

Dear all,

The Fifth Conference of States Parties (CSP5) to the Arms Trade Treaty, held in Geneva on 26-30 August 2019, considered and adopted the report of the Chair of the Working Group on Effective Treaty Implementation (hereinafter WGETI).

CSP5 endorsed¹ the WGETI conclusions regarding: 1) initiating work on Article 9 (Transit or trans-shipment) and developing a medium-term workplan to that effect, 2) continuing work on Articles 6 and 7 (Prohibitions & Export and Export Assessment), including further voluntary sharing of experience on key aspects of these articles, including Article 7(4), and considering the utility of a medium-term plan for work on these Articles, 3) as well as conducting further work on Article 11 (Diversion) as per the proposed multi-year workplan.

In this context, the WGETI will further facilitate discussions and exchange of views on the priority issues endorsed by CSP5 with a view of achieving outcomes that will assist states in the practical implementation of the Treaty at a national level.

WGETI Sub-working Groups

As the Chair of the WGETI and guided by decisions of CSP5, I have decided to focus the work of WGETI until CSP6 on the above-mentioned three priority issues endorsed by CSP5. For reasons of efficiency, I have also decided that these priority issues would be addressed in three sub-working groups led by the following experienced facilitators to whom I would like to express my heartfelt appreciation:

1. Articles 6 & 7 (Prohibitions & Export and Export Assessment) will be facilitated by **Ambassador Ignacio SÁNCHEZ DE LERÍN** of Spain²;
2. Article 9 (Transit or trans-shipment) will be facilitated by **Mr. Rob WENSLEY** of South Africa³; and
3. Article 11 (Diversion) will be facilitated by **Ms. Stela PETROVIĆ** of Serbia⁴.

Objectives and preparation for the first WGETI meeting in February

The general exchange on Treaty implementation held in the framework of the WGETI last year identified priority issues for further consideration. They also highlighted the need for work to take a more concrete form and the importance of achieving concrete results. The activities of the WGETI will thus be undertaken with these two objectives in mind.

¹ *Final Report*, paragraph 25 (ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1).

² Permanent Representative of Spain to the Conference on Disarmament

³ Department of International Relations and Cooperation.

⁴ Ministry of Trade, Tourism and Telecommunications.

In preparation for the first WGETI meeting in February, facilitators of each WGETI sub-working group have prepared work plans for their respective session that you will find herewith as Annexes A, B and C. These work plans cover both organizational and substantive elements of the work ahead. They include, amongst others, an overview of the aims and objectives of each of the sub-working groups, a description of the key issues that each sub-group will address, including consideration on substance and/or a list of guiding questions designed to guide discussions. The WGETI Chair's Draft Report to CSP5 provides a central basis guiding the substance of these documents.

Participants in the WGETI are invited to rely on these documents in preparing for the WGETI meeting and are strongly encouraged to participate actively in the respective sessions. Exchanging information on national approaches to Treaty implementation will be key for the WGETI to be able to fulfil its mandate and deliver concrete outcomes.

Programme of Work for the WGETI Sub-working Groups

The first meeting of the WGETI will take place on 04 - 05 February 2020, at the Palais des Nations, in Geneva. The WGETI has been given 1.5 days to conduct its meetings (subject to introductory and closing remarks provided by the WGETI Chair during each session), which will be allocated as follows:

Table 1. Schedule of WGETI Sub-working Group Meetings (February 2020)

	04 February		05 February
10:00 – 10:15	Opening remarks by CSP6 President and WGETI Chair	10:00 – 12:45	WGETI sub-working group on Article 11
10:15 – 13:00	WGETI sub-working group on Articles 6&7	12:45 – 13:00	Conclusions by the Chair
13:00 – 15:00	Break		Break
15:00 – 18:00	WGETI sub-working group on Article 9		WGTU

I look forward to working closely with all of you in steering our work towards a successful CSP6.

Yours sincerely,

Ambassador Jang-keun LEE
Deputy Permanent Representative Permanent Mission of the Republic of Korea
Chair of the ATT Working Group on Effective Treaty Implementation

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ANNEX A

WORK PLAN SUB-WORKING GROUP ON ARTICLES 6 & 7 TUESDAY, 04 FEBRUARY 2020, 10:15-13:00

Introduction

1. The first Chair of the Working Group on Effective Treaty Implementation (WGETI), Ambassador Sabrina DALLAFIOR of Switzerland, established the Sub-Working Group on Articles 6&7 (Prohibitions & Export and Export Assessment) at the commencement of the preparatory process for the Fourth Conference of States Parties (CSP4) to the Arms Trade Treaty (ATT) in January 2018, and appointed Sweden to facilitate the work of the Sub-Group in the lead up to CSP4 and CSP5. The Sub-Group made significant progress during its first two years of work, and identified many areas to take forward (see paragraph 22(c) of the Report to the Fifth Conference of States Parties (CSP5) ([ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1](#)) presented by the Chair of the WGETI to CSP5).

2. The current Chair of the WGETI, Ambassador Jang-keun LEE of the Republic of Korea, appointed Spain, who nominated Ambassador Ignacio SÁNCHEZ DE LERÍN, to facilitate the work of the Sub-working Group on Articles 6&7 at the commencement of the preparatory process for the Sixth Conference of States Parties (CSP6) to the ATT. The work of the Sub-Group will build on the work undertaken and progress made during the previous cycles.

Summary of progress so far

3. During its work so far the sub-working group on Articles 6 and 7 has heard several case studies of national practice in this area and has developed a *List of Possible Reference Documents to Be Used by States Parties in Conducting Risk Assessments* under Article 7 that includes existing guidance documents relating to the implementation of Article 7.4 on gender-based violence. The List was welcomed by CSP5 as living document to be reviewed and updated regularly.

4. On the strength of discussions during the CSP5 cycle meetings and progress made between CSP3 and CSP4, the former WGETI Chair concluded that the development of a multi-year work plan pertaining to the work of the sub-working group on Articles 6 and 7 seems warranted, which could notably provide for the further unpacking of the following aspects of Articles 6 and 7: the interpretation States Parties give to key concepts in Article 7 such as ‘facilitate’, ‘serious’ and ‘overriding risk’ and the measures undertaken by States Parties to mitigate risks identified. She also noted that consideration may also be given to the elaboration of elements of a voluntary training guide on gender-based violence (see paragraph 31 of the [Chair’s Report](#)).

