



**Seventh Conference of States Parties to the Arms Trade Treaty**

**Working Group on Effective Treaty Implementation  
Sub-Working Group on Article 9**

**27 April 2021**

**Delivered by: Ms. Cindy Ebbs, Control Arms**

TOPIC 1:

Thank you for giving me the floor Mr. Facilitator,

Control Arms regrets that the COVID-19 pandemic has delayed the work of the sub-Working Group on Article 9. However, we welcome this new opportunity to discuss how best to manage transit and transshipment of conventional arms in the context of the ATT.

Article 9 of the ATT is one of the least developed of any of the operative parts of the Treaty. This is undoubtedly a reflection of the fact that not only do states' approaches to the issues of arms transit and trans-shipment vary according to their individual circumstances, there is a general lack of detailed understanding of the types of control regimes that exist. As a result, the sub-working group on Article 9 has a vital role to play in shining a light onto this important aspect of ATT implementation and facilitating the sharing of experience among states from different regions and in different circumstances.

I want to thank the Flemish Peace Institute for their very insightful presentation. The analysis of the systems covered provides a very useful and detailed understanding of how several States Parties not only define but use in practice the terms "transit" and "trans-shipment." Control Arms agrees with and emphasizes Mr. Cops' conclusion that more transparency is needed on these issues, and we look forward to the willingness of States Parties -- and work of this sub-working group -- in this regard.

Control Arms therefore encourages transit and trans-shipment States to be open and proactive in sharing their experiences and the lessons they have learned in this field of operation. We hope that from these discussions, progress can be made toward the development of a compendium of existing practices or voluntary guidance on implementation of the transit and

transshipment obligations under the ATT. This, in turn, should increase awareness of how effective implementation and operationalization of Article 9 can contribute meaningfully toward realising the objectives of the ATT, including strengthening compliance with United Nations Security Council resolutions and preventing the diversion of arms.

Control Arms understands that while the terms 'transit' and 'transshipment' are clearly inter-linked, there are also important differences between them. It should be noted, however, that there is no generally agreed understanding of the precise distinction between these two terms. For these purposes, Control Arms is taking transit to be the transport of goods that pass through a territory on board the original means of transport (for example, a vessel, train or aircraft). We see trans-shipment as the transport of goods through a territory where the goods are unloaded from one means of transport and re-loaded onto the same or a different means of transport.

While there are definitional and, in some cases, practical distinctions between the terms "transit" and "trans-shipment" with regard to licensing requirements imposed by states, there is no distinction between these terms when it comes to States Parties' obligations under Article 6 of the ATT. I will expand on this in the Control Arms statement under Topic 2.

Thank you for your attention.

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TOPIC 2:

Thank you Mr Facilitator, for giving me the floor again to share Control Arms' statement on this topic.

Control Arms welcomes the consideration of the legal questions posed in Topic 2 of today's session of the Sub-Working Group on Article 9. Topic 2 and this exercise more broadly, provides a much-needed space for the sharing of views on the intersection and application of Articles 6, 7 and 9 of the ATT amongst States Parties who play a role in the transit and transshipment of conventional weapons. It also provides a forum to discuss how ATT obligations fit together with existing international legal obligations, such as the Law of the Sea and the Right of Innocent

Passage, and also those relating to transit by air and by land. In this regard, Control Arms encourages the Sub-Working Group to seek out resources developed by civil society, especially one developed by Saferworld in 2015 and available on its website titled: [Prevention, Transit and Innocent Passage Under the Arms Trade Treaty](#) (2015).

As we are at the beginning of this exercise, today I will concentrate on States Parties' relevant obligations under Article 6 of the Treaty.

The Article 6 prohibitions apply not only to exports, but to all “transfers,” which the ATT defines as inclusive of transit and trans-shipment. While the language in Article 9 appears to provide some flexibility to states with regard to how to implement obligations found in Article 6 with respect to transit and trans-shipment, its “necessary and feasible” language cannot be read as relieving States Parties of their obligation to uphold the prohibitions contained in Article 6. Instead, States Parties must fulfil their obligations relating to Article 6 based on a holistic interpretation of the Treaty.

For States Parties to be in a position to fulfil their obligations under Article 6, they need to have knowledge of the type, quantity, ultimate destination and end-user of arms that are transiting, or being trans-shipped through, their jurisdiction. In this regard, it is important that States Parties have in place the capability for their competent authority to be notified and provided with all relevant details of conventional arms shipment transiting or trans-shipping through their territory. Furthermore, faithful implementation of Article 6 requires that all ATT States Parties have the legal authority to interdict and prevent the transit or transshipment of arms - in line with UNCLOS principles - where they have reason to believe that the transfer violates Article 6 of the ATT.

For guidance on how States Parties might establish the necessary regulations and procedures, make best use of the information shared in this sub-working group, and progress towards a better understanding of best practices, we reiterate our recommendation to this sub-working group to develop a ‘Voluntary Guide to Implementing Article 9 of the ATT’ similar to processes undertaken in other sub-working groups.

Such a guide would be valuable for States that are in the process of reviewing and developing their national control regulations, systems and procedures to ensure effective implementation of the ATT, and may thus contribute to increased effectiveness of the ATT as a whole.

Finally, Mr Facilitator, the elaboration of guidance for transit and transshipment states has the potential to make an important contribution to ATT universalization. Many States that have not yet joined the ATT are those where transit and trans-shipment are key concerns. Clarifying the roles and responsibilities relating transit and trans-shipment can provide much needed information and guidance on ATT implementation in this specific context.

Thank you again for your attention.

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