

**VOLUNTARY GUIDE TO IMPLEMENTING ARTICLE 9  
OF THE ARMS TRADE TREATY<sup>1</sup>**

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<sup>1</sup> Annex B of the Working Group on Effective Treaty Implementation (WGETI) Chair's Draft Report to CSP9 ([ATT/CSP9.WGETI/2023/CHAIR/767/Conf.Rep](https://att/csp9.wgeti/2023/Chair/767/Conf.Rep)), endorsed by States Parties at CSP9 as a living document of a voluntary nature, to be reviewed and updated by the Working Group, as appropriate.

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## Background

1. At the Fifth Conference of States Parties to the ATT (CSP5), the Conference endorsed the recommendation of the Chair of ATT Working Group on Effective Treaty Implementation (WGETI) for the Working Group to initiate work on Article 9 (transit and trans-shipment) in the intersessional period of CSP6 and to develop a medium-term workplan to that effect, bearing in mind the draft list of proposed topics and elements for consideration in Annex E of the Chair's Report to CSP5. For that purpose, the WGETI Sub-working Group on Article 9 was established, facilitated by Mr. Rob WENSLEY of South Africa. Following discussions during the Sub-working Group's first meeting on 4 February 2020, a multi-year work plan was eventually welcomed by States Parties via silence procedure in March 2021 as a living document of a voluntary nature.<sup>2</sup>

2. The Sub-working Group began its substantive work in the intersessional period of CSP7 with discussions dedicated to the various topics in the multi-year plan, which focused on the exchange of national approaches and the exploration of common practices, with a view to the possible development of a compendium of national practice and/or Voluntary Guide. These discussions were systematically held on the basis of guiding questions and relevant input in background papers prepared by the Facilitator, and kicked off by one or more expert presentations on the topic at hand. Following the sessions of the Sub-working Group during the intersessional period of CSP8, the Conference noted the conclusion of the WGETI Chair in his Chair's Report to CSP8 that the Facilitator of the Sub-working Group would begin his work on draft elements for a possible Voluntary Guide on the implementation of Article 9, deriving from the views exchanged during discussions thus far.

3. In line with this conclusion, the draft elements below are structured according to the list of topics in the multi-year work plan of the Sub-working Group on Article 9. They were drafted to reflect and build on the interventions of participants during the various sessions of the Sub-working Group, the background papers and expert presentations that kicked-off every session, as well as the relevant international and regional instruments and reference documents which experts and participants directed attention to.

4. Throughout the sessions, interventions were made by States, UN agencies, Non-Governmental Organisations and industry.

The following expert presentations kicked off the different sessions:

1. Dr. Paul HOLTOM, Small Arms Survey - [\*Article 9 - Transit and Transshipment provisions in initial reports\*](#)
2. Dr. Diederik COPS, Flemish Peace Institute - [\*Transit controls of military goods in seven European countries\*](#)
3. Prof. dr. Anna PETRIG, University of Basel - [\*Article 9 ATT - A Law of the Sea Perspective\*](#)

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<sup>2</sup> Multi-year Workplan for the WGETI Sub-working Group on Article 9 (Transit or trans-shipment), available at: [https://www.thearmstradetreaty.org/hyper-images/file/Annex%20B%20-%20Draft%20WGETI%20Multi-year%20Workplan%20for%20Article%209%20\(19%20Feb%202021\\_cl\)/Annex%20B%20-%20Draft%20WGETI%20Multi-year%20Workplan%20for%20Article%209%20\(19%20Feb%202021\\_cl\).pdf](https://www.thearmstradetreaty.org/hyper-images/file/Annex%20B%20-%20Draft%20WGETI%20Multi-year%20Workplan%20for%20Article%209%20(19%20Feb%202021_cl)/Annex%20B%20-%20Draft%20WGETI%20Multi-year%20Workplan%20for%20Article%209%20(19%20Feb%202021_cl).pdf)

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4. Dr. Julia HÖRNIG, Erasmus University Rotterdam - [Transport and Transit of Arms by Road and Air](#)
  5. Dr. Julia HÖRNIG, Erasmus University Rotterdam - [Transport and Transit of Arms by Sea](#)
  6. Mr. Richard PATTERSON, Firearms and Ammunition Import/Export Roundtable – *An industry perspective*<sup>3</sup>

5. A non-exhaustive overview of the international and regional instruments as well as reference documents that were mentioned during the discussions and presentations is included in [Annex A](#) (building further on the lists included in the background papers that guided the discussions in the Sub-working Group).

6. The overall aim of this Voluntary Guide is to provide a picture of how States Parties approach the implementation of the obligations in Article 9 of the Treaty, also in relation to other articles, as well as to provide some understanding of the key concepts in the Article and the legal and policy discussions surrounding those concepts. It is not the purpose of the Voluntary Guide to prescribe, create new norms and standards or establish an agreement on a single interpretation of the Article 9 obligation, nor to reinterpret established definitions. Where legally binding definitions are applicable, this is explicitly mentioned as such.

#### **Treaty text**

7. The text of Article 9 is included below to help readers/users situate the key concepts in the context in which they appear in the Treaty. The text of other relevant articles is included in [Annex B](#).

#### **ARTICLE 9 – TRANSIT OR TRANS-SHIPMENT**

*Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms covered under Article 2 (1) through its territory in accordance with relevant international law.*

#### **National approaches to the terms ‘transit’ and ‘trans-shipment’**

8. States Parties approaches on this topic were not addressed in the background paper and the expert presentation on transit and trans-shipment provisions in initial reports because the Initial Reporting Template does not explicitly deal with transit and trans-shipment definitions. The expert presentation did refer to the section on this topic in the Small Arms Survey’s *“The Arms Trade Treaty: A Practical Guide to National Implementation”*.<sup>4</sup> The presentation emphasized in that regard that the terms transit and trans-shipment are rarely defined in treaties because there is no consensus on their scope; it made reference to the simple meaning of transit as “passing through a place” and to the definition of trans-shipment in the amended International Convention on the Simplification and Harmonization of Customs Procedures (also

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<sup>3</sup> This presenter did not use a PowerPoint presentation or other documentation for his presentation.

<sup>4</sup> This guide is available at <https://www.smallarmssurvey.org/resource/arms-trade-treaty-practical-guide-national-implementation>.