5. In addition, in the context of the thematic discussion on Gender and Gender Based Violence and the draft decision contained in document ATT/CSP5/2019/PRES/528/Conf.Gender GBV submitted by the CSP5 President, CSP5 decided that the WGETI should consider the following issues in conjunction with other relevant elements to enhance States Parties’ ability to implement Articles 6 and 7:

i. Encourage discussion on States’ practice in interpreting the language and standards entailed in Article 7(4), including “serious”, “facilitate” and “overriding” risk, in order to assist States Parties in considering GBV issues in implementing the Treaty.

ii. Encourage States Parties to provide information on their national practices relating to “mitigating measures” in the context of Article 7(4): what these can be and how they are implemented.

- iii. Encourage States Parties to provide information on their national practices in GBV risk assessment in order to facilitate learning between States Parties.
- iv. Elements for a voluntary training guide to assist States Parties on the issues of GBV, including best practices for risk assessment, should be developed with voluntary funding, and with the participation of all stakeholders.

Next steps

6. In light of these developments, and in order to take the work of the sub-working group forward, the Facilitator of the sub-working group on Articles 6 and 7 has prepared:
 - a) A draft multi-year work plan pertaining to the work of the sub-working group on Articles 6 and 7 (see Attachment 1);
 - b) A methodology template for unpacking key concepts (Attachment 2); and
 - c) A draft outline of a possible voluntary guide to be developed by the sub-working group during the course of its work, titled: 'Elements of a voluntary guide to implementing Articles 6 & 7 of the Arms Trade Treaty' (see Attachment 3).

Multi-year work plan

7. The facilitator has prepared a draft multi-year work plan that is derived from the former WGETI Chair's recommendation and the decision of CSP5 that the WGETI should consider the elements outlined in paragraph 5 above. The multi-year plan is designed to ensure that the elements identified by the previous Chair of the WGETI are unpacked by the sub-working group, with a view to developing a voluntary guide to the implementation of Articles 6 and 7 that encapsulates the discussions and findings of the sub-working group, that serves as a compilation of State practice and experience to guide other States in their implementation efforts. Sequencing the work as proposed will also enable targeted participation by relevant experts depending on issues addressed.

8. The draft multi-year workplan includes the following topics and objectives:
 - Unpacking key concepts in Articles 6 and 7, including 'facilitate', 'serious' and 'overriding risk', with a view to identifying the interpretation States Parties give to these concepts in practice, and compiling common practice in this area that could serve as guidance to other States Parties, to be considered for endorsement at CSP6;
 - Encouraging information sharing on national practices relating to 'mitigating measures' in the context of Article 7(1)(i)-(iv) and Article 7(4);
 - Encourage States Parties to provide information on their national practices relating to assessing the risks identified in Article 7(1)(i)-(iv) and Article 7(4);
 - Discussing and developing a draft list of elements for a voluntary guide to assist States Parties implement Articles 6 and 7. This would logically be developed towards the end of the multi-year work plan and would represent a culmination of the outcomes of the discussions on the above topics; and
 - Exploring States Parties' understanding of the scope and implications of Article 6 in more detail, since the focus of the sub-working group has thus far been on the implementation of Article 7.

9. A draft of the proposed multi-year plan is included in Attachment 1 for consideration and discussion during the first CSP6 meeting of the Sub-working group on Articles 6&7 on 04 February 2020. Participants are also welcome to submit their written comments and suggestions to the facilitator through the ATT Secretariat at: info@thearmstradetreaty.org. A revised version of the multi-year work plan incorporating comments and inputs compiled by the facilitator will be presented to the second CSP6 meeting of the Sub-working Group on Articles 6&7 in April 2019, with a view to its endorsement/adoption at CSP6.

Methodology template

10. Following a discussion on the multi-year work plan, the meeting on 04 February will consider the options for obtaining and collecting the information needed to help populate the voluntary guide that will eventually be developed by the sub-working group. Regarding this discussion, the facilitator has prepared a draft methodology template designed to capture information and input from States Parties on their national practices and approaches to interpreting key concepts. This methodology template and other options for maximizing States' sharing of their national practices and experiences as input to the voluntary guide will be reviewed and discussed during the 1st CSP6 Preparatory Meeting on 04 February 2020.

11. Participants will be invited to complete the template and submit their inputs regarding national practice to the facilitator, via the ATT Secretariat, by the second meeting of the sub-working group to be held in April 2020.

Draft elements of a voluntary guide

12. The facilitator has prepared a draft outline of a potential voluntary guide to implementing Articles 6&7, titled: '*Elements of a voluntary guide to implementing Articles 6 & 7 of the Arms Trade Treaty*'. The topics included in the outline as potential sections or chapters of a voluntary guide are closely aligned with the topics included in the draft multi-year workplan, and the facilitator's objective is for the sub-working group to develop the voluntary guide section-by-section as the collective discussions on each topic and sharing of State practice and experience is completed.

13. The facilitator would like to invite participants to consider the different elements for consideration highlighted in the outline and come to the first meeting prepared to comment on the draft elements for a voluntary guide, including highlighting any topics or areas they feel are missing from the list.

ATTACHMENT 1

DRAFT MULTI-YEAR WORK PLAN FOR THE WGETI SUB-WORKING GROUP ON ARTICLES 6&7 (PROHIBITIONS & EXPORT AND EXPORT ASSESSMENT)

