

Working Group on Effective Treaty Implementation

Sub-working Group on Article 11

05 February 2020 - Geneva, Switzerland

Delivered by: Roy Isbister, Saferworld and Frank Sliper, Pax

Session 2. 1 How to undertake consistent and objective transfer risk assessments that take into account the risk of diversion (Articles 7(1) and 11(2));

- Adherence to highest international standards;
- Existence of practical guidance on export procedures and standards (published handbooks, websites);
- Willingness of Parties to share established procedures and standards;
- Defining necessary actions/ appropriate solutions;
- Different diversion risk standards among different parties;
- Rapidly changing circumstances – challenge?

It is self-evident that it is better, wherever possible, to prevent small arms diversion rather than to respond to diversion once it has taken place. This implies careful risk assessment before decisions are taken on whether to authorise arms transfers. However, it is unclear as to how many States actually have, in place, effective systems or frameworks for assessing diversion risks. At the same time, while understandings relating to diversion have increased over the past two decades, there is no strong sense of quite what is meant by “highest international standards” for diversion risk assessment. It may be more useful to focus on encouraging “good practice” in this area. In this regard the ‘Possible Measures to Prevent and Address Diversion’ that was Annexed to this Working Group’s Draft Report to CSP4 would, in our view, represent a good starting point.

With regard to establishing the legitimacy and credibility of all parties involved in the transfer, each State should be responsible for ensuring that each actor concerned with arms transfers and operating within their jurisdiction are legitimate and of good standing. One of the most efficient ways of ensuring this is to establish a requirement that those concerned with the trade and international transfer of arms register with a relevant national authority. Registration requirements should include a demonstration by the party concerned that it has a full understanding of its relevant obligations, while registration should be a pre-requisite for the individuals or companies concerned to undertake their activities relating to the international trade in arms. There should also be a requirement for periodic review of the registration, while conviction of a serious criminal offence should result in disqualification and loss of any eligibility to continue operations in respect of the international arms trade. Registration requirements are increasingly commonplace and if all ATT States Parties were to adopt such a system this could enable sharing of information in relation to individuals and companies that are found to have broken the law.

Session 2.2. How to identify certain diversion risk indicators;

- Red flags

How to establish the legitimacy and credibility of all parties involved in the transfer, such as the exporter, brokers, shipping agents, freight forwarders/intermediate consignees and stated end-use/r (Article 11(2));

- Bilateral/Multilateral Cooperation: Information exchange regarding the parties involved in the transfer;
- Availability of database resources;
- Open resources (are they legitimate?);
- Intelligence information availability;

Session 2.3. How to examine the risks arising from the proposed shipment arrangements;

- Different duties of parties involved in shipment arrangements (exporters, importers, final delivery addressee, freight forwarders, carriers, customs brokers, transport companies);
- Familiarity with type and characteristics of goods, and depending of that - suitability of type of the proposed shipment arrangement;
- Familiarity with proposed transfer route, and depending that – is it possible to ensure physical security of the goods during all phases of transportation (who is responsible?);

It is often difficult to identify risks posed by shipping arrangements because of the way that international shipping operates. Frequently exporters of goods will entrust shipment of a cargo to a freight forwarder who will organise the shipment according to particular instructions they have been given which have nothing to do with prevention of diversion and indeed which may even increase risk: for example, they may be asked to send the goods by the quickest or most direct or most economical route. This means that exporters may not know which carrier is transporting their cargo or the route that it will take. For most goods, this may be acceptable; however, it is arguable that in the case of international arms transfers, and especially for types of equipment anticipated to have an elevated diversion risk, shipping arrangements should be established and approved in advance of the export taking place. Consideration could also be given to whether any of the rules applied to the transfer of hazardous materials could usefully be extended to transfers of arms. Certainly 7633 authorities in exporting, transit and importing States should be made aware in advance of the movement of arms from, through or into their jurisdiction so that any necessary steps may be taken to ensure safe passage and prevent diversion.

Session 2.4 How to assess the reliability of controls in the importing country and the transit country (applicable);

- Reliability of documentation issued by importing/transit country;
- How much information importing /transit country are willing to share?;
- Previous experience (if applicable) of mutual cooperation with importing /transit country;
- Good practices and available information regarding past cases of fraudulent transfers;

Session 2.5 How to examine the risk that a conventional arms transfer would increase the risks of diversion of the existing holdings of the end-user.