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known as the Revised Kyoto Convention), which alludes to a transfer from the importing means of transport to the exporting means of transport.

9. The reference to simplicity was also reflected in the interventions of States Parties about their national definitions of transit and trans-shipment. All intervening States Parties shared broad definitions, without references to specific customs procedures as part of those definitions. The common ground was the simple reference to **a movement through the (customs) territory of goods that are not destined for the local market, but for a destination outside the (customs) territory**. Such broad definitions allow States Parties to capture all potentially unlawful transactions within the scope of their transit and trans-shipment regulations.

10. The interventions further demonstrated that States do not consider transit and trans-shipment as different types of transfers, but that **trans-shipment is regarded as an element or sub-component of transit**: it is simply transit that involves transferring goods from one transportation vessel to another.

11. Some States apply the same regulatory measures to transit with or without trans-shipment, while others apply different measures. For the latter group, the element of trans-shipment is a very relevant factor when they consider which type of regulatory measures to apply to different forms and situations of transit. This was discussed more extensively during the different sessions on regulatory measures.

12. By way of illustration, the box below contains a sample of definitions of transit and trans-shipment in instruments that deal with the transfer of arms or related goods.

#### **Box 1. Definitions of transit and trans-shipment in strategic goods related instruments**

##### ***International definitions***

[Decision of the Conference of the States Parties to the Chemical Weapons Convention on guidelines regarding declaration of import and export data for schedule 2 and 3 chemicals](#)

*‘transit operations’ [...] shall mean the physical movements in which scheduled chemicals pass through the territory of a state on the way to their intended state of destination. Transit operations include changes in the means of transport, including temporary storage only for that purpose’*

[UN Modular Small-arms-control Implementation Compendium \(MOSAIC\) 01.20: Glossary of terms, definitions and abbreviations](#)

*transit: “movement of goods across the territory of a State as part of a transfer between two other States, including the transloading of the goods at the points of entry into and exit from the transit State” (transloading is understood as “transferring goods from one transportation vessel to another”, which includes “transfers from one mode of transportation to another (e.g. from ship to truck) and transfers between different vessels of the same mode of transportation (e.g. from one ship to another)”*

*transshipment: “transport of goods to an intermediate location outside the exporting and importing States, where they are loaded to a different transport vessel and transported to their final destination (or*

*additional point of transshipment) without crossing the territory of the State in which the transloading takes place (NOTE: Transshipment usually takes place in transport hubs at ports and often takes place within designated customs areas, which are not subject to customs checks or duties.)”*

### **Regional definitions**

[User's Guide to the European Union Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment](#)

*Transit': movements in which the goods (military equipment) merely pass through the territory of a Member State*

*- 'Transshipment': transit involving the physical operation of unloading goods from the importing means of transport followed by a reloading (generally) onto another exporting means of transport*

[Regulation \(EU\) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items \(recast\)](#)

*'transit' means a transport of non-Union dual-use items entering and passing through the customs territory of the Union with a destination outside the customs territory of the Union where those items: (a) are placed under an external transit procedure according to Article 226 of the Union Customs Code and only pass through the customs territory of the Union; (b) are trans-shipped within, or directly re-exported from, a free zone; (c) are in temporary storage and are directly re-exported from a temporary storage facility; or (d) were brought into the customs territory of the Union on the same vessel or aircraft that will take them out of that territory without unloading;*

### **Phrases 'under its jurisdiction' and 'through its territory in accordance with international law'**

13. The phrases 'under its jurisdiction' and 'through its territory (in accordance with international law)' delineate the scope of the obligation in Article 9 in a cumulative manner. States Parties need to regulate transit and trans-shipment that is both 'under its jurisdiction' and occurs 'through its territory'. The Treaty therefore does not *oblige* States Parties to regulate transit and trans-shipment outside their territory, even if it involves vessels that are under their jurisdiction. This does not affect the applicability of other international obligations (see paragraph 22).

14. What is considered the "territory" of a State is not defined in the Treaty. During the presentation on this topic, it was explained that on the basis of general international law, including the Convention on International Civil Aviation (also known as the Chicago Convention) and the United Nations Convention on the Law of the Sea (UNCLOS), the State territory extends to all its land territory, its internal waters (including seaports), its territorial sea and the airspace above these land and maritime zones (it does not extend to the so-called exclusive economic zone or the high seas). This entails that the obligation in Article

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9 intrinsically covers transit and trans-shipment by land, water and air; the Treaty itself does not differentiate between them. Based on their specific characteristics, national considerations or international obligations, States may opt to treat them differently (see paragraph 27).

15. The term jurisdiction is also not defined in the Treaty. Under general international law, State jurisdiction relates to the authority of a State to prescribe rules, to enforce those rules and to adjudicate cases concerning those rules. Concerning the regulation of transit and trans-shipment through the State territory, the expert presentation on this topic made it clear that States Parties in principle have full jurisdiction to prescribe and enforce regulatory measures, but that certain limits arise from international law.

16. Focusing on transit by water, the presentation addressed limitations concerning transit through the internal waters (including ports) and the territorial sea of a State.

17. Concerning the internal waters and ports, few limitations apply. The main restriction is that States cannot enforce their regulations against sovereign immune vessels, which are war ships and ships used only on government non-commercial service. Such vessels cannot be subject to onboard search or inspection. States will usually not exercise their jurisdiction towards vessels in their internal waters and ports if the issue at hand concerns internal affairs of the ship that do not affect their interests. It could be argued, however, that violations of the Treaty do not constitute “internal affairs of the ship”. Lastly, States need to apply their measures in a non-discriminatory manner. In that regard, for all vessels that are not sovereign immune vessels, States can apply a wide array of measures to enforce its transit and trans-shipment regulations in their internal waters, for example setting conditions for port entry, denial of landing, trans-shipment or processing of cargo, denial of use of other port services, boarding and inspection and detention until compliance with the relevant regulations.