1 st CSP6 Preparatory Meeting, 04 February 2020	
10.00-11.00	<p>Topic 1: Draft Multi-year Work Plan</p> <p>Introduction by facilitator</p> <p>Open discussion</p> <p><i>In reviewing the draft proposed multi-year plan, participants are invited to consider, amongst others, the following questions:</i></p> <ol style="list-style-type: none"> a. <i>Has sufficient time has been allocated to each topic?</i> b. <i>Have any key concepts that should be 'unpacked' been omitted?</i> c. <i>Has any consideration been omitted?</i>
11.00-12.00	<p>Topic 2: Methodology for unpacking concepts</p> <p>Introduction by facilitator</p> <p>Explanation of the template and methodology</p> <p>Open discussion based on other concepts that may require better understanding.</p> <p><i>States should turn back the fulfilled templates before 2nd CSP6 Preparatory Meeting on 14 April 2020. The facilitator would then prepare a concept paper compiling common practice in this area that could serve as guidance to other States Parties for discussion on CSP7 First Preparatory Meeting.</i></p>
12.00-13.00	<p>Topic 3: Draft Elements of a Voluntary [Training] Guide</p> <p>Introduction by facilitator</p> <p>Open discussion</p> <p><i>During this session, the Facilitator will present a preliminary outline of the Voluntary Guide that will be developed during the course of the multi-year workplan as each topic is discussed. Participants will have the opportunity to comment on the draft outline.</i></p>
2 nd CSP6 Preparatory Meeting, 14 April 2020	
45 minutes	<p>Topic 4: Draft Multi-year Work Plan (cont...)</p> <p><i>The Facilitator will present a revised draft multi-year plan, incorporating the discussions on the initial multi-year plan discussed during the 1st CSP6 Preparatory Meeting. Participants will be invited to provide their feedback and inputs on the revised multi-year plan, with a view to the Facilitator being in a position to present a final version to CSP6 for consideration and possible adoption/endorsement.</i></p>

30 minutes	<p>Topic 5: Unpacking key concepts</p> <p><i>The facilitator will report back to the group on how many States Parties have provided responses through the template, and will present other concepts that States may have requested to be included in the compilation exercise.</i></p> <p><i>[In addition, there will be expert kick-off presentations on what constitutes ‘a serious violation of international humanitarian law’ and ‘a serious violation of international human rights law’.]</i></p>
1h 45 mins	<p>Topic 6: Voluntary Guide – Chapter 1 (Key concepts)</p> <p><i>Open discussion on Chapter 1 of the Voluntary Guide to Implementing Articles 6&7 (Key concepts). Participants will have the opportunity to review and comment on the proposed structure.</i></p>
1st CSP7 Preparatory Meeting, (date TBC)	
30 minutes	<p>Topic 7: Unpacking key concepts</p> <p><i>The facilitator will present the concept paper compiling common practice in this area that could serve as guidance to other States Parties for open discussion and consideration for endorsement by CSP7.</i></p>
1h 30 mins	<p>Topic 8: Article 7(2) - Mitigation measures</p> <p><i>This discussion will explore the obligation in Article 7(2) for exporting States Parties to ‘consider whether there are measures that could be undertaken to mitigate risks identified. The discussion will focus on State practice with respect to the following aspects:</i></p> <ul style="list-style-type: none"> - <i>What ‘confidence-building measures’ have States undertaken to mitigate risks?</i> - <i>What ‘jointly developed and agreed programmes’ have been developed or adopted by export and importing States to mitigate risks?</i> <ul style="list-style-type: none"> o <i>What are the practicalities of developing and implementing such programmes?</i> o <i>What are the characteristics/elements or prerequisites for successful programmes (i.e. those that have mitigated identified risks)?</i> - <i>How do States determine when/that an identified risk has been adequately mitigated?</i>
1 hour	<p>Topic 9: Voluntary Guide –Chapter 1</p> <p><i>The Facilitator will present the revised draft of Chapter 1 of the Voluntary Guide to Implementing Articles 6&7 (Key concepts), derived from the discussions held during the 2nd CSP6 Preparatory Meeting held on 14 April 2020 and the 1st CSP7 Preparatory Meeting. Participants will have the opportunity to review and comment on the draft chapter.</i></p>
2nd CSP7 Preparatory Meeting, (date TBC)	
1h	<p>Topic 10: Voluntary Guide –Chapter 3 (Article 7 (Export and Export Assessment))</p> <p><i>The Facilitator will also present the preliminary draft of Chapter 3 (Article 7 (Export and Export Assessment)), derived from national presentations and discussions held during the CSP4 and CSP5 cycles, as well as the 1st CSP7 Preparatory Meeting. Participants will have the opportunity to review and comment on the draft chapter.</i></p>

2h	<p>Topic 11: Relationship between Article 6 and other Articles</p> <p><i>This discussion will explore the question: What are the implications of the phrase ‘shall not authorize any transfer’ in Article 6? Participants will discuss the relationship between Article 6 and other Articles in the Treaty, including:</i></p> <ul style="list-style-type: none"> - <i>What is the relationship between Article 6 and Article 7 (Export and Export Assessment), since the term ‘transfer’ includes ‘export’ under Article 2(2)?</i> - <i>What is the relationship between Article 6 and Article 8 (Import), since the term ‘transfer’ includes ‘import’ under Article 2(2)?</i> - <i>What is the relationship between Article 6 and Article 9 (Transit and Trans-shipment), since the term ‘transfer’ includes ‘transit’ and ‘trans-shipment’ under Article 2(2)?</i> - <i>What is the relationship between Article 6 and Article 10 (Brokering), since the term ‘transfer’ includes ‘brokering’ under Article 2(2)?</i>
1st CSP8 Preparatory Meeting, (date TBC)	
3 hours	<p>Topic 12: Scope of Article 6</p> <p><i>This discussion will explore the obligations in Article 6, including the following issues:</i></p> <p><u>Article 6(1):</u> <i>What ‘obligations under measures adopted by the United Nations Security Council’ are covered under Article 6(1)?</i></p> <p><u>Article 6(2):</u> <i>What ‘international obligations under international agreements’ are ‘relevant’ under Article 6(2)?</i></p> <p><u>Article 6(3)</u></p> <ul style="list-style-type: none"> - <i>What constitutes ‘knowledge at the time of authorization’ under Article 6(3)?</i> - <i>What is genocide?</i> - <i>What are crimes against humanity?</i> - <i>What are grave breaches of the Geneva Conventions of 1949?</i> - <i>What are ‘attacks against civilian objects or civilians protected as such’?</i> - <i>What other ‘war crimes’ may be included?</i> <p><i>[In addition, there will be expert kick-off presentation on how the term ‘knowledge’ is interpreted in international law.]</i></p>
2nd CSP8 Preparatory Meeting, (date TBC)	
1 hour	<p>Topic 13: Scope of Article 6</p> <p><i>This discussion will explore the obligations in Article 6, including the following issues:</i></p> <p><u>Article 6(1):</u> <i>What ‘obligations under measures adopted by the United Nations Security Council’ are covered under Article 6(1)?</i></p> <p><u>Article 6(2):</u> <i>What ‘international obligations under international agreements’ are ‘relevant’ under Article 6(2)?</i></p>

