

Arms Trade Treaty
Working Group on Effective Treaty Implementation
Geneva, 6 – 7 March 2017

Food for thought paper on the topic of the prevention of diversion (Article 11)

Submitted by Switzerland
02 March 2018

Given the risks associated with international arms trade, the Arms Trade Treaty (ATT) requires its State Parties to assess, manage and (if possible) mitigate them. With regard to the risk of diversion, Article 11 requires States Parties to consider several aspects, which need to be thoroughly discussed in order to provide guidance on their effective implementation.

This paper seeks to serve as food for thought for some of the questions raised in the Work Plan of the WGETI Sub Group on Article 11 and to propose possible ways forward.

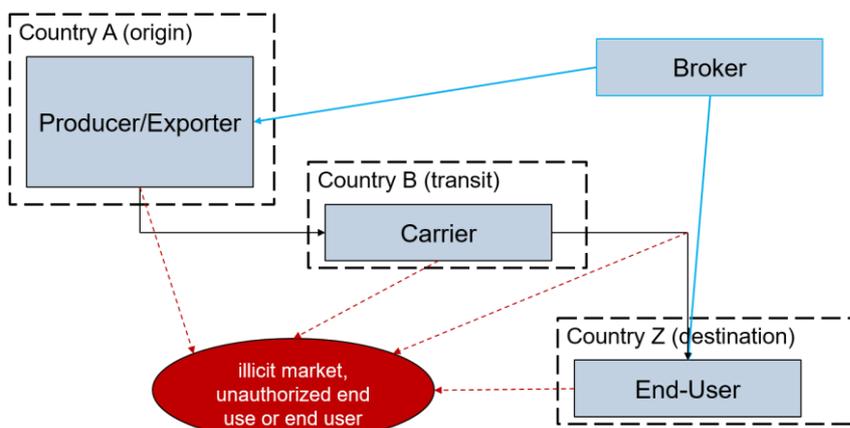
1. Understanding the scope of diversion covered by Article 11

The ATT's preamble contains a reference to the scope of diversion by directly referencing three activities:

- i. The diversion of arms from the lawful to the illicit market;
- ii. The diversion for unauthorized end use; and
- iii. The diversion to unauthorized end users.

Additionally, the WGETI Sub Group Work Plan's guiding question rightfully points out the distinction between diversion of the transfer of conventional arms and the diversion of transferred conventional arms.

In order to account for the different activities as well as the different possible points of diversion, a visualization of the arms transfer chain might help identifying the scope.



Based on the arms transfer chain and the three activities mentioned in the ATT's preamble, the following five dimensions of diversion could, inter alia, be understood as being part of the scope of diversion:

1. Diversion by the producer/exporter out of the country of origin (e.g. through forged documentation);
2. Diversion in a declared country of transit (either intended or unintended by the producer/exporter or other actors; i.e. transit country or broker);
3. Diversion on international waters or in undeclared transit countries (either intended or unintended by the producer/exporter or other actors; i.e. transit country or broker);
4. Diversion to an unauthorized end-user or for an unauthorized end-use in the country of destination.
5. Diversion to an unauthorized end-user or for an unauthorized end-use in a third country.

2. Preventing Diversion

Under Article 11(2) each exporting State shall seek to prevent the diversion of conventional arms covered by the Treaty by assessing the risk of diversion of the export and considering the establishment of relevant mitigation measures. Additionally, each State Party involved in the transfer of conventional arms shall take measures to prevent their diversion [Article 11(1)].

Article 11 encompasses measures to prevent the diversion of arms "transfers" that is to say the full range of activities of the international trade described in Articles 2(2), and not only exports. Article 11, however, applies strictly speaking to transfers of conventional arms listed in Article 2(1) only and does not include ammunition/munitions or parts and components covered by Articles 3 and 4. Nonetheless, it remains in the discretion of each State Party to apply Article 11 mutatis mutandis and to also consider the risk of diversion with regard to ammunition and parts and components.

In an attempt to answer the Work Plan's guiding question and having in mind the different dimensions of diversion along the arms transfer chain, the following instruments could, inter alia, be useful in order to mitigate specific risks:

1. Requirement of End-Use(r)-Certification (EUC) for each export to state entities;
2. Verification of EUC through diplomatic channels or the importing country's national authority by using the declared Point of Contact (ATT Article 5);
3. Delivery notification by the End-User or the transit countries, if appropriate;
4. On-site visits (i.e. Post-shipment Verification) as a means to build confidence.

Whereas these instruments might serve as risk mitigation measures for a specific arms transfer, the ATT also mentions instruments focussing on a more fundamental approach to risk mitigation, i.e. jointly developed and agreed programmes as mentioned in Article 11(2). Such programmes can take various forms depending on the challenges identified. 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. Another approach to risk mitigation might involve legal or administrative reform, such as the strengthening of the national arms control authority (i.e. by leveraging the ATT's Voluntary Trust Fund or UNSCAR).

It must also be underlined that an effective mitigation of the risk of diversion is linked to the effective implementation of a whole set of other articles (i.e. article 5: establishing a national control authority; article 8: regulating brokering; article 9: regulating transfer/transshipment; and article 15: international cooperation).

3. Concluding Comments

Mitigation measures are an important element of Article 11 and a key aspect when addressing the complex issue of diversion. In this context, Switzerland is of the view that mitigation measures require our close attention and that this aspect of the treaty needs to be further explored.

As a first step, there would be value in seeking to identify effective mitigation measures for consideration at the second meeting of the WGETI.

The initial identification of mitigation measures could be performed via a Q&A document, focusing either specifically on mitigation measures or more broadly on the issue of diversion.

Within a longer time perspective, relations and/or synergies between measures to mitigate the risk of diversion and measures to mitigate the risks addressed in article 7 could be discussed within the WGETI.
