



**Statement on the role of industry in responsible international arms transfers
Wednesday 21 February**

To be delivered by Kelsey Gallagher

Thank you Madam Facilitator.

The United Nations Guiding Principles on Business and Human Rights, unanimously adopted by the Human Rights Council and endorsed in the Final Report of the 9th Conference of States Parties to the ATT, have significant normative force. This is evidenced by their growing application across various industry sectors and supply chains and that they increasingly serve as the basis of litigation.

While the Guiding Principles in no way diminishes the primary responsibility of States to ensure respect for human rights in the licensing of arms transfers, they also make clear that industry has its own responsibilities to protect human rights. Those responsibilities extend beyond adherence with national laws and regulations on arms transfers, compliance with sanctions, and matters such as environmental and labor standards, financial accountability and the prevention of corruption. The concept of conducting human rights due diligence within industry is not new, as there is growing acknowledgement among those in the private sector of their human rights responsibilities as reflected, for example, in the increasing number of companies producing annual human rights reports. Control Arms welcomes this trend and recognizes its capacity to further the collective goals of the ATT.

In terms of the relationship between industry's human rights and IHL due diligence responsibilities and the obligation of States Parties to regulate all actors involved in arms transfers, these separate and distinct sets of responsibilities complement and reinforce one another. By conducting separate due diligence processes and then working together, both States and industry will be more effective in achieving the purpose of the ATT, which is to "prevent human suffering".

This approach of "shared responsibility" by States and industry can assist in preventing liability under IHL and international criminal law where it is individuals that may be found complicit in serious violations following the irresponsible transfer of conventional arms. A national export license will not shield individuals operating in a corporate capacity from legal liability when serious violations otherwise occur.

Industry should be proactive in collecting information informing on the potential human rights risks of individual proposed transfers, and not simply rely on officials conducting assessments at the permit licensing phase. As set out in the background paper prepared by the ATT Secretariat for this Working Group, there are publicly available resources that some States Parties consult



in their transfer decision making processes. Publicly available resources such as United Nations human rights reports, as well as reporting and analysis by civil society, should inform both States and industry of a proposed end user's human rights record.

Further to this, industry often has a close and ongoing relationship with their clients that is unique to that of producers. This provides thorough knowledge of proposed end users and end-uses, alongside real-world access to information from the ground where proposed transfers will be used. Indeed, in many cases, industry may be the first to discover that arms transfers could have been used in serious violations of human rights or have been diverted. Both States and industry drawing on information that they each possess and undertaking their own analysis of end user adherence to international norms and the protection of human rights will upscale the effectiveness of risk assessments, which will lower the risk of potential abuses and result in a stronger ATT.

States have a responsibility to ensure that all actors involved in arms transfers are aware of the obligations of international law and to work with them to implement and comply with those obligations. This needs to be an ongoing and two way dialogue in which transfers are assessed on a case by case basis. Control Arms would see value in industry being treated as a cross-cutting issue across the different Working Groups and to focus on their responsibilities throughout the transfer process.

And if I may, a question to the presenters:

During discussions on CSP9's thematic focus, we heard concerns that those industry actors that implement stringent human rights and IHL due diligence safeguards could inadvertently cede a competitive advantage to those that don't. Are there any good examples of human rights due diligence policies being implemented sector-wide in other industries, and therefore leveling the playing field?

Thank you.