	<p><u>Article 6(3)</u></p> <ul style="list-style-type: none"> - What constitutes 'knowledge at the time of authorization' under Article 6(3)? - What is genocide? - What are crimes against humanity? - What are grave breaches of the Geneva Conventions of 1949? - What are 'attacks against civilian objects or civilians protected as such'? - What other 'war crimes' may be included?
1 hour 30 mins	<p>Topic 14: Voluntary Guide – Chapter 2 (Article 6 (Prohibitions))</p> <p><i>The Facilitator will present the preliminary draft of Chapter 2 of the Voluntary Guide to Implementing Articles 6&7 (Article 6 (Prohibitions)), derived from the discussions held during the 1st CSP8 Preparatory Meeting. Participants will have the opportunity to review and comment on the draft chapter.</i></p>
30 minutes	<p>Topic 15: Voluntary Guide – Conclusion</p> <p><i>The Facilitator will present the final draft of the Voluntary Guide to Implementing Articles 6&7 in order to consider the endorsement by CSP8.</i></p>

ATTACHMENT 2

DRAFT METHODOLOGY TEMPLATE FOR UNPACKING KEY CONCEPTS

State Parties are invited to complete the table by inserting an explanation of their approach to the interpretation of each concept, limiting their explanation to 250 characters.

	ATT State Party	“facilitate” (7.1.b) i-iv)/(7.4.)	“serious” (7.1.b) i-ii)/(7.4.)	“overriding risk” (7.3.)	Other concepts
1.	Albania				
2.	Antigua and Barbuda				
3.	Argentina				
4.	Australia				
5.	Austria				
6.	Bahamas				
7.	Barbados				
8.	Belgium				
9.	Belize				
10.	Benin				
11.	Bosnia and Herzegovina				
12.	Botswana				
13.	Brazil				

	ATT State Party	“facilitate” (7.1.b) i-iv)/(7.4.)	“serious” (7.1.b) i-ii)/(7.4.)	“overriding risk” (7.3.)	Other concepts
14.	Bulgaria				
15.	Burkina Faso				
16.	Cabo Verde				
17.	Cameroon				
18.	Canada				
19.	Central African Republic				
20.	Chad				
21.	Chile				
22.	Costa Rica				
23.	Côte D'Ivoire				
24.	Croatia				
25.	Cyprus				
26.	Czech Republic				
27.	Denmark				
28.	Dominica				
29.	Dominican Republic				
30.	El Salvador				

	ATT State Party	“facilitate” (7.1.b) i-iv) /(7.4.)	“serious” (7.1.b) i-ii) /(7.4.)	“overriding risk” (7.3.)	Other concepts
31.	Estonia				
32.	Finland				
33.	France				
34.	Georgia				
35.	Germany				
36.	Ghana				
37.	Greece				
38.	Grenada				
39.	Guatemala				
40.	Guinea				
41.	Guinea Bissau				
42.	Guyana				
43.	Honduras				
44.	Hungary				
45.	Iceland				
46.	Ireland				
47.	Italy				

	ATT State Party	“facilitate” (7.1.b) i-iv) / (7.4.)	“serious” (7.1.b) i-ii) / (7.4.)	“overriding risk” (7.3.)	Other concepts
48.	Jamaica				
49.	Japan				
50.	Kazakhstan				
51.	Latvia				
52.	Lebanon				
53.	Lesotho				
54.	Liberia				
55.	Liechtenstein				
56.	Lithuania				
57.	Luxembourg				
58.	Madagascar				
59.	Maldives				
60.	Mali				
61.	Malta				
62.	Mauritania				
63.	Mauritius				
64.	Mexico				

	ATT State Party	“facilitate” (7.1.b) i-iv)/(7.4.)	“serious” (7.1.b) i-ii)/(7.4.)	“overriding risk” (7.3.)	Other concepts
65.	Monaco				
66.	Montenegro				
67.	Mozambique				
68.	Netherlands				
69.	New Zealand				
70.	Niger				
71.	Nigeria				
72.	Norway				
73.	Palau				
74.	Panama				
75.	Paraguay				
76.	Peru				
77.	Poland				
78.	Portugal				
79.	Republic of Korea				
80.	Republic of Moldova				

	ATT State Party	“facilitate” (7.1.b) i-iv) / (7.4.)	“serious” (7.1.b) i-ii) / (7.4.)	“overriding risk” (7.3.)	Other concepts
81.	Republic of North Macedonia				
82.	Romania				
83.	Saint Kitts and Nevis				
84.	Saint Lucia				
85.	Saint Vincent and the Grenadines				
86.	Samoa				
87.	San Marino				
88.	Senegal				
89.	Serbia				
90.	Seychelles				
91.	Sierra Leone				
92.	Slovakia				
93.	Slovenia				
94.	South Africa				
95.	Spain				
96.	State of Palestine				

	ATT State Party	“facilitate” (7.1.b) i-iv) / (7.4.)	“serious” (7.1.b) i-ii) / (7.4.)	“overriding risk” (7.3.)	Other concepts
97.	Suriname				
98.	Sweden				
99.	Switzerland				
100	Togo				
101	Trinidad and Tobago				
102	Tuvalu				
103	United Kingdom of Great Britain and Northern Ireland				
104	Uruguay				
105	Zambia				

