

Arms Trade Treaty  
**Sixth Conference of States Parties**  
 Geneva, 17 – 21 August 2020  
 (By written procedure)

**ATT WORKING GROUP ON EFFECTIVE TREATY IMPLEMENTATION  
 CHAIR'S DRAFT REPORT TO CSP6**

**INTRODUCTION**

1. This Draft Report to the Sixth Conference of States Parties (CSP6) is presented by the Chair of the Working Group on Effective Treaty Implementation (WGETI) to reflect on the work carried out by the WGETI since CSP5 and to put forward recommendations for consideration by CSP6.

**BACKGROUND**

2. The Third Conference of States Parties (CSP3) decided to establish a *standing* Working Group on Effective Treaty Implementation to operate under the Terms of Reference contained in Annex A of the Co-chairs' report to CSP3 ([ATT/CSP3.WGETI/2017/CHAIR/158/Conf.Rep](#)), including a mandate to serve as an ATT continuous platform to:

- a. exchange information and challenges on the practical implementation of the Treaty at the national level;
- b. address, in detail, specific issues set by CSP as priority areas (topics) to take Treaty implementation forward; and
- c. identify Treaty implementation priority areas for endorsement by CSP to be used in Treaty implementation support decisions e.g. ATT Voluntary Trust Fund.

3. For its part, CSP5 underlined the importance that the WGETI take work forward in the intersessional period of the Sixth Conference of States Parties in particular on Articles 6, 7, 9 and 11 in dedicated sub-working groups.

**Appointment of WGETI Chair**

4. On 30 October 2019, the President of CSP6 appointed Ambassador Jang-keun LEE of the Republic of Korea as Chair of the WGETI for the period between CSP5 and CSP6. On 10 June 2020, the President of CSP6 announced that Ambassador Sang-beom LIM of the Republic of Korea would replace Ambassador Jang-keun LEE as the Chair of the WGETI from 10 June 2020 until the end of CSP6.

**WGETI Sub-working Groups and appointment of facilitators**

5. After careful consideration and guided by decisions of CSP5, the Chair of the WGETI decided to focus work until CSP6, first and foremost, on the three priority issues to be addressed in three Sub-working Groups led by dedicated facilitators as listed below:

- a. Articles 6 (Prohibitions) and 7 (Export and Export Assessment) facilitated by Ambassador Ignacio SÁNCHEZ DE LERÍN of Spain.
- b. Article 9 (Transit or trans-shipment) facilitated by Mr. Rob WENSLEY of South Africa.
- c. Article 11 (Diversion) facilitated by Ms. Stela PETROVIĆ of Serbia.

### **FIRST MEETING OF THE WGETI**

6. The WGETI Sub-working Groups held their first set of meetings from 04-05 February 2020 in Geneva, at the Palais des Nations, Geneva (Room V). The WGETI meeting was attended by representatives of 70 States, 3 international organisations, 1 regional organisation, 9 civil society organisations and 3 industry organisations.

#### **Sub-working group on Article 6 and Article 7**

7. During its meeting in February 2020, the WGETI sub-working group on Articles 6&7 considered three documents prepared by the facilitator, Ambassador Ignacio SÁNCHEZ DE LERÍN of Spain: a) A draft multi-year work plan pertaining to the work of the sub-working group on Articles 6 and 7; b) A methodology template for unpacking key concepts; 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'.

8. Participants welcomed the documents, whilst also emphasizing that a 'one size does not fit all' approach needs to be taken with respect to unpacking key concepts in Articles 6 and 7 (and the Treaty more broadly) and noting that clarity is needed with respect to the output of the exercise. Participants also made some concrete suggestions for enhancing the multi-year work plan and draft outline of a possible voluntary guide.

#### **Sub-working group on Article 9**

9. The meeting of the WGETI sub-working group on Article 9 began with a presentation by the Small Arms Survey on the information included in States Parties' Initial Reports on their implementation of the transit and trans-shipment provisions of the Treaty. This formed a good basis for the general discussion that followed on the scope and nature of the transit and trans-shipment provisions in Article 9 of the Treaty. Elements for a draft multi-year work plan on Article 9 were also sought by the facilitator.

#### **Sub-working group on Article 11**

10. In accordance with the multi-year work plan developed during previous meetings, the meeting of WGETI Sub-working group on Article 11 focused on assessing the risk of diversion, and the role of private sector in mitigating diversion risk, with discussions centering on the questions posed by the Facilitator in the agenda circulated for the meeting. Participants shared their national approaches and experiences with assessing the risk of diversion and recognized the challenges of the proposed topics.

### **SECOND MEETING OF THE WGETI**

11. The second set of meetings of the WGETI Sub-working Groups was scheduled to take place from 14-15 April 2020, with the intention of building on and take forward the discussions of the February meetings. However, as announced by the President of CSP6 in his letter of 18 March 2020, the ATT meetings scheduled to take place in April 2020 were cancelled due to the COVID-19 outbreak.