18. Concerning transit through the territorial sea, the so-called “right of innocent passage” applies, a rule of customary international law codified in Article 17 of the UNCLOS. The right of innocent passage limits the right of States – or the methods they use – to enforce its transit regulations against foreign ships that continuously and expeditiously pass through their territorial sea, provided that this passage is “innocent”, as described in Article 19 of the UNCLOS, and takes place “in conformity with [the UNCLOS] and with other rules of international law”. The scope of this limitation is not beyond debate. The expert presentation put forward that under international law, the mere fact of having arms on board does not render passage not innocent, but that the meaning of “conformity with [...] international law” is not clear, and that the requirements of the rule arguably leave room for States to include certain considerations concerning the application of the ATT and UNSC arms embargoes when they work out their regulatory and enforcement measures regarding transit through the territorial sea. As a minimum, States Parties need to be able to interdict transit – including through the territorial sea – that would be in violation of the prohibitions in Article 6 of the Treaty, most notably if a UN Security Council arms embargo would be violated or if the State has knowledge that the arms or items would be used in the commission of genocide, crimes against humanity or war crimes (see paragraph 49 *et seq.* on the relationship with Article 6).<sup>5</sup> Yet, in doing so, taking into account the right of innocent passage, States Parties should adapt their controls to avoid undue interference with genuine innocent passage, for example by focusing on ad hoc controls and

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<sup>5</sup> This topic was also addressed in the Small Arms Survey’s Practical Guide to National Implementation of the ATT, previously mentioned in paragraph 8.

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inspections in case of a reasonable suspicion of an illicit transfer rather than systematic licensing obligations.

19. It should be noted that this right of innocent passage only applies to transit through the territorial sea and not to transit through the internal waters and ports. It is also noted that a similar concept does not apply to the national airspace (see paragraph 39).

20. It should be borne in mind that the phrase 'in accordance with international law' does not only refer to international law *limitations* on States Parties' authority to prescribe and/or enforce transit and trans-shipment controls, but also to their international law *obligations* to do so. For example, States Parties which are also a party to the UN Firearms Protocol will need to take into account the obligations regarding transit in Articles 10 and 11 of the Protocol.

21. During the discussion on this topic, intervening States Parties mentioned that their transit controls only extend to transit on their territory. They pointed to a number of options for transit control, such as general customs control, systematic and ad hoc inspections, and prior notifications allowing to inspect or seize cargo.

22. On the obligations of flag States, the expert presentation emphasized that even though Article 94 of the UNCLOS requires States to exercise jurisdiction over their ships, these ships are not considered part of the territory of the State. This entails that Article 9 of the Treaty does not oblige States Parties to regulate their vessels in transit, because the Treaty only requires States Parties to regulate transit or trans-shipment "through its territory". This does not affect the applicability of other international obligations. During the discussions it was pointed out, however, that States Parties which are also party to the UN Firearms Protocol do have certain obligations regarding cases where their vessels are involved in illicit transit of firearms outside of their territory, as it is understood that the obligation in Article 11 of the Protocol to take appropriate measures to increase the effectiveness of import, export and transit controls extends to their extraterritorial jurisdiction.

### **Measures to regulate the transit and trans-shipment of arms**

23. In line with the multi-year workplan, the Sub-working Group dedicated separate sessions to measures to regulate the transit and trans-shipment of arms according to the mode of transport, by land, air and sea. The interventions of States Parties during these sessions demonstrated, however, that the mode of transport is generally not the ultimate conclusive factor in differentiating the types of control measures that States Parties apply to transit and trans-shipment of arms. For that reason, this section addresses measures to regulate the transit and trans-shipment of arms in general first, regardless of the mode of transportation, before going into the relevant specifications of transit and trans-shipment by land, air and sea.

24. The presentation on transit and trans-shipment provisions in initial reports and subsequent interventions of States Parties demonstrated that it is generally understood that States Parties need to regulate all these forms of transit, but that in requiring "*appropriate measures where necessary and feasible*", the Treaty allows flexibility and variation based on States Parties' national situation, provided

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that they comply with the limitations and obligations of international law, as well as other articles of the Treaty, in particular Article 6. As Article 6 applies to all types of transfer mentioned in Article 2 (2), including transit and trans-shipment, as a minimum States Parties will have to regulate transit and trans-shipment in order to fulfil its obligations under Article 6. This topic, the material scope of the Treaty's transit and trans-shipment obligations, was not explored in full during the sessions on regulatory measures, but forms part of the discussion on the relationship between Article 9 and other Articles (see paragraph 49 *et seq.*).

25. Concerning practical measures and options, in every session the following aspects were systematically addressed: the general options and common practices for regulating transit and trans-shipment, the specific forms of regulatory measures that States Parties take and the government departments and agencies that are involved in implementing these regulatory measures. In their interventions States Parties also addressed the different parties/entities involved in transit and trans-shipment that are responsible for compliance with their regulations. Overall reference can be made to the check list that was part of the expert presentation on transit and trans-shipment provisions in initial reports, and that was taken from the transit and trans-shipment section in the Small Arms Survey's "*The Arms Trade Treaty: A Practical Guide to National Implementation*" (see box below). This section also provides extensive guidance on all these aspects.

**Box 2. 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 to interdict, suspend a shipment, training, outreach)

Expert presentation by Dr. Paul HOLTOM, Small Arms Survey: [Article 9 - Transit and Transshipment provisions in initial reports](#) (taken from Small Arms Survey's "*The Arms Trade Treaty: A Practical Guide to National Implementation, 2016*")

26. On the topic of regulatory measures, the interventions during the different sessions demonstrated that States Parties combine a range of tools to regulate transit and trans-shipment, in line with the flexibility that the Treaty provides. The most commonly used tool is the prior authorization requirement, sometimes in the form of different types of licences with varying degrees of control. This is often combined with exemptions from authorization, prior notification requirements and/or ad hoc controls for certain circumstances. Some States Parties integrate these controls in their general customs control system. Some States Parties also only allow specifically registered actors to carry out transit and trans-shipment operations.

27. States Parties differentiate their controls on the basis of a number of factors. One factor concerns the international law limitations mentioned above, which might entail that a systematic licence requirement is not feasible and ad hoc controls such as the right to temporally seize and inspect shipments



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might be more appropriate. At the same time, also international law obligations might play a role, such as the abovementioned UN Firearms Protocol. States Parties also mentioned other factors, such as the element of trans-shipment, where different measures are applied depending on whether the arms are trans-shipped from one means of transport to the other, or stay on board throughout the whole transit phase. States Parties also indicated that certain activities or purposes are exempt from transit and/or trans-shipment obligations, such as hunting, sport shooting or movements of arms owned by (friendly) armed forces or security personnel. The expert presentation of the Flemish Peace Institute also mentioned the type of military goods, the countries of destination or of origin of the controlled goods as factors that are used by States to differentiate their transit and trans-shipment controls. States mostly use such exemptions and simplified procedures for low-risk transfers, which states generally consider unproblematic in light of Articles 6, 9 and 11 of the Treaty, for example, where based on a relationship of trust (confidence) between the states involved.