ATTACHMENT 3

ELEMENTS OF A VOLUNTARY GUIDE TO IMPLEMENTING ARTICLES 6 & 7 OF THE ARMS TRADE TREATY

Introduction

1. Key concepts
2. Article 6 (Prohibitions)
 - a. What transfers must be prohibited?
 - b. Article 6(1)
 - i. Obligations under measures adopted by the United Nations Security Council
 - c. Article 6(2)
 - i. Relevant international obligations under international agreements
 - d. Article 6(3)
 - i. What constitutes 'knowledge' at the time of authorization?
 - ii. What is genocide?
 - iii. What are crimes against humanity?
 - iv. What are grave breaches of the Geneva Conventions of 1949?
 - v. What are 'attacks against civilian objects or civilians protected as such'?
 - vi. What other 'war crimes' may be included?
3. Article 7 (Export and Export Assessment)
 - a. What is the obligation in Article 7?
 - b. Conducting risk assessments under Article 7
 - i. When must a State Party conduct a risk assessment?
 - ii. Who conducts risk assessments?
 - iii. What criteria must be applied?
 1. Peace and security
 2. Serious violations of international humanitarian law
 3. Serious violations of international human rights law
 4. Offences under international conventions or protocols relating to terrorism
 5. Offences under international conventions or protocols relating to transnational organised crime
 6. Serious acts of gender-based violence or serious acts of violence against women and children
 - c. Mitigation measures

d. [*Other*]

Conclusion

Annex. List of possible reference documents to be considered by States Parties in conducting a risk assessment under Article 7

ANNEX B

**WORK PLAN SUB-WORKING GROUP ON ARTICLE 9
TUESDAY, 04 FEBRUARY 2020, 15:00-18:00**

Background

14. In their Draft Report to the Third Conference of States Parties (CSP3) (ATT/CSP3.WGETI/2017/CHAIR/158/Conf.Rep), the Co-chairs of the (then) Ad Hoc ATT Working Group on Effective Treaty Implementation identified Article 9 (Transit and trans-shipment) as one of four priority topics for discussion by the Working Group in the period running up to the Fourth Conference of States Parties (CSP4). CSP3 endorsed the workplan of the Working Group, including the list of priority topics for discussion, but directed the Working Group to further refine the order of the priority topics. Accordingly, work on Article 9 was delayed to allow work on the other priority topics to progress.

15. With substantive progress having been made regarding Article 5 implementation, notably with the drafting of the Voluntary Basic Guide to Establishing a National Control System, the Working Group on Effective Treaty Implementation (WGETI) determined that work on Article 5 could be temporarily discontinued to start addressing other ATT Articles, commencing with Article 9 (Transit and trans-shipment).

16. A list of topics and elements for consideration were compiled by the WGETI to guide the work of a WGETI sub-working group on Article 9 to be established after the Fifth Conference of States Parties to the Arms Trade Treaty (ATT). This formed Annex E to the WGETI Chair's Draft Report to CSP5, contained in document ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep.

The work ahead

17. The current Chair of the WGETI, Ambassador Jang-keun LEE of the Republic of Korea, established the Sub-Working Group on Article 9 (Transit and trans-shipment) at the commencement of the preparatory process for the Sixth Conference of States Parties (CSP6) to the Arms Trade Treaty (ATT) in December 2019, and appointed South Africa, who nominated Mr. Rob WENSLEY to facilitate the work of the Sub-Group in the lead up to CSP6.

18. The Facilitator of the sub-working group has prepared a background paper, which is derived from the list of topics and elements for consideration included as Annex E to the WGETI Chair's Draft Report to CSP5, titled: #. The background paper is included in Attachment 1 for consideration and discussion during the first meeting of the sub-working on Article 9 on 05 February 2020.]

19. Following the first meeting of the sub-working group, the Facilitator will develop a programme of work and multi-year work plan for the sub-working group, to be circulated to ATT stakeholders for discussion during the second meeting of the sub-working group in April 2020, and for consideration and possible adoption by CSP6.

ATTACHMENT 1

BACKGROUND PAPER ON TRANSIT AND TRANS-SHIPMENT

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 by Article 2 (1) through its territory in accordance with relevant international law.

General

1. Common elements of a national regulatory conventional arms control framework are generally understood to include its measures relating to transit and trans-shipment.
2. Most national control systems comprise the national legislation, regulations, and administrative procedures established by a government both to administer the import, export, transit, trans-shipment, and brokering of arms and other items and to process applications for authorisations to conduct these activities and monitor their trade.
3. The main components of a national control system should include a legal and regulatory basis for licensing and enforcement, a corresponding institutional framework, and administrative procedures for implementation.
4. ATT states parties provide information on national measures to implement Article 9 provisions in their initial reports on measures to implement the ATT. Of the 73 ATT states parties that had submitted an initial report by 17 January 2020, 61 have made their report publicly available. Fifty-three of these 61 states parties have a national control system that includes measures that allow the regulation of transit, compared to 51 that have provisions for the regulation of trans-shipment. In total, 55 of these 61 states parties have a national control system that includes measures that allow the regulation of transit and/or trans-shipment.⁵ This is because not all states parties regulate transit and transshipment in the same way, but approach the issue using one of the following approaches:
 - No distinction between transit and transshipment;
 - Transshipment is regarded as an element or sub-component of transit;
 - Transit is regulated but transshipment is not;
 - Transshipment is regulated but transit is not.
5. The national control systems of ATT States Parties also differ with regards to the application of their national control measures for transit and/or transshipment. For example, 56 of the ATT States Parties that have made their initial report publicly available indicate that their national control system includes measures that cover transit and/or transshipment through land territory (including internal

⁵ Five States Parties indicated in their initial report that their national control system includes measures that allow the regulation, where necessary and feasible, of transit only. Two States Parties indicated that such measures apply only to transshipment.

waters) and 53 report that this is the case for transit and/or transshipment through national air space. Forty-eight States Parties have control measures for the regulation of transit and/or transshipment through territorial waters.

6. Thirty-five States Parties indicated that written authorizations (licences or permits) are used to regulate the transit and/or transshipment of conventional arms covered by Article 2(1) of the ATT, with three States Parties using export and import authorizations to regulate transit and/or transshipment. Thirty-seven States Parties provided a reference to the legislation that contains provisions to regulate transit and/or transshipment, a link to a website providing information on the requirements, or the documentation or information required for an application for a transit and/or transshipment authorization.

7. Twenty-two States Parties stated in their initial report that the transit and/or transshipment of controlled equipment is permitted without regulation or under a simplified procedure under certain circumstances (for instance in a free trade area).

