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## SUB-WORKING GROUP ON ARTICLE 11 (DIVERSION) – WORK PLAN

### Introduction

In the previous meeting of the Sub-working Group on Article 11 (Diversion) on March 6, discussions focused on the *scope of diversion* and *measures to prevent and address diversion* related to conventional arms.

As noted in the *Chair's Summary Report and Way Forward* paper of 22 March, in the 6 March meeting, participants generally acknowledged that diversion could take place at any stage in the life cycle/transfer chain of conventional arms. Participants broadly agreed the Sub-working Group should consider the issue of preventing and addressing in-transfer diversion (described as *diversion of the transfer of conventional arms*) as well as post-delivery diversion (described as *diversion of transferred conventional arms*). Participants shared examples of prevention measures as well as diversion challenges relating to all stages of the life cycle/transfer chain of conventional arms, and stressed the importance of mechanisms for information exchange to help prevent and address diversion.

Participants expressed interest in doing further work in the Sub-working Group on a range of issues, including:

- where and how diversion is occurring;
- the points in the life cycle/transfer chain of conventional arms where diversion can occur and the challenges and possible preventive measures for addressing diversion at these points; and
- mechanisms for exchanging information on diversion.

To support further work on these issues, as proposed in the *Chair's Summary Report and Way Forward* paper, and drawing on helpful input from a number of States and organisations that provided comments in response to this paper, the facilitator has compiled:

- a draft paper which highlights the different points in the life cycle/transfer chain of conventional arms where diversion can occur and provides an initial list of possible measures to mitigate or prevent diversion at the various stages (transport, upon import, during transit, at storage locations, etc.); and
- a draft initial list of documents already available that provide guidance on preventing and addressing diversion.

These papers are attached as Annex A and Annex B to this work plan. It should be stressed that the measures and guidance identified in these papers are presented only as options, which States may choose to draw from as relevant and useful. They are not proposed as mandatory.

As proposed in the *Chair's Summary Report and Way Forward* paper, the second meeting of the Sub-working Group will address the areas for further work identified above and develop practical recommendations to be made to the Fourth Conference of States Parties (CSP4). To this end, the facilitator proposes the following program of work and guiding questions for the meeting to structure participants' work.

### **1. *Where and how* is diversion occurring?**

In order to develop effective measures to prevent and address diversion, it is important to identify the key points in the life cycle/transfer chain of conventional arms where diversion can occur, and the processes and methods which can be used to divert conventional arms at these points. It is necessary also to understand the challenges faced in preventing and addressing these types of diversion. The facilitator will invite civil society and State Party experts to introduce these issues, including through use of specific case studies, and encourage participants to share their own national experiences in response.

#### Guiding questions

- In your State's understanding or experience, at which points in the life-cycle/transfer chain of conventional arms are they most at risk of diversion, and how are they diverted?
- In your State's understanding or experience, what challenges are faced when preventing or addressing diversion at these points?
- Can you share specific examples from your own State's experience of cases where diversion was attempted or succeeded, and what impact this had on your State's practices with respect to preventing and addressing diversion?

### **2. Measures to prevent and address diversion**

It is clear that diversion can take place at any stage in the life cycle/transfer chain of conventional arms, and different measures to prevent and address diversion are needed for different stages of the life cycle/transfer chain. At the 6 March meeting, and through their responses to the *Chair's Summary Report and Way Forward* paper of 22 March, States have shared examples of a range of measures to prevent and address diversion at different stages in the life cycle/transfer chain. The facilitator has compiled a draft paper based on these inputs, which highlights the different points in the life cycle/transfer chain of conventional arms where diversion can occur and provides an initial list of possible measures to mitigate or prevent diversion at the various stages. The facilitator has also compiled a draft list of documents already available that provide guidance on preventing and addressing diversion. It should be stressed that the measures and guidance identified in these papers are presented only as options that States may choose to draw from as relevant and useful. They are not proposed as mandatory. The facilitator will introduce these draft papers and invite participants to comment (participants are encouraged to provide written comments on the draft papers to the Secretariat in advance of the meeting if they are in a position to do so).

