

**Control Arms Submission to the
Working Paper presented by CSP6 President - Transparency and Exchange of
Information: Its Role in the Prevention of Diversion**

29 May 2020

Control Arms welcomes the Working Paper presented by CSP6 President Ambassador Foradori of Argentina on "[*Transparency and Exchange of Information: Its Role in the Prevention of Diversion*](#)" (the "President's Paper"), as an initiative which has tremendous potential in advancing implementation of the Arms Trade Treaty ("ATT" or the "Treaty").

Transparency and Exchange of Information in the ATT

In addition to the Treaty's provisions cited in this section of the President's Paper as relating to transparency (Article 11.6; Article 13) and cooperation and information exchange (Article 5.6; Article 7.6; Article 7.7; Article 8.1 and Article 15), Control Arms notes there are two additional critical Treaty provisions that also speak directly to or address States Parties' obligations relating to transparency and information exchange:

Transparency as Purpose. First, it should be emphasized, in the context of Sixth Conference of States Parties to the ATT (CSP6) and beyond, that transparency and cooperation is one of the three central purposes of the Treaty, alongside reducing human suffering and contributing to peace, security and stability. "*Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties*" (Article 1) is critical to the Treaty's effective operation. If we do not refer back to the Treaty's purpose in this context, it is a missed opportunity to ensure that all stakeholders - exporters, importers, transit and transshipment, civil society and industry - work together to achieve this shared purpose. Therefore, transparency and cooperation must be incorporated in the context of all of the actions of State Parties, whether those actions are required or encouraged.

Transparency as purpose must be considered and addressed not only in the substantive application of the Treaty, but also in its procedural aspects. As we work together with the CSP6 Presidency to achieve progress in the thematic area of transparency, cooperation and information exchange in preparation for and during CSP6, it is important that all stakeholders have the opportunity to input into the process in all forums, including the proposed three-tier approach to diversion proposed by the Working Group on Transparency and Reporting (WGTR).

Transparency as a purpose must also include public transparency. Public transparency is all but missing in the President's Paper as well as in the WGTR work plan and recommendations related to diversion. Given the importance of transparency in all its forms to the effective operation of the Treaty, Control Arms calls on the President to include discussions on public transparency in the context of his thematic focus.

Information Exchange Balance and Flow. Second, the President's Paper does not make mention of Article 8.3 in its summary of the Treaty's provisions on information exchange, which sets out a right provided to importers concerning information exchange that complements that of exporters. In Article 8.3, the Treaty provides importing States Parties with the ability to request information from exporting States Parties relating to export authorizations, pending or actual, wherein the importing party is the country of final destination. This right granted to importing States Parties must be included in any analysis of cooperation and information exchange because it provides the opportunity for the exchange of information between parties to a transfer to flow in both directions.

The Role of Transparency and Exchange on Information in Preventing Diversion

As one of the Treaty's main objectives outlined in Article 1 - to "[p]revent and eradicate the illicit trade in conventional arms and prevent their diversion" - diversion appears several times in the ATT's text and figures most prominently in Article 11, which compels each State Party involved in an arms transfer to "*take measures to prevent their diversion.*" Much of the intended responsibility falls upon exporting states, which "*shall seek to prevent the diversion of the transfer of conventional arms (...) by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes.*" However, effective implementation and compliance with the provisions outlined in Articles 11(2) - 11(6), require cooperation and information sharing between all states involved in the transfer. Therefore, these articles provide for the exchange of information between all states involved in the transfer (exporters, importers, transit and transshipment or third party states) on ways to prevent diversion at every point in the transfer chain – from pre-authorization of arms shipments through to delivery, end-use and unauthorized re-export or reassignment.

The progress made by the Working Group on Effective Treaty Implementation (WGETI) Sub-Working Group on Article 11, particularly the non-exhaustive list of practical measures which states can use to address diversion as outlined in '[Possible Measures to Prevent and Address Diversion](#)' - provides a significant and substantial step towards tackling diversion. The list includes eight instances in the transfer cycle during which states may use information sharing and cooperation to prevent or mitigate the risk of diversion. States should use these practical measures to advance efforts toward information-exchange and cooperation to prevent diversion.

The three-tiered approach to diversion (information exchange platform, informal discussion meetings, WGETI discussions) as proposed by the WGTR can play a vital role in enabling States Parties to prevent diversion and ultimately, implement the Treaty. However, in terms of access, two of the three tiers of this approach are open only to ATT States Parties. The closed nature of these meetings limits their utility because it does not provide the option for States Parties to benefit from the knowledge and expertise found in civil society and industry or from ATT signatories and observer states. In the spirit of transparency, cooperation and information

exchange, Control Arms suggests opening these meetings to ensure that all stakeholders can work together to mitigate and prevent arms diversion worldwide.

In terms of the scope of discussions on this important issue, both within these two ATT Working Groups as well as in other fora, Control Arms suggests an expansion beyond lesson-learning and clarification of good practices to include improvements in risk assessments and diversion prevention. Expected outcomes should also include practical initiatives amongst interested governments and other ATT stakeholders. For example, it would be useful to pool information and resources to address particular challenges for risk assessment or prevention, such as the reliability of safeguards on air or naval transportation routes in certain regions and to plan coordinated actions to identify and address weaknesses or gaps in national control systems associated with diversion risks.