28. In order to apply these measures in practice, State Parties require the relevant parties in the transfer to provide information on forthcoming transits and trans-shipments that they have made subject to their control. During the session, reference was made to a wide range of information, including copies of export, import and other transit authorizations (or alternatives), packing lists, contracts, invoices, information on the means of transport and the actors involved, relevant transport documentation and contact details of relevant authorities.

29. On the topic of relevant government departments and agencies, the presentation on transit and trans-shipment provisions in initial reports demonstrated that in most States Parties multiple ministries and government agencies are involved in the regulation of transit and trans-shipment. Explicit reference was made to: 1) the ministries of Defence, Interior and Public Security (including police); 2) the ministries of Business, Economy, Finance and Trade (including customs); 3) the ministry of Foreign Affairs; and 4) the export (transfer) control agency. This was also reflected in the interventions of States Parties during the different sessions. The customs authorities are often at the forefront of transit and trans-shipment controls, but usually there is inter-agency cooperation, involving some or all of the authorities mentioned above. Sometimes different authorities are competent for different types of transit (land, air and sea).

30. Inter-agency cooperation does not only concern the decision-making process for approving or denying transactions, but also the enforcement of regulatory measures. This includes monitoring transactions and exchanging relevant information between relevant departments and agencies.

31. On the topic of which parties/entities are (legally designated as) responsible for compliance with transit and trans-shipment regulations, intervening States Parties pointed out that transit and trans-shipment generally involves a wide range of parties which may or may not be established in the transit state. In that respect, States Parties often do not (only) hold the exporter responsible for compliance with their transit and trans-shipment regulations, but also the carrier, as well as logistical actors that are involved in the transit State itself. It is noted that this differs from transport law, which was the focus of the expert presentations on transit and trans-shipment of arms by land, air and sea. As indicated in the expert presentation, in the context of transport law, the focus is primarily on the relationship between the seller/shipper and the carrier, in which the former has the duty to provide the latter with all the necessary information, documents and licences, while the latter has duties of care concerning the cargo, including the storing, stowage and loading of goods (see paragraphs 33 and 41).

32. One specific issue that was included in the multi-year work plan, but was not extensively addressed during the sessions on regulatory measures concerns the implications of free trade / free movement of goods zones. While the background paper for the session on transit by land named a free trade area as one of the examples that States Parties included in their initial reports of circumstances where transit and/or trans-shipment is permitted without regulation or under a simplified procedure, during the sessions, one State Party shared that conventional arms are restricted goods and are not subject to the principles of free trade and are subject to specific rules.<sup>6</sup>

<b>Overview of options for regulating transit and trans-shipment cited in interventions and expert presentations</b>			
<i>Regulatory (control) measures</i>	<i>Relevant factors to differentiate controls</i>	<i>Relevant government departments and agencies</i>	<i>Responsible parties</i>
prior authorization (different types of licences)	international law limitations and obligations	Various ministries, including ministries of Foreign Affairs, Defence, Interior and Public Security (including police)	Exporter
prior notification	element of trans-shipment	various ministries including Business, Economy, Finance and Trade (including customs)	Carrier
ad hoc controls	type of items	various ministries including Foreign Affairs	logistical actors (e.g. freight forwarder)
	countries of destination or of origin of	export (transfer) control agency	
	specific purposes (e.g. hunting or sport shooting)		

### **Measures to regulate the transit and trans-shipment of arms by land**

33. The background paper for the session on this topic listed a number of examples of international and regional instruments governing transit and transportation of goods by road and rail, of which most were also addressed in the kick-off expert presentation. These are included in [Annex B](#). None of these

<sup>6</sup> To illustrate, the issue of free-trade zones is addressed in the Best Practice Guidelines for Transit or Trans-shipment of the Wassenaar Arrangement (<https://www.wassenaar.org/app/uploads/2019/consolidated/01Best-Practice-Guidelines-for-Transit-and-Trans-shipment.pdf>). These guidelines provide that the authority to stop, inspect and seize a shipment, as well as legal grounds to dispose of a seized shipment should extend fully to activities taking place in special Customs areas located within a sovereign state’s territory, such as free-trade zones, foreign trade zones and export processing zones.

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instruments specifically address transit and trans-shipment regulations, nor conventional arms. As indicated in the expert presentation, these agreements concern transport law and deal with the obligations and rights of parties to a transport contract, on issues such as documentation, labelling, packaging, storing and the duty of care during transport.

34. The significance of these instruments for the practical implementation of the ATT and regulating (the permissibility of) transit and trans-shipment of conventional arms is therefore limited. Also the types of actors that are responsible to comply with arms transfer regulations might be different or broader than those who are responsible under (private) transport law.

35. One possibly relevant element could be the documentation that must accompany the goods during transport according to these instruments. Detailed descriptions of cargo that are required for safety purposes might in some circumstances be a source of information for arms transfer control authorities as a basis for risk assessments and to conduct ad hoc inspections. In that regard, it could be opportune for States to have communication and cooperation between their authorities in charge of the implementation of the ATT and transit controls and those involved in relevant road safety procedures. In this context, the expert presentation on this topic referred to certain dangerous goods regulations that are relevant for the transport of ammunition. While the presentation remarked that ammunition, regulated in Article 3 of the Treaty, is not directly included in the material scope of Article 9, States Parties should still take this into account, as ammunition is included in the scope of Article 6, which applies to all types of transfer, including transit and trans-shipment (see paragraph 49 *et seq.*).