### Guiding questions

- In your State's view, and taking into consideration the discussion on where and how diversion occurs, does the facilitator's draft paper on measures to prevent and address diversion satisfactorily capture:
  - the different points in the life cycle/transfer chain of conventional arms where diversion can occur; and
  - possible measures to mitigate or prevent diversion at the various stages (transport, upon import, during transit, at storage locations, etc.)?

What changes to the paper would your State recommend to make it most useful to States?

- In your State's view, could the paper be used in further work of the Sub-working Group, and if so, in what way?
- In your State's view, does the facilitator's draft list of documents already available, which provide guidance on preventing and addressing diversion, satisfactorily capture the available materials on this subject? What changes to the paper would your State recommend to make it most useful to States?
- In your State's view, could the paper be used in further work of the Sub-working Group, and if so, in what way?

### **3. Mechanisms for exchanging information**

In the 6 March meeting, and in the separate discussions in the Working Group on Transparency and Reporting on 8 March, participants stressed the importance of mechanisms for information exchange to help prevent and address diversion, including establishing (or better utilising) national focal points. Information exchange is important at the policy level (i.e. on measures to prevent and address diversion) as well as at the operational level (i.e. on specific cases of diversion). Participants highlighted some of the mechanisms already in place at the regional level as well as bilateral exchanges. Some suggested the Working Group on Effective Treaty Implementation (WGETI) and the database of national focal points that the Arms Trade Treaty (ATT) Secretariat is currently developing were the only formal mechanisms required for information exchange within the ATT framework. However, there was general acknowledgement of the need for further exploration of options and approaches to enhance information sharing. The facilitator will invite participants to share their views on this.

### Guiding questions

- What are your State's current practices with regard to information exchange on diversion?
- In your State's view, what existing mechanisms are useful for exchanging information on diversion? Are there ways in which these could be enhanced?
- In your State's view, are existing bilateral, regional and ATT mechanisms (WGETI and Secretariat database) for information exchange sufficient, or are new mechanisms needed?

- In your State's view, what further work should the Sub-working Group do on the issue of information exchange?

#### **4. Conclusions and recommendations**

##### Guiding questions

Considering the Sub-working Group's discussions to date, what would your State recommend to CSP4 regarding outcomes from the Sub-working Group on Diversion and further discussion of issues in connection with Article 11 (Diversion), including on:

- The draft initial list of possible measures to mitigate or prevent diversion at the various stages of the life cycle or transfer chain of conventional arms;
- The draft initial list of documents already available for providing guidance on preventing and addressing diversion;
- Further discussion of possible mechanisms for information exchange in future CSP cycles; and
- Whether projects related to Article 11 (Diversion) should be priorities for the Voluntary Trust Fund (VTF)?

**ANNEX A****MEASURES TO PREVENT AND ADDRESS DIVERSION**

The measures identified in this paper are presented only as a non-exhaustive list of options which States may choose to draw from, where relevant and useful, to prevent and address diversion as it may occur in their particular national context. They are not proposed as mandatory.

**Transfer chain stage 1: Before the transfer/Country of origin/point of embarkation**

States could consider:

1. Requiring or encouraging all parties involved in conventional arms transfers (exporters, freight forwarders/intermediate consignees, brokers, shipping agents, and end users) to be registered with national authorities.
  - This could include transportation companies which conduct transfers between third countries.
2. Requiring or encouraging parties involved in conventional arms transfers to introduce internal export control compliance programs to assist them in complying with national export control legislation and regulations, and increase awareness and mitigation of diversion risks.
  - Internal compliance programs could include provisions for parties to conduct their own risk assessments, record-keeping on international commercial operations, and cooperation and information sharing with competent authorities (e.g. regular reporting on licences used, cooperation with compliance visits by government agencies etc.).
3. Performing consistent and objective transfer risk assessments that take into account the risk of diversion, including by:
  - Establishing the legitimacy and credibility of the exporter, brokers, shipping agents, freight forwarders/intermediate consignees and stated end-use/r.
    - Note the guidance regarding such assessments in sources such as the Wassenaar Arrangement 'Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Arms' and 'Best Practices to Prevent Destabilizing Transfers of SALW through Air Transport', as well as the EU 'User's Guide for the Common Position'.
  - Also examining the risks:
    - Arising from the proposed shipment arrangements.
    - Arising from the potential unreliability of controls in the importing country and the transit country (if applicable).
    - Arising from insufficient resources to allow for effective enforcement of national laws concerning the transfer of conventional arms.

- That a conventional arms transfer would increase the risks of diversion or irresponsible export of the existing holdings of the end-user.
  - Utilising interdepartmental / inter-agency examination of the exportation requests, enabling analysis of diversion risks to be based on reliable information, from diverse sources (diplomatic, customs, intelligence unit, UN experts reports, information exchanges between States).
  - Maintaining national databases identifying natural or legal persons previously sanctioned and /or involved in illicit trafficking.
4. Requiring all conventional arms transfers to be subject to prior authorisation, delivery under specific conditions and within a certain amount of time.
5. Requiring proper documentation (such as contracts or agreements, international import certificates, transit approvals, end-user certificates (EUCs), and various other assurances) and a thorough review of that documentation. This review should involve:
- Authentication of documentation (including checks for forged or inauthentic documentation, including authentication of EUCs through diplomatic channels or the importing country's national authority by using the declared Point of Contact).
  - Verification of contents of the documentation through establishing the legitimacy and credibility of the stated end-use/r (see point 4 above).
  - To prevent any falsification risk, importing States could institute national procedures for issuing EUCs for government and private end-users.
6. Including concrete, unambiguous suspension or cancellation clauses in the wording of all conventional arms contracts.
7. Requiring the following details in EUCs:
- Parties involved in the transfer (essential: details of the exporter and end user, such as name, business name, address, phone, etc.; optional: details of the intermediate consignee and final consignee).
  - Goods to be transferred (essential: description, reference to contract, purchase order, invoice or order number; quantity and/or value).
  - End-use (essential: indication of end user; undertaking, where appropriate, that the goods will not be used for purposes other than the declared end use and/or used for Chemical Biological Radiological and Nuclear (CBRN) etc.).
  - Location (optional: certification that goods are to be installed at/used at premises of end user; agreement to on-site inspections).
  - Documentation (essential: signature, name, title of consignee/end-user representative; original or legally-certified copy; optional: signature and certification by government of final consignee/end user; unique identifier/number provided by the government authority; validity terms and date of issue; kept with conventional arms all along the transfer).

- Re-export / diversion (optional: an undertaking not to re-export/tranship at all, or at least not without notification or express permission from original exporting state's competent authorities).
- Delivery verification (optional: provide a Delivery Verification Certificate / proof of arrival).
- Note the useful guidance provided on these points in the Wassenaar Arrangement 'End-User Assurances Commonly Used Consolidated Indicative List' (also used by the Organization for Security and Cooperation in Europe's (OSCE) 'Standard elements of EUCs', as well as the International Small Arms Control Standards (ISACS) module on EUCs.