8. Twenty-one ATT States Parties reported that their national control transit and/or transshipment goes beyond the fulfilment of obligations under Article 6 of the Treaty. Nine of these States Parties explicitly stated that they apply the same criteria and risk assessment procedures before authorizing or denying applications for transit and/or transshipment of conventional arms as they do for the export of conventional arms – i.e. they apply ATT Article 7. Thirty-two States Parties reported applying measures to regulate transit and/or transshipment for categories of conventional arms that are not covered by Article 2(1), of which 21 States Parties explicitly stated that they regulate the transit and/or transshipment of all items covered by their national control list.

9. In many cases, the same agencies that are responsible for the control of exports are also responsible for the regulation of transit and/or transshipment. Most States Parties reported multiple ministries and government agencies are involved in decision-making regarding authorizations and the enforcement of national legislation.

10. In connection with the encouraged practice contained in Article 12(2) of the ATT, fifty-one States Parties reported that their national control system included provisions for maintaining records regarding authorizations for the transit and/or transshipment through national territory of conventional arms covered under Article 2(1) of the ATT.

ISSUES FOR CONSIDERATION UNDER THE SCOPE OF ARTICLE 9

QUESTION 1:

What would be common understandings under the term, “appropriate measures to regulate” under a national conventional arms control system?

- A. This may be interpreted as a Decree (Executive Order), as may be issued by a Head of State, according to that country’s national procedures and has the force of law;
- B. National legislation;
- C. National regulations/regulatory measures (scope and application of applicable legislation);
- D. both B and C above.

Discussion of national implementation measures and/or best practices

QUESTION 2:

How are these covered within regulatory frameworks?

- (a) Is the general rubric of “transfers” alone sufficient?
- (b) How best could the terms transit and trans-shipment be elaborated?
 - i. Transit
 - ii. Trans-shipment

Discussion of national experiences and/or best practices

QUESTION 3:

How can the term “under its jurisdiction” be best defined?

General obligations and the role of flag States?

Options by States for regulating transit or trans-shipment “through its territory in accordance with relevant international law”.

Discussion of national experiences and/or best practices

QUESTION 4:

What are the parameters/limits to the term “where necessary and feasible”, if any?

Discussion of national experiences and/or best practices

QUESTION 5:

Which other ATT Articles should be considered by this sub-working group when considering implementation of Article 9?

Discussion of national experiences and/or best practices

ANNEX C

**WORK PLAN SUB-WORKING GROUP ON ARTICLE 11 (DIVERSION)
WEDNESDAY, 05 FEBRUARY 2020, 10:00-12:45**

Introduction

1. The WGETI Sub-working group on Article 11 (Diversion) was established by the WGETI Chair after consideration of recommendations and decisions of the Fourth Conference of States Parties (CSP4). The WGETI Sub-working group on Article 11 (Diversion), which is recognized as one of the key objectives of the Arms Trade Treaty (ATT), held its first two meetings during the intersessional period between CSP4 and CSP5.

General overview

2. During its previous meetings, the WGETI sub-working group on Article 11 developed a multi-year workplan as a living document to guide continued work in this area (Attachment 2 to this document). This formed Annex C to the WGETI Chair's Draft Report to CSP5, contained in document ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep, was welcomed by CSP5, and is attached below as Attachment 1 for your convenience. The multi-year work plan is focused on three parts:

1. Before the transfer
2. During the transfer
3. At or after importation/ Post delivery

3. All stages of the transfer chain are divided into smaller areas, each with their own questions and discussion guidance. The first two meetings during the CSP5 cycle considered the first item on the multi-year work plan on the issue of import documentation. Challenges were detected in the lack of shared understanding on terminology for end use and end user documentation. It was indicated that much remains to be done to address challenges posed by implementation of the Article 11. CSP5 further validated the elaboration of a voluntary guide on end use/r documentation that serves as a repository of State Practice in this area on the basis of *Elements of a guide to end use and end user documentation*. States Parties are encouraged to share information on end use/r documentation, through the ATT Secretariat, to inform this guide.

First CSP6 Preparatory Meeting focus

4. In accordance with the multi-year work plan, the first meeting of WGETI Sub-working group on Article 11 to be held during the CSP6 cycle, will focus on transfer chain stage 1 – Before the transfer. The focus will be on the following topics: Assessing the risk of diversion, and the role of private sector in mitigating diversion risk (guiding questions are included in the following Agenda).

5. Participants are strongly encouraged to take an active role in discussion on the proposed topics, and to share the national approaches regarding the following Agenda. The facilitator will welcome all additional comments and suggestions to the Agenda, and hopes that participants will take this opportunity to exchange information and experiences, as well as to recognize the challenges of the proposed topics.

ATTACHMENT 1
DRAFT AGENDA FOR THE 1ST CSP6 PREPARATORY MEETING
OF THE SUB-WORKING GROUP ON ARTICLE 11 (DIVERSION)
5TH FEBRUARY 2020

- 1. Opening remarks**
- 2. Session 1: Assessing the risk of diversion**

This discussion will explore the practicalities (including resource requirements and challenges) associated with assessing the risk of diversion of an export and the possible establishment of mitigation measures, including the following elements:

- **How to undertake consistent and objective transfer risk assessments that take into account the risk of diversion (Articles 7(1) and 11(2));**
 - *Adherence to highest international standards;*
 - *Existence of practical guidance on export procedures and standards (published handbooks, websites);*
 - *Willingness of Parties to share established procedures and standards;*
 - *Defining necessary actions/ appropriate solutions;*
 - *Different diversion risk standards among different parties;*
 - *Rapidly changing circumstances – challenge?*

- **How to identify certain diversion risk indicators;**
 - *Red flags*

- **How to establish the legitimacy and credibility of all parties involved in the transfer, such as the exporter, brokers, shipping agents, freight forwarders/intermediate consignees and stated end- use/r (Article 11(2));**
 - *Bilateral/Multilateral Cooperation: Information exchange regarding the parties involved in the transfer;*
 - *Availability of database resources;*
 - *Open resources (are they legitimate?);*
 - *Intelligence information availability;*

- **How to examine the risks arising from the proposed shipment arrangements;**
 - *Different duties of parties involved in shipment arrangements (exporters, importers, final delivery addressee, freight forwarders, carriers, customs brokers, transport companies);*
 - *Familiarity with type and characteristics of goods, and depending of that - suitability of type of the proposed shipment arrangement;*
 - *Familiarity with proposed transfer route, and depending that – is it possible to ensure physical security of the goods during all phases of transportation (who is responsible?);*