36. Following the expert presentation, States Parties focused on the general transit and trans-shipment measures as described above. In terms of international and regional agreements, mention was made of the ECOWAS Convention on Small Arms and Light Weapons, which includes transit and trans-shipment as well as “transport” in its definition of transfer. The Convention provides a system of a general transfer ban and possible exemption requests that are processed via the ECOWAS Secretariat. Also the Central African Convention for the Control of Small Arms and Light Weapons was mentioned. This convention also includes transit and “transport” in its definition of transfer and requires authorization for all types of transfer. Both conventions are regional examples of positive international law obligations States Parties need to take into account when regulating transit and trans-shipment. On this subject, States Parties also referred to *bilateral* treaties that concern transit of goods through their territory.

### **Measures to regulate the transit and trans-shipment of arms by air**

37. The background paper for the session on this topic listed a number of examples of international instruments governing transit and transportation of goods by air, of which most were also addressed in the expert presentation.

38. The focus in both was on the Chicago Convention, in reference to its articles 3 and 6 and to article 4 (6) of its Annex 17. The articles in the Convention clarify the following elements: 1) the Convention only applies to civil aircraft; 2) state aircraft, such as aircraft used in military services, can only fly over the territory of another State or land thereon with authorization by special agreement or otherwise; and 3) States cannot use civil aviation for any purpose inconsistent with the aim of the Convention. The article

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in the Annex concerns measures to take relating to cargo to ensure a secured transport chain. Additionally, also Annex 18 to the Convention was mentioned, which deals with the safe transport of dangerous goods by air.

39. None of these articles specifically address transit and trans-shipment regulations and conventional arms. As with the abovementioned instruments governing transit and transportation by land, their significance for regulating (the permissibility of) transit and trans-shipment of conventional arms is limited. States Parties could nevertheless consider the information-sharing requirements concerning transport of dangerous goods as a source of information for transit and trans-shipment of goods within the scope of the relevant regulations, namely ammunition (see paragraph 35). Additionally, concerning all conventional arms within the scope of the Treaty, States Parties should also note Article 35 of the Chicago Convention, however, as explained in the box below.

**Box 3. Munitions of war or implements of war on board of aircraft engaged in international navigation**

Article 35a of the Chicago Convention explicitly provides that *“no munitions of war or implements of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State”*. This provision entails that for transit by air there is no “right of innocent passage” under international law as there is for transit through the territorial sea.

Concerning the scope of “munitions of war or implements of war”, the article provides that *“each State shall determine by regulations what constitutes munitions of war or implements of war for the purposes of this Article, giving due consideration, for the purposes of uniformity, to such recommendations as the International Civil Aviation Organization may from time to time make”*.

Since this provision is directly relevant for the regulation of transit of conventional arms, it could be opportune for States Parties to foresee some type of coordination between their authorities in charge of the implementation of the ATT and those in charge of the implementation of the Chicago Convention.

40. In their interventions following the expert presentation on this topic, none of the intervening States Parties specifically addressed the abovementioned instruments or any other topic specific to transit by air.

**Measures to regulate the transit and trans-shipment of arms by sea**

41. The expert presentation on this topic addressed a number of international and regional instruments on transport by sea, with a focus on private transport law and its so-called “Hague Visby Rules”.<sup>7</sup> These instruments do not specifically address transit and trans-shipment regulations, nor conventional arms; they mostly regulate the relationship between the seller/shipper and the carrier vis-à-vis the transport, including loading and discharge. In that specific context, the seller/shipper has the duty

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<sup>7</sup> The basic document of these *Hague-Visby Rules* concerns the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading of 25 August 1924, known as the *Hague Rules*. The Convention was amended by the so-called *Visby Protocol* of 23 February 1968.

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to provide the latter with all the necessary information, documents and licences. Interventions following the expert presentation demonstrated, however, that in States Parties' transit and trans-shipment regulations also other actors bear responsibility for compliance, including the carrier and certain logistical actors (see paragraph 31 above and the section on the role of the private sector below).

42. On this topic of relevant actors, the issue was raised in the discussion that despite rules on the training of crew in maritime transport regulations, the personnel of carriers often lack sufficient training, which disables them from carrying out basic controls and hampers compliance. This was further addressed in the session on the role of the private sector.

43. Concerning regulatory measures on maritime transport, mention was made of instruments such as the International Maritime Dangerous Goods (IMDG) Code and the aforementioned UNCLOS. In that respect, the expert presentation returned to the topic of transit restrictions and the right of innocent passage. The presentation emphasized the right of the coastal state to regulate non-innocent passage and to stop, inspect and divert vessels from the territorial sea, also indicating that UN Security Council's arms embargoes must enjoy preference over innocent passage (in reference to article 103 of the UN Charter). One intervening State Party subsequently indicated that not all transit operations are subject to prior authorization, but that the custom authorities control all flows and can intervene. Similar to the aforementioned dangerous goods regulations on land and air transport, the IMDG code was raised in the expert presentation as only relevant for transport of ammunition (see paragraphs 35 and 39).

#### **Box 4. Deviation of original itinerary / unscheduled transit**

The expert presentation also addressed the special issue of deviation, where a ship changes its scheduled itinerary *en route* and performs an unscheduled transit through the territorial waters (sea and/or internal waters) of a State, either due to an emergency or for unforeseen circumstances (for example to pick up extra cargo). The question was raised whether such passage is considered "diversion" if the ship is carrying conventional arms and had not previously obtained a transit authorization from that State.

The expert presentation addressed the topic from the transport law perspective, in reference to the "Hague Visby Rules" and the International Code for the Security of Ships and of Port Facilities (ISPS). The presentation indicated that in the specific transport law context, a "reasonable deviation" is not deemed an infringement, but also that the international code for the security of ships and of port facilities (ISPS) includes "*preventing the introduction of unauthorized weapons, incendiary devices or explosives to ships or port facilities*" in its functional requirements.

In terms of transit and trans-shipment regulations, regardless of any classification of such deviation as "diversion", it should be noted that States Parties cannot discriminate between ships that make a scheduled stop, which was part of their initial itinerary, and ships that have changed their itinerary *en route* for unforeseen circumstances. If they have arms on board, these ships need to be subject to the States' transit and trans-shipment regulations in an equal manner. In line with the flexibility that Article 9 provides, this does not mean that in practice States have to necessarily sanction every specific instance where an unscheduled transit happens contrary to their transit regulations, but, as a minimum, they will need to apply regulatory measures to ensure their compliance with Articles 6 of the Treaty and their other relevant international obligations.