- Extensive knowledge of the existing holdings of the end user and his needs of future purchases (arms types, quantities, lifecycle of holdings, existence of domestic production, personnel number of the end user military/police, etc.);
- Geopolitical situation and non – state actors involvement;

Session 2.6 What are the options for mitigating detected risk(s)?

- The existence of adequate resources;
- Request for additional information/ documents/assurances;
- Enhanced monitoring or refusal of the transfer?;
- Need and wiliness of the country to seek for international assistance in order to mitigate detected risks;
- The existence of political will;

Distinction should be made between standard good practice and mitigation, which implies taking additional steps which may be specific to a particular transfer. For example, obtaining and verifying import and end-use documentation is not a mitigation measure; it is basic good practice.

There are a range of mitigation measures that could be useful at different stages of an international arms transfer, but consideration of possible responses requires, in the first instance, a thorough assessment of the risk of diversion, including a detailed analysis of the nature of that risk. Any mitigation measures should then be targeted so as to address the specific risk identified. If, for example, the risk is calculated to be unsafe storage by the final end-user post-delivery, mitigation should target the end-user's storage facilities and/or procedures, as appropriate.

For arms in transit, a variety of security measures could be envisaged from satellite monitoring of a shipment through using specialist transport providers, to providing an armed escort; some of these are mentioned in 'Possible Measures to Prevent and Address Diversion' that was Annexed to this Working Group's Draft Report to CSP4.

Session 2. 6.1 The Sub-working group will also examine the role of information and information exchange in conducting a risk assessment and identify the types of information and mechanisms of information exchange that are relevant and necessary.

- Importance of information exchange;
- The methods of information exchange;
- Relevant types of information;
- Availability of information to some/all parties?
- Right people/ right information/ right time

While information exchange is one of the critical elements of an effective diversion risk assessment, it is particularly important for those States that are not part of existing international non-proliferation networks or regional arms control mechanisms. Establishing provision for information exchange within the ATT framework will be vital if all States Parties are to play a full role in preventing the diversion of arms. This will require all States Parties to share and update details of their national point of contact, and to have procedures in place to enable their point of contact to operate as an effective conduit, ensuring that relevant information is passed to the appropriate individuals in a useful format and in a timely manner.

3. Session 2. 1 The role of the private sector in mitigating diversion risk

This discussion will explore the role of the private sector, including arms manufacturers/industry and civil society, in mitigating diversion risk before the physical transfer takes place. It will also examine the role of internal export control compliance programmes.

- Private sector parties credibility;
- Private sector awareness raising;
- Industry outreach;
- Commercial interests vs. National Interests vs. Global Security

- ICP – Importance of Internal export control compliance programmes;

Civil society and industry have a vital role to play in addressing the diversion of arms. To this end, a number of civil society organisations have been involved in initiatives to detect and trace diverted arms on the ground in regions of conflict and instability, and in doing so have shone a light on weaknesses in States arms transfer controls and in efforts to prevent diversion. Other civil society organisations are working with States to identify gaps in national arms transfer controls and thus to help build capacity to address diversion of arms. Moreover a number of civil society organisations are working to support government efforts to conduct outreach to industry on strategic trade controls while, at the same time, working with industry actors to promote and encourage the adoption of internal compliance programmes – including training on how to screen for diversion risks.

But we must never forget that the primary responsibility for identifying, addressing and mitigating diversion risk lies with states. And yet too often we see the lead being taken in identifying problematic practices by human rights or humanitarian organisations, journalists, other non-governmental actors. Even dedicated individuals, or so-called citizen-journalists, wading through social media posts and satellite imagery have repeatedly shown to be very capable of identifying diversion and misuse of weapons. Often on a shoestring budget, potentially at great personal risk.

We will continue to do our bit, but imagine how much more effective we could be if governments themselves approached these issues with the same sense of priority and urgency as the non-governmental sector. Nevertheless, we will continue to do our bit, with the hope and expectation that our work will be received, to quote the language of the ATT itself, “in a consistent, objective and non-discriminatory manner.”