

## Diversion Information Exchange Forum

### Revised Draft Elements for Terms of Reference (ToR)

#### Background and purpose

The Diversion Information Exchange Forum concerns the informal meeting among interested States Parties (and possibly signatory States) to discuss concrete cases of detected or suspected diversion that they are dealing or have dealt with, that States Parties endorsed as the third tier of the three-tier approach to sharing information on diversion during the Fourth Conference of States Parties. The endorsement of the three-tier approach and the informal meeting followed discussions on this topic in the Working Group on Transparency and Reporting (WGTR), as a mechanism to facilitate the information exchanges that are required or encouraged by the Treaty.

The purpose of the Forum is to allow States Parties and signatory States to share concrete and operational information about cases of suspected or detected diversion that they are dealing with, so that they can actually prevent it from happening, address it properly when it already has occurred, or help other States preventing or addressing such cases. In that respect, it is meant as a complementary instrument to bilateral exchanges between States involved in a specific case and as a mechanism that facilitates States Parties in the implementation of paragraphs 3, 4 and particularly 5 of article 11 of the Treaty, encouraging State Parties to share relevant information with one another on effective measures to address diversion, and article 15 on international cooperation. The intended outcome of the Forum is to clarify specific cases and identify and agree appropriate responses, for which sharing concrete and operational information is indispensable. In light of the potential sensitivity and confidentiality of such information, it was thought to be essential that exchanges in the Forum are informal and thus disconnected from regular WGETI and WGTR meetings (without ruling out discussions on general patterns and lessons learnt in the WGETI sub-group on diversion).

The informal kick-off meeting of the Forum, chaired by the WGTR co-chairs, was held on 28 August 2019, during CSP5, and concerned an initial discussion on the potential future set-up of the Forum, its working methods and handling of information, and the potential information to be shared. For this kick-off meeting, the WGTR co-chairs invited non-state experts of relevant organisations to inform discussions and distributed *“Elements that could form the basis for a memorandum on the informal meeting”*. Out of the meeting came as main substantive recommendations to: a) confirm the meeting as a meeting between States Parties and signatory States only (with potential involvement of non-state experts on request); b) consider making the meeting a standing, formal forum, with a dedicated Chair; c) continue work on Terms of Reference (ToR); and d) include in the ToR a non-exhaustive list of types of information that States would be encouraged to share within the meeting. During a second informal meeting on 5 February 2020, a discussion was held on the future status of the Forum and on the draft elements for ToR distributed by the WGTR co-chairs.

**In line with the decision to consult with ATT stakeholders remotely on the documents to be submitted to CSP6 in view of COVID-19, the discussion on the future status of the Forum and its ToR will continue via e-mail and the information exchange platform in the restricted area of the ATT website, on which the WGTR co-chairs will post “announcements” for that purpose. States Parties and signatory States are therefore invited to use these channels to submit their comments on the revised ToR below and on the cost estimate and impact assessment that was also circulated, no later than 21 May 2020. Subsequently,**

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**informal face-to-face consultations may be held in July or August, or during CSP6, pending developments regarding COVID-19 and/or progress made during remote consultations.**

### **Set-up of the “Diversion Information Exchange Forum”**

1. The “Diversion Information Exchange Forum” (hereinafter: the Forum) is a *sui generis* body for informal exchanges between States Parties to the Arms Trade Treaty (ATT) and signatory States concerning concrete cases of detected or suspected diversion and for sharing concrete, operational diversion-related information.
2. These Terms of Reference (hereinafter: ToR) govern the functioning of the Forum and the exchanges of information during its meetings as well as any intersessional exchanges and sharing of diversion-related information. The Rules of Procedure for the Conference of States Parties only apply to the Forum when explicitly stated in these ToR.
3. [The Forum shall meet during every Conference of States Parties and every session of preparatory meetings, unless decided otherwise by the President of the Conference and the Chair of the Forum, in consultation with the Secretariat.] OR [*The Forum in principle meets during the Conference of States Parties and the sessions of preparatory meetings, subject to a decision of the President of the Conference and the Chair of the Forum, in consultation with the Secretariat.*]
4. [The Forum shall be chaired by the facilitator of the sub-working group on Article 11 of the Working Group on Effective Treaty Implementation. If the facilitator is not available, or the sub-working group is suspended or cancelled, the Chair of the Forum shall be appointed by the President of the Conference for a period until the conclusion of the following CSP.] OR [*The Chair of the Forum shall be appointed by the President of the Conference for a period until the conclusion of the following CSP. In doing so, the President shall consider appointing the facilitator of the sub-working group on Article 11 of the Working Group on Effective Treaty Implementation, depending on his/her availability.*]
5. The work of the Forum will be supported by the Secretariat.

### **Participation**

6. In line with the aforementioned CSP4 decision, meetings of the Forum are open for all States Parties and signatory States that are interested to discuss and share operational information on concrete diversion cases with other States Parties and signatory States. In that respect, all States Parties and signatory States can participate in all meetings and no objections can be raised.
7. Representation of States Parties and signatory States in meetings is governed by rules 6 to 8 of the Rules of Procedure for the Conference of States Parties.

In line with the purpose of the Forum, representation by enforcement officers in its meetings is strongly encouraged.

8. States Parties and signatory States can propose to invite non-state experts with specific expertise in investigating, establishing, identifying and/or addressing cases of diversion to a specific meeting, or a part of that meeting. They shall submit their proposals at least [7] OR [30] days in advance of a meeting by notifying the Secretariat. The Secretariat will then immediately distribute such proposal to all States Parties and signatory States, and institute a silence procedure for 48 hours.