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## The role of the private sector in the transit and trans-shipment of arms

44. The role of the private sector was first addressed in Sub-working Group in the general presentation of the Flemish Peace Institute – in reference to its research report on transit – pointing to the variety of actors involved in transit and trans-shipment operations and their responsibility to comply with transit regulations. During the different sessions on regulatory measures, several States Parties subsequently referred to the responsibility of various actors in the transit and trans-shipment phase next to the exporter and the carrier. The box below contains an overview of such actors, based on a similar box in the Small Arms Survey's *"The Arms Trade Treaty: A Practical Guide to National Implementation"*, which was the background of the export presentation of the Small Arms Survey in the Sub-working Group (see paragraph 8).

### **Box 5. Examples of actors involved in transit and trans-shipment operations**

*Carrier or transport service provider: the company that transports the goods for the exporter; in cases of trans-shipment, two or more carriers may be involved, such as a shipping company followed by an airline.*

*Customs broker, customs agent, or clearing agent: the company that is contracted to fulfil customs obligations on behalf of the exporter or the importer.*

*Freight forwarder: the company that is contracted by the exporter to organize the shipment of goods to the importer. This service comprises all related procedures, in some cases including customs formalities. In general, the forwarder does not move the goods directly, but contracts a carrier. In cases of trans-shipment, a freight forwarder will be responsible for carrying out the operation of trans-shipment. The forwarder may also involve other parties in these processes.*

*Shipping agent: the representative of the carrier with whom the customs broker and the freight forwarder deal.*

45. A common challenge that was raised in the presentations and interventions was that these actors sometimes lack an adequate understanding of their transit and trans-shipment obligations. For logistical actors it was also raised that they not always have an understanding of indicators that could point to suspicious transactions. Contributing factors to this are a general lack of compliance awareness and cooperation between actors involved in a transfer, as well as the complexity of the regulations and the divergence between States. The latter was also highlighted in the industry presentation in this session, which focused on the exporter perspective and pointed to the impact on the legal trade, as some carriers are hesitant to accept conventional arms as cargo.

46. In that respect, a common recommendation from the presentation and interventions is to establish close cooperation between the competent authorities and these various actors through systematic outreach, monitoring and assistance. In addition, States Parties can also partner with representative organisations of such actors. Furthermore, States Parties also need to impel actors involved

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in arms transfers to share the necessary information with each other in order to comply with transit and trans-shipment obligations.

47. Recommendations to this effect were also made in the context of the Sub-working Group on Article 11, where the role of transit and trans-shipment states in preventing diversion was examined (see box).

**Box 6. Possible measures towards the private sector in background paper on the role of transit and transshipment states in preventing diversion:**

*“Awareness-raising and due diligence requirements towards freight forwarders, shipping agents, customs agents and carriers etc., to help them become partners in preventing or detecting diversion: E.g., a prior authorization requirement for service providers that want to handle transit operations involving the transport of arms.”*

48. Awareness-raising of this kind is an important basic function of the competent authorities, but is also often referred to in the context of enforcement. That is because the criminal and administrative liability of involved actors is at stake and outreach efforts seek to enhance compliance. At the same time, these actors also have a role to play in risk assessment of the enforcement authorities, for example through effective information-sharing.

### **Relationship between Article 9 and other Articles**

#### **Relationship between Article 9 and Article 6**

49. The relationship between Article 9 and Article 6 was already partially explored during the different sessions about regulatory measures. This is reflected above, in paragraphs 18 and 24. The latter paragraph emphasizes that Article 6 applies to all types of transfer mentioned in Article 2 (2), including transit and trans-shipment, and therefore, as a minimum, States Parties will have to regulate transit and trans-shipment in order to fulfil their obligations under Article 6. Paragraph 18 focuses on the specific topic of transit through the territorial sea and the limitations on States’ power to intervene flowing from the so-called right to innocent passage; it emphasizes that, as a minimum, States Parties need to be able to interdict transit – including through the territorial sea – that would be in violation of the prohibitions in Article 6 of the Treaty, most notably if a UN Security Council arms embargo would be violated or if the State has knowledge that the arms or items would be used in the commission of genocide, crimes against humanity or war crimes.<sup>8</sup>

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<sup>8</sup> For clarity, on this topic the draft elements further specify that, taking into account the right of innocent passage, States Parties should adapt their controls to avoid undue interference with genuine innocent passage, for example by focusing on ad hoc controls and inspections in case of a reasonable suspicion of an illicit transfer rather than systematic licensing obligations.

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50. The relationship between Article 9 and Article 6 is also important in terms of the items that should be subject to the required controls. Whilst Article 9 only refers to conventional arms covered under Article 2 (1), the prohibitions in Article 6 also apply to the items covered under Article 3 (Ammunition/Munitions) and Article 4 (Parts and Components).

51. During the dedicated discussion on the relationship between Article 9 and Article 6, a few States Parties referred to elements of their national approach to applying the prohibitions in Article 6 to transit and trans-shipment. They indicated that their control regimes allows all flows to be subject to control, systematically or ad hoc. States Parties could apply exactly the same assessment criteria to transit and trans-shipment as they do to export, referring to both Article 6 and 7, with some exceptions. These exceptions would relate to forms of transit *without trans-shipment*, such as overflight. These controls would be confined to preventing the transits that are prohibited under Article 6. In practice, the national legislation would then contain the prohibitions in Article 6 as the (legal) basis for ad hoc transit controls.

### **Relationship between Article 9 and Articles 7 (6) and 11**

52. The relationship between Article 9 and Article 11, as well as the specific provision in Article 7 (6), was already explored in the Sub-Working Group on Article 11 (Diversion) during the CSP8 cycle. In that respect, reference can be made to the background paper on the role of transit and trans-shipment states in preventing diversion which informed those discussions.<sup>9</sup>

53. Concerning the general obligation in Article 11 (1) for all States Parties involved in arms transfers to take measures to prevent diversion, the bulk of the challenges and measures included in the background paper concerned the enforcement of States Parties' transit and trans-shipment regulations, as well as compliance by private actors. This was also the focus of the discussions in the Sub-Working Group on Article 11. An overview of these exchanges is included in the report of the WGETI Chair to CSP8.

