Group on Article 9**

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**Delivered by: Aaron Lainé, Control Arms**

Control Arms is a strong supporter of the decision at the last CSP to establish the Sub-working Group on Article 9.

[As noted by a number of other delegations] One of the key issues impacting the effective implementation of Article 9 is that while it requires States Parties to regulate transit, it leaves the precise steps to be taken up to national discretion based on what is “necessary and feasible”. Nevertheless, States Parties do not have complete freedom to do as little as they wish in this area primarily due to the fact that Article 9 is impacted by obligations under other ATT Articles, notably 6 (Prohibitions) and 11 (Diversion). These obligations elsewhere in the Treaty give a firm floor to national interpretations of the term “necessary” in Article 9. It would be very useful if time could be found for this Sub-Working Group to consider the relationship between these three Articles and what this means for their implementation.

The current lack of guidance, while allowing states to adopt measures consistent with their own capacities and situations, is not particularly helpful to those states that do not have much in the way of transit controls but who would like to address this gap in their national system. Accordingly, there could be a significant benefit if, in the context of this new Sub-working Group, a range of States Parties could share details of how their systems function (as Switzerland and Austria have done today). This would allow those State Parties that wish to develop their capabilities in this area to gain an understanding from a variety of approaches including systems based on prior notification of transit or individual authorizations, or a combination of general and ad hoc licensing.

A comprehensive licensing requirement for all strategic goods in transit may not be practical for many states. However, all States Parties must be in a position to refuse transit to shipments of arms or items covered in Articles 2.1, 3 and 4, which violate Article 6 of the ATT. The Netherlands has an *ad hoc* licensing requirement for goods in transit where circumstances demand -- this could be an interesting model for the Sub Working-Group to investigate as a way of creating the ability to intervene where necessary.

Questions are often raised in respect of the right to innocent passage of seagoing vessels; however, where vessels are known to be transferring arms to an embargoed entity, for example, or to an end-user that would use them to commit genocide, crimes against humanity or other violations of IHL as described under Article 6, the obligation to prevent such transit overtakes the right of innocent passage. These issues were explored in a Saferworld publication entitled “Prevention, Transit, and Innocent Passage Under the Arms Trade Treaty” under the rubric of

the ATT Expert Group, which is available online. We can send a link to the Secretariat for distribution to participants.

As an example of when an *ad hoc* approach might be appropriate, Control Arms would like to draw your attention to the Saudi Arabian state-owned cargo vessel Bahri Yanbu, which is currently scheduled to stop in several European ports before onward travel to the Middle East. It is our understanding that the Bahri Yanbu may well be loading and transporting arms destined for Saudi Arabia for use in the war in Yemen, with implications under Article 6 of the ATT. We see this as a case where states could apply an *ad hoc* licensing requirement to ensure that they are not inadvertently complicit in this shipment. We would welcome States Parties' views, in particular from those at whose ports the Bahri Yanbu has planned to dock, on how they apply Article 9 of the ATT in this instance. To our knowledge, these include Germany, Belgium, the UK, France, and Italy.

This case also points to the need for transit states to coordinate with each other in order to manage problematic shipments. As it happens, information on transit denials and diversion risks is already shared by EU member states, and it could be useful in the ATT context if they could say a little on how this is managed in practice. Information sharing and cooperation, both pre- and post- shipment, is a vital element in ensuring the effective and smooth functioning of transit and transshipment controls. Control Arms would urge States Parties to consider whether some form of information-sharing mechanism could be established under the ATT which could assist States Parties in the implementation of Article 6 in particular.