Article 9. Transit and Transhipment provisions in ATT initial reports

Working Group on Effective Treaty Implementation

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Today’s presentation

• Definitions of transit and trans-shipment
• What do the 61 “publicly available” initial reports tell us about State Party approaches to the regulation of transit and trans-shipment
• Linkages between Article 9 and other ATT Articles
• A possible checklist for the regulation of transit and trans-shipment
Defining transit / trans-shipment

- Transit and trans-shipment are rarely defined in treaties because there is no consensus on scope.
- Dictionary definition of transit: “the action of passing through or across a place”
- Revised Kyoto Convention: “goods are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office which is the office of both importation and exportation”
- Can apply to land, air, and territorial waters.
National measures to implement Article 9

The national control system includes measures that allow the regulation, where necessary and feasible, of transit/trans-shipment of conventional arms covered under Article 2(1) based on analysis of 61 publicly available ATT initial reports.

| Measures to regulate transit                  | 53 out of 61 |
| Measures to regulate trans-shipment          | 51 out of 61 |
| Measures to regulate transit and/or trans-shipment | 55 out of 61 |
Overview of ATT States Parties approaches to regulating transit and trans-shipment

- No distinction between transit and transhipment
- Transhipment is regarded as an element or sub-component of transit
- Transit is regulated but transhipment is not
- Transhipment is regulated but transit is not
## National measures to implement Article 9

Control measures for the regulation of transit and/or trans-shipment cover:

<table>
<thead>
<tr>
<th>Type of transit/shipment</th>
<th>Number of States Parties answering “yes” in a publicly available initial report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transit / trans-shipment through land territory (including internal waters)</td>
<td>56 out of 61</td>
</tr>
<tr>
<td>Transit / trans-shipment through territorial waters</td>
<td>48 out of 61</td>
</tr>
<tr>
<td>Transit / trans-shipment through national air space</td>
<td>53 out of 61</td>
</tr>
</tbody>
</table>

Based on analysis of 61 publicly available ATT initial reports
# National measures to implement Article 9

<table>
<thead>
<tr>
<th>Control measures for the regulation of transit and/or trans-shipment</th>
<th>Number of States Parties answering “yes” in a publicly available initial report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transit / trans-shipment written authorization (licence / permit) required</td>
<td>35 out of 61</td>
</tr>
<tr>
<td>Written export and import authorization required</td>
<td>3 out of 61</td>
</tr>
<tr>
<td>Exemptions to regulation regime (permitted without regulation or under a simplified procedure under certain circumstances)</td>
<td>22 out of 61</td>
</tr>
</tbody>
</table>

Based on analysis of 61 publicly available ATT initial reports
### Agencies involved in the regulation of transit / trans-shipment

<table>
<thead>
<tr>
<th>Competent ministries and government agencies</th>
<th>Number of States Parties answering “yes” in a publicly available initial report</th>
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</thead>
<tbody>
<tr>
<td>Export (transfer) control agency</td>
<td>3 out of 61</td>
</tr>
<tr>
<td>Ministry of Business / Economy / Finance / Trade (including customs)</td>
<td>14 out of 61</td>
</tr>
<tr>
<td>Ministry of Foreign Affairs</td>
<td>6 out of 61</td>
</tr>
<tr>
<td>Ministry of Defence / Interior / Public Security (including police)</td>
<td>16 out of 61</td>
</tr>
<tr>
<td>Multiple ministries and government agencies involved in regulation</td>
<td>40 out of 61</td>
</tr>
</tbody>
</table>
Examples of linkages to other Articles

- Article 5(3)
- Beyond Article 6
- Article 12
- Article 11
- Article 13
- Article 14
Transit and trans-shipment regulations beyond Article 2(1) scope

<table>
<thead>
<tr>
<th>National control system for transit and/or trans-shipment applies to conventional arms beyond the scope of Article 2(1)</th>
<th>Number of States Parties answering “yes” in a publicly available initial report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transit / trans-shipment measures apply beyond Article 2(1) scope</td>
<td>32 out of 61</td>
</tr>
<tr>
<td>Transit / trans-shipment measures apply to all items on the national control list</td>
<td>21 out of 61</td>
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</tbody>
</table>

Based on analysis of 61 publicly available ATT initial reports
Beyond Article 6

- Twenty-one of the 61 publicly available initial reports indicated that national control systems for transit and/or transhipment go beyond the fulfilment of obligations under ATT Article 6.
- Nine reporting states reported applying the same criteria and risk assessment procedures for controlling and export and regulating the transit and/or transhipment of conventional arms.
Article 12

- Fifty-one of the 61 publicly available initial reports indicated that the national control system includes provisions for maintaining records regarding authorizations for the transit and/or transhipment through national territory of conventional arms covered under Article 2(1) of the ATT.
Other Articles

• Article 11: Measures to address and prevent diversion during transit

• Article 13: Reporting on authorizations and actual transit and trans-shipment of conventional arms

• Article 14: Enforcement of the national system for regulating transit and trans-shipment
Possible checklist for the regulation of transit / trans-shipment

• Definition of transit and trans-shipment
• Feasible control measures in accordance with international law
• Defined scope for regulated items
• Responsibility for compliance with regulations
• Assessment criteria for authorization
• Effective administrative provisions
• Robust enforcement regime (i.e. sanctions, interagency cooperation, powers for interdict suspend a shipment, training, outreach)
Thank you.
Questions?

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