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If the proposed participation is limited to the presentation of a case of suspected or detected diversion by the proposing State Party or signatory State, no objection can be raised. If not, objections shall be dealt with in accordance with rule 7 (4) of the Rules of Procedure for the Conference of States Parties.

### **Working methods**

9. The Secretariat, in consultation with the Chair, shall distribute an invitation to all States Parties and signatory States at least [30] OR [50] days in advance of each meeting, specifying its date and venue, and shall make the necessary administrative arrangements for the meeting.

The invitation will always include a call to States Parties and signatory States to present cases of suspected or confirmed diversion and to share other diversion-related information during the meeting.

10. At least 7 days in advance of a meeting, the Secretariat, in consultation with the Chair, will distribute a draft agenda for the meeting to all States Parties and signatory States, including relevant supporting documentation, if feasible.
11. States Parties and signatory States that intend to present a case of suspected or detected diversion or to share other diversion-related information during a meeting are encouraged to notify the Secretariat as soon as possible even before the notification of the meeting. They shall announce their intention at the latest at the moment that the draft agenda for the meeting is adopted.
12. If the case that a State Party or a signatory State intends to present involves or affects one or more other States Parties and signatory States, it shall notify those States Parties and signatory States of its intention.

Unless it is legally required to do so in view of the nature of the information it intends to share, the presenting State does not need to obtain the consent of those involved or affected States Parties and signatory States to be able to give the intended presentation. After the presentation, however, those States Parties and signatory States shall be accorded the right of reply by the Chair.

13. States that present or intend to present diversion-related information in a meeting of the Forum are encouraged to also share this information via the information exchange platform in the restricted area of the ATT website, where possible.

Unless it concerns national security, information or sharing the information would hamper ongoing or pending enforcement proceedings, States Parties are encouraged to share the types of information included in the non-exhaustive list in rule 19 via the information exchange platform.

### **Nature of the meetings and handling of information**

14. Meetings of the Forum are confidential, including their agenda and all supporting documentation, unless decided otherwise by its participants.
15. Participants must ensure the confidentiality of discussions and of all the information that is classified as such by its provider, unless decided otherwise by respectively participants and the provider.

Any participant, the Chair of the Forum, or the ATT Secretariat may raise with any other participant, bilaterally or at a Forum meeting, questions concerning any suspected unauthorized disclosure of confidential information that was shared during a Forum meeting or via the information exchange platform. In the event

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of any demonstrated instance of such unauthorized disclosure, the participant with which such concern is raised, will provide an explanation of the matter to the originating participant, the Chair of the Forum or the ATT Secretariat, and take appropriate remedial measures in accordance with its respective national laws and regulations.

16. Participants can share all the information that they obtained in meetings within their competent national authorities, notably their enforcement authorities, while maintaining confidentiality. Any operational use of this information will be discussed with the provider of the information.
17. In line with its confidential nature, no official minutes of the meeting will be drafted, nor an official report.

### **Types information that States are encouraged to share and exchange**

18. Taking into account article 11 (3) to (5), States Parties and signatory States are encouraged to share and exchange all the data concerning concrete cases in which they prevented or identified diversion that they consider useful for other States Parties and signatory States to: 1) assist in addressing the cases at hand; or 2) prevent or address similar cases in the future.

Useful data are, *inter alia*, the details of the diversion and its discovery, the timeliness of the discovery, the ways and methods that were used and, where appropriate and feasible, the details of the actors involved. This concerns both closed and ongoing investigations.

19. Generally, States Parties and signatory States are encouraged to share any diversion-related information that they deem relevant on, *inter alia*:
  - a) illicit arms transfer activities including corruption;
  - b) international arms trafficking routes;
  - c) illicit arms brokers;
  - d) sources of illicit supply
  - e) methods of concealment
  - f) common points of dispatch
  - g) destinations used by organised groups engaged in diversion.
20. To complement the existing Database of National Points of Contact in the restricted area of the ATT website and to allow for the efficient and effective exchange of operational diversion-related information in the field, States Parties and signatory States are encouraged to exchange up-to-date contact details of their relevant enforcement authorities through the Secretariat.

### **Output of Forum meetings**

21. The intended outcome of any meeting is operational, i.e. exchanges of information and concrete arrangements that will contribute to preventing or addressing the concrete cases of diversion under discussion, or similar cases in the future. These exchanges and concrete arrangements fall within the scope of the confidentiality rules set out in rules 14 to 17.
22. If considered useful and feasible by participants on a case-by-case basis, the Chair will orally brief the WGETI or the Conference on any general patterns and lessons learnt that came out of a meeting of the Forum, and on general issues that could benefit from policy discussions within the WGETI. This shall be decided by the participating States Parties and signatory States by consensus.

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In any case, such oral briefing may not contain any information that could allow attribution to a particular State Party or signatory State, unless that State has given its consent. Furthermore, a State that has presented a case during a meeting may object to any briefing that is based on its case, regardless of any possible attribution.

### **Languages and documents**

23. As to language and documents, rules 46 to 49 of the Rules of Procedure for the Conference of States Parties shall apply, with the exception of the provision in rule 48 that documents shall be made available to observers.

### **Budgetary Implications**

24. Direct meetings costs, such as for technical support, documentation, and any translation and/or interpretation services, shall be covered by the resources allocated for the conduct of meetings in the budget of the Conference of States Parties as well as any voluntary contributions that are made available for this purpose. Indirect meeting costs, such as travel and accommodation, shall be borne by participants except to the extent that sponsorship funding is available.

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