8. Requiring particular conditions to be met prior to authorisation, such as:

- The transmission of supporting documents, allowing verification of the legality of the transfer (e.g. evidence of an international importation certificate from the recipient country).
- Provision of information related to transport prior to the grant of the exportation authorization: mode of transport, name of the transporter, nationality, route to be taken.
  - Note, for example, useful guidance on details to be shared and conditions for licences specifically for air transport in the Wassenaar Arrangement 'Best Practices to Prevent Destabilizing Transfers of SALW through Air Transport'.
- Agreement to specific conditions on storage facilities (location, conditions, specific management measures and security).
- Verification through physical inspections of the adequacy of the recipient's storage facilities.
- Enforcement of technical conditions to secure conventional arms, such as the systematic marking of the exported ammunitions and small arms and implementation of systems (PIN codes etc.) preventing use by non-authorized persons.
- Agreement to particular disposal requirements (e.g. conditioning the sale of new small arms and light weapons on the verified destruction of old stocks).

9. Not authorising the export if a significant risk of diversion is detected.

10. For transit and importing States, measures including:

- Requiring prior authorization for the transit and importation of conventional arms through and to their territory.
- Communicating to the exporting country documents indicating whether the transfer has been authorized or is subject to any objection.

**Transfer chain stage 2: During the transfer / En route to the intended end user / In transit**

States Parties could consider:

1. Monitoring and protecting conventional arms shipments, in cooperation with industry parties involved (e.g. freight forwarders/intermediate consignees, transporters etc) from the time the

arms leave the warehouse in the exporting state until the intended end user receives them (and verifies delivery), including through:

- Physically accompanying the shipment or remote monitoring via satellite.
  - Stringent physical security requirements (such as ensuring that arms and ammunition are transported in separate vehicles, the use of alarm systems on transport vehicles and container seals, and physical inspection during transit and at the point of delivery).
  - Scrutiny of arms shipments and documentation by customs agents in all the States involved in the transfer (exporting, transit, and importing States).
  - Note useful guidance in the Wassenaar Arrangement 'Best Practices to Prevent Destabilizing Transfers of SALW through Air Transport'.
2. Ensuring close coordination and information sharing with the governments of transit States.
  3. Requiring or encouraging delivery notification by any transit countries (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.).
    - Note that in the case of delivery by air, the exporter may be required to provide a 'certificate of unloading' to confirm delivery.

### **Transfer chain stage 3: At or after importation / Post-delivery**

States Parties could consider:

1. Requiring or encouraging delivery notification by the importing State (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.)
  - Note that in the case of delivery by air, the exporter may be required to provide a 'certificate of unloading' to confirm delivery.
2. For exporting States: conducting post-delivery checks to verify compliance with end-use conditions, such as the condition that no re-export can take place without prior notification to the country of origin, including through:
  - Checking end-use certificates by, for instance, checking delivery signatures against the list of authorised signatories by directly contacting such signatories using contact information provided in advance of the certificate.
  - Organising regular on-site visits to verify the ongoing use(r) of the arms.
  - Conducting physical inventories of exported conventional arms to ensure they are properly accounted.
  - Investigating suspected violations of end-use and re-transfer conditions agreed to by the end user.

3. For importing States: marking (in the case of small arms and light weapons) and registering (in all cases) all conventional arms and ammunition entering their national territory, as well as the secure transfer of these to the authorised end-user.
4. For exporting and importing States: initiation and compliance with tracing requests.

#### **Transfer chain stage 4: Post-delivery storage / National stockpiles**

States Parties could consider:

1. Establishing and maintaining robust stockpile management procedures for the safe storage of conventional arms and ammunition, including by:
  - Establishing and conducting inventory management and accounting procedures (including centralized record-keeping, which entails storing records of transactions made by all departments in a single, central authority).
  - Controlling access to stockpiles.
  - Applying physical security measures (such as fencing and locking systems).
  - Ensuring the security of stockpiles that are in transport.
  - Destroying all surplus arms and ammunition in regard to the international norms and standards.
  - Ensuring appropriate staff training in safe and secure stockpile management procedures.
  - Note useful guidance provided in the ISACS Module on 'Stockpile management'.
2. Ensuring adequate border controls and patrols.