Control Arms also sees value in establishing synergies with the work undertaken on this issue in other disarmament sectors, including the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (POA) and the International Tracing Instrument (ITI), the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (Firearms Protocol). Lessons learned in other disarmament fora can contribute to these discussions and strengthen diversion prevention efforts at the national, regional and international level, just as the experiences in this forum can support diversion prevention efforts taken in other frameworks.

Possible recommendations for Approval at CSP6

1) It is recommended that States should continue their efforts to establish a meeting or forum for the exchange of information on diversion in which the participants can discuss suspected or actual cases of diversion, consider possible solutions and have the possibility of outlining good practices.

Control Arms welcomes this recommendation and sees value in the establishment of meetings or of a forum that would facilitate the exchange of information on diversion. Control Arms has long made the case, particularly within the WGETI sub-Working Group on Article 11, for the importance of linking technical discussions to concrete, real-world, cases of diversion (anonymised or otherwise) and to share lessons learned from past experience with the aim of better understanding how to prevent and combat arms diversion.

Control Arms also wishes to stress the importance of involving enforcement as well as export control officials - including from customs and intelligence agencies - in these exchanges of information on diversion. As these individuals are the ones responsible for addressing diversion challenges directly and/or are responsible for the facilitation of exchanges of information and coordination with national counterparts in transit, transshipment and importing countries, they have a wealth of experience to share. Ultimately, it is these officials that are responsible for implementing the policies and recommendations put forward by ATT CSPs.

Control Arms also urges the CSP6 President and ATT States Parties to ensure that these information exchanges are open not only to States Parties, but to all ATT stakeholders, including signatories, observer states, international organizations, and NGOs.

Non-governmental and civil society organizations play a crucial role in supporting the Treaty's implementation and its reporting mechanisms. To this end, civil society organizations provide valuable research and substantive input on transparency and reporting, diversion, and other relevant aspects of the ATT. Others work with ATT States Parties directly to support their efforts to strengthen national legislation and policies to advance transparency and facilitate reporting, and to build capacity to prevent and address diversion. Through its extensive and varied expertise, civil society plays a key role in encouraging and facilitating information exchanges in support of transparency in the arms trade.

Control Arms also considers it crucial to facilitate national and regional exchanges on diversion as part of and in parallel with the meeting or forum that will be established through the CSP6 President's initiative. Facilitating regional exchanges among all parties involved in the transfer chain - export licencing officials, industry representatives, brokers, shipping companies, customs agents and other relevant actors - would add value to these efforts and to the efforts of the WGETI sub-Working Group on Article 11 to develop best practices to prevent and address diversion at each step in the transfer chain.

3) States are encouraged to designate, communicate and update national points of contact, as appropriate, in order to rapidly and easily identify national counterparts for consultations and exchange of information.

Control Arms welcomes this recommendation as a practical way to facilitate information-sharing and cooperation. As a number of States Parties have made significant improvements to their national systems since submitting their Initial Reports, including the adoption of legislation and/or procedures designed to prevent diversion, Control Arms sees value in encouraging States Parties to submit updates to their initial reports with changes to their national control system that meet the requirements of Article 13.1, and in particular, with regard to changes related to the implementation of Articles 11 and 15. These updates are an important information source to analyze efforts to implement the Treaty and identify ways in which States improve their national control systems. These updates will therefore enable national points of contact to identify opportunities for assistance and cooperation when seeking to strengthen national legislation and systems.

4) States are encouraged to hold consultations and exchange information with the objective of verifying the authenticity of the import, export, transit and/or trans-shipment documentation in cases of international transactions.

Control Arms supports this statement, but also encourages states to develop specific mechanisms and forums for such consultations, in order to ensure that they become regular and systematic, rather than ad-hoc. We further suggest that the specific requirements for information

exchange and consultations relating to transit and transshipment by air, sea and land are addressed in such mechanisms.

5) States are recommended to hold consultations and exchange information to verify the legality of users and final uses, as well as the entities and actors involved in international transit and transshipment.

Control Arms fully supports this recommendation. We further propose that states ensure that they have effective systems for such verification explicitly incorporated into their national control systems for export, import, transit and transshipment. Moreover, in order to enhance the effectiveness of this recommendation, Control Arms proposes that States Parties create online platforms or other types of mechanisms to facilitate regular consultations and information exchanges concerning the legality of any such users and final uses.

6) States are encouraged to carry out checks of exports and imports and exchange information on such exports and imports so as to facilitate early detection of diversion during international transactions.

As noted in our recent submission to the WGETI sub-Working Group on Article 11, Control Arms also sees value in States Parties sharing experiences and information generated through specific investigations concerning arms diversion and misuse. States should also support and conduct evidence-based investigations, engage in systematic tracing and improve the collection and analysis of disaggregated data on the types, distribution, movement and use of diverted weapons and ammunition. These activities will provide a platform upon which to more accurately identify diversion risk points, establish patterns of diversion and explore appropriate and effective responses.