

## **Response to Transparency and exchange of information: Its role in the prevention of diversion (April 2020)**

[ATT/CSP6/2020/PRES/597/M2.TranspInfExch](#)

Saferworld welcomes the decision of the President of the sixth Conference of States Parties (CSP6) to the Arms Trade Treaty (ATT), Ambassador Carlos Foradori of Argentina, to focus on diversion and in particular the role of transparency and information-exchange in its prevention.

Diversion, as has frequently been noted, is a critical point, where arms formerly legally transferred slip into illicit markets, from which so many problems and so much devastation unfold. Diversion flourishes in the shadows, and therefore this intensification of efforts to throw more light on the reasons for and practices of diversion is to be applauded, especially if it leads to concrete improvement in the prevention of and response to diversion cases.

There is much in the President's paper with which we agree and that we endorse. We see the value in reminding States Parties of many of the explicit references in the Treaty to exchanging information that are of relevance to the issue of diversion. We would suggest that in addition the paper draw attention to ATT Article 1, which identifies preventing diversion of conventional arms as an object of the Treaty, and "[p]romoting cooperation [and] transparency ... by States Parties" as a purpose. This, we believe, will serve to remind States Parties of this underlying imperative that should motivate all Treaty implementation.

We also support and endorse much of the detail of the paper's recommendations to States Parties for approval at CSP6, for example:

- Using all available tools to exchange information
- Designating, communicating and updating national points of contact
- Holding consultations and exchanging information to verify relevant documentation

At the same time, we believe that some aspects of these recommendations could benefit from further elaboration and more detail, so as to give greater direction and impetus to subsequent deliberations and developments.

More information on the actors, types of States and possible fora or mechanisms that might usefully have a part to play in all these efforts would be welcome.

For example, Saferworld would recommend highlighting the importance of involving a wide range of officials from States Parties, such as diplomats, licensing officers and enforcement officers. It should be made explicit that transit and transshipment States as well as exporting and importing States

should be involved across the board, as should States from which brokers are operating and transportation is organised. In addition, representatives from UN sanctions panels, relevant NGOs, reputable arms manufacturing companies and transportation agents, and investigative journalists and open-source intelligence investigators, etc. all have insights that could usefully be brought to bear to help States Parties in their work.

Mechanisms and fora for related engagement should not be limited solely to the formal ATT process *per se*. Conversations and work at bilateral, sub-regional and regional levels, and in other related multilateral contexts, e.g. the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, should also be encouraged. Mechanisms should be established for sharing information from the ATT 'centre', for actively encouraging engagement in these other settings, and for referring any intelligence, outcomes, conclusions or recommendations back into the CSP and Working Groups.

It is also important to recognise that cooperation among States flows from the authority and capacity to act at national level. We therefore recommend reference in the paper to the need for States Parties to ensure their national systems include all required measures and permissions to enable and allow the necessary cooperation to take place, and to take steps to develop the expertise and capacity necessary to play a full part in preventing and responding to diversion.

At the same time, we fully acknowledge that capacity constraints must be taken into consideration when deciding priorities and realistic ways of working. It is with this in mind that we suggest some refinement of recommendation 6, which encourages States 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." While checks on certain exports and/or imports will be absolutely fundamental to anti-diversion efforts in some circumstances, capacity constraints would point to the need to develop mechanisms, systems and processes to assist States Parties to be able to identify at-risk transfers that would then be prioritised and subject to the recommended checks.

At a more fundamental level, Saferworld is concerned about the paper's focus on developing information-exchange, while very little mention is made of transparency *per se*, despite the fact that it is transparency rather than information exchange (or information sharing) that is among the purposes of the Treaty as set out in Article 1.

This is just one manifestation of what appears to be a worrying and growing drift towards non-transparent practice, on which we also commented in our response to the Working Group on Transparency and Reporting (WGTR).<sup>1</sup> In that response, we highlighted the increasing number of States Parties that are instructing the ATT Secretariat to withhold their reports from the public domain. We also noted that two of the tiers of the proposed three-tier approach to diversion (the use of the information exchange platform, the informal discussion meetings, and the Working Group on Effective Treaty Implementation discussions) are available only to the States Parties.

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<sup>1</sup> See 'Response to the documents of the Working Group on Transparency and Reporting for CSP6 (April 2020)', *Saferworld*, 21 May 2020.

As we noted in our response to the WGTR:

There is clearly a distinction between information-sharing and transparency (hence the need for and the use of the two terms), yet there seems to be a growing conflation of the meaning in the official ATT discourse.

To be clear, transparency refers to information being in the public-domain. Information-sharing can take place in public, however it also applies to information being shared on a more restricted basis.<sup>2</sup>

The President's paper seems to reflect this trend, with the terms transparency and information exchange frequently being used interchangeably or as a generic catch-all.

There is much that can be gained through proper transparency and through the full and comprehensive participation of relevant non-state stakeholders in the ATT process, including with respect to diversion prevention and response. External stakeholders can be both a valuable source of information regarding diversion cases and strategies, including information which would otherwise be unknown by States Parties, and an important tool for information dissemination. Furthermore, such involvement sends a strong signal that States Parties are determined to both achieve the object of the Treaty of preventing diversion and honour the purpose of promoting cooperation *and* transparency by State Parties.

However, references to transparency are absent from all six of the recommendations in the President's paper, which refer only to actions that involve information exchange or sharing among States.

Saferworld proposes that the possible recommendations for approval at CSP6 should be amended to reflect the need for transparency as well as information exchange. This we see as part of a general call for States Parties to reflect on the purpose of the Treaty and to recommit to maximise transparency, except when there is a clear and specific imperative to apply restrictions. We are committed to working with the President, the Working Groups, the States Parties and other stakeholders in pursuit of this goal.

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<sup>2</sup> Ibid., p. 1.