#### **Other comprehensive measures applicable across the transfer chain**

States Parties could consider:

1. Establishing a strong national system for licensing and control of international transfers of conventional arms (including transit and trans-shipment).
2. Ensuring close cooperation and information-sharing with other States involved in the arms transfer chain, including information on international trafficking routes, illicit brokers, sources of illicit supply and methods of concealment.
3. Maintain open communication across various licensing, intelligence, customs, and other government agencies.
4. Running industry outreach programmes (such as with industry associations) to share diversion risk assessment guidance and encourage industry to play a cooperative role in risk assessment and management.

5. Creating registers of conventional arms manufacturers, exporters, and brokers, with the requirement that records are effectively managed.
6. Develop Customs, law enforcement and intelligence cooperation amongst States.
7. Providing sufficient resources to national authorities, especially customs authorities, to ensure they have effective control over conventional arms flows into and out of their territory.
8. Reinforcing cooperation between national authorities and the private sector (armament industry, transporters, banks, etc.) to ease the detection and the interception of the illicit flows.
9. Ensuring that when a diversion is detected, appropriate legal and administrative measures are taken to enable the competent national authorities to seize the illicit conventional arms.
10. Ensuring the establishment of criminal offences and the capacity for sanctioning violators in relation to diversion detected during post-delivery checks or at any time during an arms transfer.
  - Available sanctions should be both administrative (including confiscation of conventional arms) and criminal (sufficiently high to serve as deterrents).
11. Ensuring effective legislation for investigating and punishing theft, corruption and other diversion-related offences.
12. For both exporting and importing States: jointly developing and agreeing programmes to identify challenges identified, which may take various forms depending on the challenges identified.
13. For example, the exporting and importing States could collaborate on measures to improve the security of stockpiles and the disposal of surplus stocks, or to eradicate organised criminal activity and combat corrupt practices
14. Ensuring transparency through communicating information on authorised or completed- legal transfers of conventional arms in annual reports.
15. Sharing information with other States on measures taken that have been proven effective in addressing the diversion.

## ANNEX B

## EXISTING GUIDANCE ON DIVERSION MEASURES

The guidance documents identified in this paper are presented only as optional sources, which States may choose to draw from, when relevant and useful, to assist them to prevent and address diversion as it may occur in their particular national context. They are not proposed as mandatory.

<b>European Union (EU)</b>	<p><a href="#">EU Common Position on Arms Exports</a></p> <p><a href="#">User's Guide to the EU Common Position on Arms Exports</a></p>
<b>International Small Arms Control Standards (ISACS)</b>	<p>The ISACS has produced a number of <a href="#">Standards Modules</a> on small arms and light weapons, including, of particular Relevance:</p> <p><a href="#">National controls over the international transfer of small arms and light weapons</a></p> <p><a href="#">National controls over the end-user and end-use of internationally transferred SALW</a></p>
<b>Organisation for Security and Cooperation in Europe (OSCE)</b>	<p>The OSCE has produced a range of <a href="#">guidance documents on small arms and light weapons</a>, including, of particular relevance:</p> <p><a href="#">OSCE Handbook of Best Practices on Small Arms and Light Weapons</a></p> <p><a href="#">OSCE Decision on introducing best practices to prevent destabilizing transfers of small arms and light weapons through air transport and on an associated Questionnaire</a></p> <p><a href="#">Standard elements of end-user certificates and verification procedures for SALW exports</a></p>
<b>United Nations Office for Disarmament Affairs (UNODA)</b>	<p><a href="#">ATT Implementation Toolkit</a>: Module 10: Preventing diversion</p>
<b>Wassenaar Arrangement</b>	<p>The Wassenaar arrangement has also collated a range of <a href="#">Best Practices and Guidelines on Arms Transfers</a>, including, of particular relevance:</p> <p><a href="#">Best practice guidelines for exports of small arms and light weapons</a></p> <p><a href="#">Elements for objective analysis and advice concerning potentially destabilising accumulations of conventional weapons</a></p> <p><a href="#">Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport</a></p>

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