54. Concerning information-exchange referred to in Article 7 (6) and Article 11 (3) of the Treaty, the background paper identified as a practical challenge the difficulty for transit States to rely on exporting States to systematically provide data about the shipment to the transit State. It included as an example the fact that information on the means and route of transport is not always known at the licensing stage (as transportation is often only secured *after* obtaining the export licence) and may be subject to change.

55. Concerning the obligation in Article 11 (3) for importing, transit, trans-shipment and exporting States Parties to cooperate and exchange information in order to mitigate the risk of diversion, the background paper provided a number of recommendations that go further than the provision of documentation by the exporting State to the transit or trans-shipment State in advance of the export. These are the following:

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<sup>9</sup> This paper was included as Attachment 2 of Annex C in the WGETI Chair Letter and Sub-Working Group documents for the 15-16 February 2022 WGETI meeting ([ATT/CSP8.WGETI/2022/CHAIR/713/M1.LetterSubDocs](https://att.csp8.wgeti.org/2022/CHAIR/713/M1.LetterSubDocs)). In terms of measures, the paper drew on the preceding paper titled 'Possible measures to prevent and address diversion', which was welcomed at CSP4 and is available in the [Tools and Guidelines section of the ATT website](#).



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- i. *Exporting States should alert transit and transshipment States in advance of shipments that are legal and properly authorised (advanced notification), so transit states are in a better position to focus their attention and resources on those shipments that have not been pre-notified or which may raise suspicion;*<sup>10</sup>
  - ii. *Exporting States should alert transit and transshipment States when they are aware of diversion risks associated with a particular shipment in transit;*
  - iii. *All States involved in a transfer should, in accordance with national laws, share intelligence information gathered through national and regional networks and operations; etc.*

56. Due to the fact that transit control involves actors other than those in the exporting and importing State, operational cooperation and information exchange is of vital importance. An additional consideration is the link between Article 9 and Articles 11 (4) and (5), which respectively encourage States Parties, inter alia, to share information regarding illicit activities and oblige States Parties to assist each other in investigations, prosecutions and judicial proceedings concerning violations of arms transfer-related regulations. If a State Party identifies possible illicit activities or actors in another State Party, that State Party should be systematically informed, so that investigations can be opened in that jurisdiction as well. In this context, regional cooperation fora could also play a facilitating role.

#### **Relationship between Article 9 and Article 12 (2)**

57. Article 12 (2) encourages States Parties to maintain records of conventional arms that are authorized to transit or trans-ship territory under its jurisdiction. This could include establishing and maintaining a registry of all types of transfers, including transit and trans-shipment.

#### **Conclusion**

58. As explained in paragraph 6, the aim of this Voluntary Guide is to provide a picture of how States Parties approach the implementation of the obligations in Article 9 of the Treaty and to provide some understanding of the key concepts in this Article. It is not its purpose of to prescribe, create new norms and standards or establish an agreement on a single interpretation of the Article 9 obligation, nor to reinterpret established definitions.

59. Nevertheless, the presentations and exchanges that underpin this guide have shed a clear light on many relevant aspects of transit- and trans-shipment control and the related Treaty obligations, as well as their practical implementation in States Parties' national control systems. This makes this Guide a useful instrument for all States that need to introduce transit and trans-shipment controls in accordance with the Treaty or intend to update their existing controls.

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<sup>10</sup> In this context, as an example, reference can be made to Article 10 (2) (b) of the UN Firearms Protocol. This provision provides that *before issuing export licences or authorizations* for shipments of firearms, their parts and components and ammunition, each *State Party shall verify* that, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the *transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit*. This is naturally only an obligation for States Parties that are also Party to the UN Firearms Protocol and limited to firearms, their parts and components and ammunition.

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60. The substantive focus of this Guide was outlined in the multi-year workplan of the Sub-working Group on Article 9, as welcomed at CSP7. This does not mean that all relevant issues concerning transit and trans-shipment controls have been addressed. As demonstrated throughout the Guide, many cross-cutting issues are highly relevant for transit and trans-shipment controls, in particular enforcement and international cooperation. In that respect, transit and trans-shipment need to remain an important focus of attention beyond this Guide, whenever States Parties will explore these cross-cutting issues further within the ATT framework. For these discussions to be useful in practice, it will also be important to involve the relevant private sector actors, especially the types identified in paragraph 44, as well as international organisations or bodies which deal with similar or related issues, such as the World Customs Organisation, Interpol, the UN Office on Drugs and Crime, the World Shipping Council and the International Air Transport Association.

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## ANNEX A. CITED INTERNATIONAL AND REGIONAL INSTRUMENTS AND REFERENCE DOCUMENTS

### National approaches to the terms 'transit' and 'trans-shipment'

1. Instruments and documents cited in expert presentation by dr. Paul Holtom, Small Arms Survey - [Article 9 - Transit and Transshipment provisions in initial reports](#)
  - ❖ International instruments
    - [International Convention on the Simplification and Harmonization of Customs Procedures \("Revised Kyoto Convention"; 2008\)](#)
  - ❖ Best practice and reference documents
    - [Small Arms Survey, The Arms Trade Treaty: A Practical Guide to National Implementation \(2015\)](#)
2. Instruments and documents cited in expert presentation by dr. Diederik Cops, Flemish Peace Institute - [Transit controls of military goods in seven European countries](#)
  - ❖ Regional instruments
    - [EU Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment](#)
    - [EU User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment \(2019\)](#)
  - ❖ Best practice and reference documents
    - [Flemish Peace Institute, Under the radar: Transit of military goods – from licensing to control \(2022\)](#)

### Phrases 'under its jurisdiction' and 'through its territory in accordance with international law'

1. Instruments and documents cited in expert presentation by prof. dr. Anna Petrig, University of Basel - [Article 9 ATT - A Law of the Sea Perspective](#)
  - ❖ International instruments
    - [United Nations Convention on the Law of the Sea \("UNCLOS"; 1982\)](#)

### Measures to regulate the transit and trans-shipment of arms by land

1. Examples of international and regional instruments governing transit and transportation (Annex A of the background paper on measures to regulate the transit and trans-shipment of arms by land and air, attached to [ATT/CSP8.WGETI/2022/CHAIR/713/M1.LetterSubDocs](#))
  - ❖ International instruments relevant to transportation by road
    - [Convention on the Contract for the International Carriage of Goods by Road \("CMR"; 1956\)](#)
    - [Protocol to the Convention on the Contract for the International Carriage of Goods by Road \(1978\)](#)