- **How to assess the reliability of controls in the importing country and the transit country (applicable);**
 - *Reliability of documentation issued by importing/transit country;*
 - *How much information importing /transit country are willing to share?;*
 - *Previous experience (if applicable) of mutual cooperation with importing /transit country;*

- *Good practices and available information regarding past cases of fraudulent transfers;*

➤ **How to examine the risk that a conventional arms transfer would increase the risks of diversion of the existing holdings of the end-user.**

- *Extensive knowledge of the existing holdings of the end user and his needs of future purchases (arms types, quantities, lifecycle of holdings, existence of domestic production, personnel number of the end user military/police, etc.);*
- *Geopolitical situation and non – state actors involvement;*

➤ **What are the options for mitigating detected risk(s)?**

- *The existence of adequate resources;*
- *Request for additional information/ documents/assurances;*
- *Enhanced monitoring or refusal of the transfer?;*
- *Need and wiliness of the country to seek for international assistance in order to mitigate detected risks;*
- *The existence of political will;*

*The Sub-working group will also examine the role of information and **information exchange** in conducting a risk assessment and identify the types of information and mechanisms of information exchange that are relevant and necessary.*

- *Importance of information exchange;*
- *The methods of information exchange;*
- *Relevant types of information;*
- *Availability of information to some/all parties?*
- *Right people/ right information/ right time*

3. Session 2: The role of the private sector in mitigating diversion risk

This discussion will explore the role of the private sector, including arms manufacturers/industry and civil society, in mitigating diversion risk before the physical transfer takes place. It will also examine the role of internal export control compliance programmes.

- *Private sector parties credibility;*
- *Private sector awareness raising;*
- *Industry outreach;*
- *Commercial interests vs. National Interests vs. Global Security*
- *ICP – Importance of Internal export control compliance programmes;*

4. Other issues

5. Closing remarks

ATTACHMENT 2: WGETI CHAIR'S REPORT TO CSP5 - ANNEX C. MULTI-YEAR WORK PLAN FOR THE WGETI SUB-WORKING GROUP ON ARTICLE 11 (DIVERSION)

1 st CSP5 Preparatory Meeting, 30 January 2019	
10.00-11.00	<p>Draft Multi-year Work Plan</p> <p>Introduction by facilitator</p> <p>Open discussion</p> <p><i>In reviewing the draft proposed multi-year plan, participants are invited to consider, amongst others, the following questions:</i></p> <ol style="list-style-type: none"> <i>a. Has sufficient time has been allocated to each topic?</i> <i>b. Have any topics been omitted that should be included?</i> <i>c. Has any consideration been omitted?</i>
11.00-13.00	<p>1. Import documentation⁸</p> <p><i>This discussion will explore the types of written documentation submitted as part of an application for an export licence from the exporting State (such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances). It will consider:</i></p> <ul style="list-style-type: none"> <i>- What types of written documents exist?</i> <i>- How are such documents prepared? Which ministries and agencies are involved?</i> <i>- What is the role and/or responsibilities of the importing State regarding such documents?</i> <i>- What is the role and/or responsibilities of the transit/transshipment State(s)?</i> <i>- What is the role and/or responsibilities of the brokering State(s)?</i> <i>- What is the role of the exporting State (i.e. verification and authentication as part of diversion risk assessment)?</i> <i>- In practice, what are the common elements of such documents? What assurances are provided? What is the minimum that should be required?</i> <p><i>It will also examine the role of information exchange in verifying and authenticating import documentation and identify the types of information exchange that are relevant and necessary.</i></p>

Transfer chain stage 1: Before the transfer

2 nd CSP5 Preparatory Meeting, 03 April 2019		
Transfer chain stage 1: Before the transfer	3 hours	<p>2. Import documentation⁹ (continued)</p> <p><i>This discussion will continue to explore the types of written documentation submitted as part of an application for an export licence from the exporting State (such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances). The Facilitator will circulate a background paper in advance of the 2nd series of CSP5 meetings to facilitate discussion, including the following elements:</i></p> <ul style="list-style-type: none"> - <i>What types of written documents exist?</i> - <i>How are such documents prepared? Which ministries and agencies are involved?</i> - <i>What is the role and/or responsibilities of the importing State regarding such documents?</i> - <i>What is the role and/or responsibilities of the transit/transshipment State(s)?</i> - <i>What is the role and/or responsibilities of the brokering State(s)?</i> - <i>What is the role of the exporting State (i.e. verification and authentication as part of diversion risk assessment)?</i> - <i>In practice, what are the common elements of such documents? What assurances are provided? What is the minimum that should be required?</i> - <i>What sanctions do exporting States impose for non-compliance with end-use/r assurances and undertakings?</i> <p><i>It will also examine the role of information exchange in verifying and authenticating import documentation and identify the types of information exchange that are relevant and necessary.</i></p> <ul style="list-style-type: none"> - <i>How do exporting States verify and authenticate import documents as a part of a broader risk assessment framework?</i> - <i>What mechanisms are used?</i> - <i>Which agencies are involved?</i> - <i>How long does it take?</i> - <i>What steps are taken if the documentation is found to be fraudulent?</i>
	1 hour	<p>3. The role of the private sector in import documentation</p> <p><i>This discussion will explore the role of the private sector, including arms manufacturers/industry and civil society, in mitigating diversion risk before the physical transfer takes place. It will also examine the role of internal export control compliance programmes.</i></p> <ul style="list-style-type: none"> - <i>What is the role of industry in helping State agencies verify and authenticate import documentation?</i> - <i>What could be done to encourage industry to develop internal control compliance programmes?</i>

1 st CSP6 Preparatory Meeting, (date TBC)		
Transfer chain stage 1: Before the transfer	3 hours	<p>6. Assessing the risk of diversion¹⁰</p> <p><i>This discussion will explore the practicalities (including resource requirements and challenges) associated with assessing the risk of diversion of an export and the possible establishment of mitigation measures. The Facilitator will circulate a background paper in advance of the 1st series of CSP6 meetings to facilitate discussion, including the following elements:</i></p> <ol style="list-style-type: none"> <i>a. How to undertake consistent and objective transfer risk assessments that take into account the risk of diversion (Articles 7(1) and 11(2));</i> <i>b. How to identify certain diversion risk indicators;</i> <i>c. How to establish the legitimacy and credibility of all parties involved in the transfer, such as the exporter, brokers, shipping agents, freight forwarders/intermediate consignees and stated end-use/r (Article 11(2));</i> <i>d. How to examine the risks arising from the proposed shipment arrangements;</i> <i>e. How to assess the reliability of controls in the importing country and the transit country (if applicable); and</i> <i>f. How to examine the risk that a conventional arms transfer would increase the risks of diversion of the existing holdings of the end- user.</i> <i>g. What are the options for mitigating detected risk(s)?</i> <p><i>It will also examine the role of information and information exchange in conducting a risk assessment and identify the types of information and mechanisms of information exchange that are relevant and necessary.</i></p>
	1 hour	<p>5. The role of the private sector in mitigating diversion risk</p> <p><i>This discussion will explore the role of the private sector, including arms manufacturers/industry and civil society, in mitigating diversion risk before the physical transfer takes place. It will also examine the role of internal export control compliance programmes.</i></p>

¹⁰ Paragraph 5 of the Sub-working group paper : [Possible measures to prevent and address diversion](#) (available in other languages [here](#)).

2 nd CSP6 Preparatory Meeting, (date TBC)		
Transfer chain stage 1: Before the transfer	3 hours	<p>6. Assessing the risk of diversion¹¹ (continued)</p> <p><i>This discussion will continue to explore the practicalities (including resource requirements and challenges) associated with assessing the risk of diversion of an export and the possible establishment of mitigation measures, including the following elements:</i></p> <ul style="list-style-type: none"> - <i>How to undertake consistent and objective transfer risk assessments that take into account the risk of diversion (Articles 7(1) and 11(2));</i> - <i>How to identify certain diversion risk indicators;</i> - <i>How to establish the legitimacy and credibility of all parties involved in the transfer, such as the exporter, brokers, shipping agents, freight forwarders/intermediate consignees and stated end-use/r (Article 11(2));</i> - <i>How to examine the risks arising from the proposed shipment arrangements;</i> - <i>How to assess the reliability of controls in the importing country and the transit country (if applicable); and</i> - <i>How to examine the risk that a conventional arms transfer would increase the risks of diversion of the existing holdings of the end-user.</i> - <i>What are the options for mitigating detected risk(s)?</i> <p><i>It will also examine the role of information and information exchange in conducting a risk assessment and identify the types of information and mechanisms of information exchange that are relevant and necessary.</i></p>
	1 hour	<p>7. Discussion on paper outlining elements of a process for assessing the risk of diversion</p> <p><i>The Facilitator will circulate a paper in advance of the 2nd series of CSP6 meetings outlining the elements of a process for assessing the risk of diversion, based on the discussion that took place during the 1st meeting, for consideration and possible adoption at CSP6.</i></p>

¹¹ Paragraph 5 of the Sub-working group paper : [Possible measures to prevent and address diversion](#) (available in other languages [here](#)).

1 st CSP7 Preparatory Meeting, (date TBC)	
Transfer chain stage 2: During the transfer	<p>3 hours</p> <p>1. The role of transit and transshipment States in preventing diversion</p> <p><i>This discussion will explore the measures that can and are being taken by transit and transshipment States to mitigate the risk of diversion during a transfer. The Facilitator will circulate a background paper in advance of the 1st series of CSP7 meetings to facilitate discussion, including the following elements:</i></p> <ul style="list-style-type: none"> - <i>Issuing delivery notification (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Article 11(3));</i> - <i>Conducting routine risk assessment or due diligence checks on conventional arms shipments, in cooperation with local, regional or international law enforcement organizations and other regulatory agencies, prior to approval of transfers; and</i> - <i>Monitoring and protecting conventional arms shipments, in cooperation with customs service, law enforcement and other industry parties involved (e.g. freight forwarders/intermediate consignees, transporters etc).</i> <p><i>It will also examine the practical and legal challenges faced by transit and transshipment States in preventing diversion during transit (by sea, air or land – road and rail), as well as the role of cooperation and information exchange among States involved in a transfer during the transfer phase and identify the types of information exchange that are relevant and necessary.</i></p> <ul style="list-style-type: none"> - <i>What mechanisms are used in ensuring cooperation and information exchange to mitigate diversion?</i> - <i>Which ministries or agencies are involved in the information exchange process?</i> - <i>Are there national legal restrictions that can impact the information exchange process?</i>
Transfer chain stage 2: During the transfer	<p>1 hour</p> <p>2. The role of the private sector in mitigating diversion risk</p> <p><i>This discussion will explore the role of the private sector, in particular transporters (road, rail, air and sea), freight forwarders/intermediate consignees, etc mitigating diversion risk during transfer.</i></p>

2 nd CSP7 Preparatory Meeting, (date TBC)		
Transfer chain stage 3: At or after importation / Post-delivery	2 hours	<p>1. The role of importing States in preventing diversion</p> <p><i>This discussion will explore the measures that can and are being taken by importing States to mitigate the risk of diversion post-delivery, including</i></p> <ul style="list-style-type: none"> - <i>Issuing delivery notification by the importing State (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Articles 8(1) and 11(3));</i> - <i>Registering and maintaining records of conventional arms entering their national territory, as well as the secure transfer of these to the authorised end-user (Article 12 (2)); and</i> - <i>Ensuring robust stockpile management procedures (including routine security inspections and audits of the conventional arms stockpiles of all end users). Note: it is anticipated that the topic of post-delivery storage and stockpile management would be discussed as part of a future multi-year work plan that will address Transfer chain 4.</i> - <i>Effective legislation for investigating and/or punishing diversion-related offences.</i>
	2 hours	<p>2. Post-delivery cooperation</p> <p><i>This discussion will explore the possibility of exporting States conducting post-delivery checks in cooperation with competent authorities in the importing State to verify compliance with end-use conditions, such as the condition that no re-export can take place without prior notification to the country of origin. It will examine the political and resource implications of such checks.</i></p> <ul style="list-style-type: none"> - <i>What are some challenges/concerns regarding post-delivery cooperation?</i>