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- ❖ Regional instruments relevant to transportation by road
    - [\*ECOWAS Convention Regulating Inter-State Road Transportation between ECOWAS Member States \(1982\)\*](#)
    - [\*ECOWAS Convention relating to Inter-States Road Transit of Goods \(1982\)\*](#)
    - [\*OAS Agreement on the Adoption of the Inter-American Manual on Traffic Control Devices for Streets and Highways \(1979\)\*](#)
    - [\*Inter-American Convention on Contracts for the International Carriage of Goods by Road \(1989\)\*](#)
    - [\*European Agreement concerning the International Carriage of Dangerous Goods by Road \("ADR"; 1957\)\*](#)
    - [\*Intergovernmental Agreement on the Asian Highway Network \(2003\)\*](#)
  - ❖ International instruments relevant to transportation by rail
    - [\*International Convention to Facilitate the Crossing of Frontiers for Goods Carried by Rail \(1952\)\*](#)
    - [\*Convention on International Customs Transit Procedures for the Carriage of Goods by Rail under Cover of SMGS Consignment Notes \(2007\)\*](#)
    - [\*United Nations Convention on International Multimodal Transport of Goods \(1980; not in force\)\*](#)
  - ❖ Regional instruments relevant to transportation by rail
    - [\*Agreement on International Railways in the Arab Mashreq \(2003\)\*](#)

2. Additional instruments and documents cited in expert presentation by dr. Julia Hörnig, Erasmus University Rotterdam - [\*Transport and Transit of Arms by Road and Air\*](#)

- ❖ International instruments
  - [\*UN Firearms Protocol supplementing the UN Convention against Transnational Organized Crime \(2001\)\*](#)
- ❖ Regional instruments
  - [\*EU Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community\*](#)
  - [\*EU Regulation No 258/2012 of the European Parliament and of the Council of 14 March 2012\*](#)
- ❖ Best practice and reference documents
  - [\*Wassenaar Agreement Compendium of Best Practice Documents\*](#)

**Measures to regulate the transit and trans-shipment of arms by air**

1. Examples of international and regional instruments governing transit and transportation (Annex A of the background paper on measures to regulate the transit and trans-shipment of arms by land and air, attached to [ATT/CSP8.WGETI/2022/CHAIR/713/M1.LetterSubDocs](#))
  - ❖ International instruments relevant to transportation by air
    - [\*Convention for the Unification of Certain Rules relating to International Carriage by Air \("Warsaw Convention"; 1929\)\*](#)
    - [\*Convention for the Unification of Certain Rules Relating to International Carriage by Air \("Montreal Convention"; 1999\)\*](#)

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➤ [Convention on International Civil Aviation \("Chicago Convention"; 1994\)](#)

❖ Best practice and reference documents

➤ [Wassenaar Arrangement Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons \(SALW\) through Air Transport \(2007\)](#)

➤ [Wassenaar Arrangement Elements for Controlling Transportation of Conventional Arms Between Third Countries \(2011\)](#)

2. [Additional instruments and documents cited in expert presentation by dr. Julia Hörnig, Erasmus University Rotterdam - \*Transport and Transit of Arms by Road and Air\*](#)

❖ International instruments relevant to transportation by air

➤ [IATA Dangerous Goods Regulations \("IATA DGR"\)](#)

❖ Regional instruments relevant to transportation by air

➤ [EU Commission Regulation No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation \(EC\) No 216/2008](#)

**Measures to regulate the transit and trans-shipment of arms by sea**

1. [Instruments and documents cited in expert presentation by dr. Julia Hörnig, Erasmus University Rotterdam - \*Transport and Transit of Arms by Sea\*](#)

❖ International instruments relevant to transportation by sea

➤ "Hague-Visby Rules"

▪ [International Convention for the Unification of Certain Rules of Law relating to Bills of Lading \(1924\)](#)

▪ [Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading \(1968\)](#)

▪ [United Nations Convention on the Carriage of Goods by Sea \(1978\)](#)

➤ [International Convention for the Safety of Life at Sea \("SOLAS" 1974\)](#)

➤ [International Convention on Arrest of Ships \(1999\)](#)

➤ [International Maritime Dangerous Goods Code \("IMDG Code"; 2020\)](#)

❖ Regional instruments relevant to transportation by sea

➤ [European Union Customs Code \(2013\)](#)

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## **ANNEX B. OTHER RELEVANT ARTICLES OF THE TREATY**

### **ARTICLE 2 – SCOPE**

1. *This Treaty shall apply to all conventional arms within the following categories: (a) Battle tanks; (b) Armoured combat vehicles; (c) Large calibre artillery systems; (d) Combat aircraft; (e) Attack helicopters; (f) Warships; (g) Missiles and missile launchers; and (h) Small arms and light weapons.*
2. *For the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as transfer.*
3. *This Treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party's ownership.*

### **ARTICLE 5 (3) – GENERAL IMPLEMENTATION**

3. *Each State Party is encouraged to apply the provisions of this Treaty to the broadest range of conventional arms. [...]*

### **ARTICLE 6 – PROHIBITIONS**

1. *A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.*
2. *A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.*
3. *A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.*

### **ARTICLE 7 (6) – EXPORT AND EXPORT ASSESSMENT**

6. *Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.*

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**ARTICLE 11 (1) AND (3) – DIVERSION**

1. *Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.*
3. *Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).*

**ARTICLE 12 (2) – RECORD-KEEPING**

2. *Each State Party is encouraged to maintain records of conventional arms covered under Article 2 (1) that are transferred to its territory as the final destination or that are authorized to transit or trans ship territory under its jurisdiction.*

**ARTICLE 15 – INTERNATIONAL COOPERATION**

1. *States Parties shall cooperate with each other, consistent with their respective security interests and national laws, to effectively implement this Treaty.*
2. *States Parties are encouraged to facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of this Treaty pursuant to their respective security interests and national laws.*
3. *States Parties are encouraged to consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty.*
4. *States Parties are encouraged to cooperate, pursuant to their national laws, in order to assist national implementation of the provisions of this Treaty, including through sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion of conventional arms covered under Article 2 (1).*
5. *States Parties shall, where jointly agreed and consistent with their national laws, afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to this Treaty.*

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