12. As was also announced by the CSP6 President in his letter of 01 April 2020, the President, in consultation with the ATT office holders and the ATT Secretariat, prepared a plan to enable the work of the WGETI Sub-working Groups to continue remotely in the intersessional period to ensure necessary decisions can be taken by CSP6 guiding the work of the next CSP cycle. That plan involved the ATT office bearers consulting with ATT stakeholders remotely on the documents to be submitted to CSP6, and finalising the documents for timely submission to CSP6.

13. Accordingly, the following WGETI documents were circulated to ATT stakeholders on 07 April 2020 for consultation remotely (on-line) during the intersessional period :

- a. Revised draft multi-year work plan for the WGETI Sub-working group on Articles 6 & 7;
- b. Revised draft elements of a Voluntary Guide to implementing Article 6&7;
- c. Draft multi-year work plan for the WGETI Sub-working group on Article 9; and
- d. Revised multi-year work plan for the WGETI Sub-working group on Article 11.

14. Following the deadline for the submission of inputs (21 May 2020), the Facilitators of the WGETI Sub-working groups incorporated the comments and suggestions received from ATT stakeholders into the draft WGETI documents. Revised versions of the following documents are annexed to this report:

- a. Annex A: Revised draft multi-year work plan for the WGETI Sub-working group on Articles 6 & 7;
- b. Annex B: Revised draft multi-year work plan for the WGETI Sub-working group on Article 9; and
- c. Annex C: Revised multi-year work plan for the WGETI Sub-working group on Article 11.

15. The revised draft elements of a Voluntary Guide to implementing Article 6&7 and the outcome of the exercise involving the methodology template for unpacking key concepts will be circulated in advance of – and considered during – the first series of WGETI meetings in 2021.

## **WGETI RECOMMENDATIONS**

16. On the basis of discussions during meetings and progress made since CSP5, the following are presented for consideration by CSP6:

- a. To endorse and welcome the uploading of the documents listed below, which have been consolidated on the basis of exchanges during the WGETI meetings held in February 2020 and comments received through consultations held remotely during the intersessional period, as living documents to be reviewed by the Working Group, as appropriate:
  - i. The *Revised draft multi-year work plan for the WGETI Sub-working group on Articles 6 & 7 (Prohibitions & Export and Export Assessment)* (Annex A);
  - ii. The *Revised draft multi-year work plan for the WGETI Sub-working group on Article 9 (Transit or Trans-shipment)* (Annex B); and
  - iii. The *Revised multi-year work plan for the WGETI Sub-working group on Article 11 (Diversion)* (Annex C).

\*\*\*

## ANNEX A

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

The aim of this multi-year work plan is to ensure that the work of this Sub-working Group gives priority to the continuation and deepening of the voluntary sharing of expert views and national experiences in the implementation of Articles 6 and 7 of the Arms Trade Treaty.

1 <sup>st</sup> CSP6 Preparatory Meeting, 04 February 2020	
10.00-11.00	<p><b>Topic 1: Draft Multi-year Work Plan</b></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"> <li>a. <i>Has sufficient time has been allocated to each topic?</i></li> <li>b. <i>Have any key concepts that should be ‘unpacked’ been omitted?</i></li> <li>c. <i>Has any consideration been omitted?</i></li> </ol>
11.00-12.00	<p><b>Topic 2: Methodology for unpacking concepts</b></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 15 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 at CSP7 First Preparatory Meeting.</i></p>
12.00-13.00	<p><b>Topic 3: Draft Elements of a Voluntary [Training] Guide</b></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 <sup>nd</sup> CSP6 Preparatory Meeting, 14 April 2020	
	<p><b>Meeting cancelled due to the COVID-19 crisis.</b></p> <p><i>The Facilitator will circulate a revised draft multi-year plan, incorporating the discussions on the initial multi-year plan discussed during the 1<sup>st</sup> CSP6 Preparatory Meeting. Participants will be invited to provide their feedback and inputs on the revised multi-year plan in writing via email to the ATT Secretariat by 21 May 2020, 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>
1 <sup>st</sup> CSP7 Preparatory Meeting, (date TBC)	
1h 30 mins	<p><b>Topic 4: Unpacking key concepts</b></p> <p>Report back by facilitator</p> <p>Open discussion</p> <p><i>The facilitator will report back to the group on how many States Parties in total provided responses through the template. This will conclude the exercise involving the methodology template, and any future discussions on key concepts will take place as part of the development of Chapter 1 of the Voluntary Guide.</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 30 mins	<p><b>Topic 5: Voluntary Guide – Chapter 1 (Key concepts)</b></p> <p>Introduction by facilitator</p> <p>Open discussion</p> <p><i>The Facilitator will present the preliminary draft of Chapter 1 of the Voluntary Guide to Implementing Articles 6&amp;7 (Key concepts) derived from contributions received from States Parties to the methodology template exercise. Participants will have the opportunity to review and comment on the content and proposed structure of the first draft of Chapter 1.</i></p>
2 <sup>nd</sup> CSP7 Preparatory Meeting, (date TBC)	
1h 30 mins	<p><b>Topic 6: Voluntary Guide – Chapter 1 (Key concepts) (continued...)</b></p> <p>Introduction by facilitator</p> <p>Open discussion</p>

	<i>The Facilitator will present the revised draft of Chapter 1 of the Voluntary Guide to Implementing Articles 6&amp;7 (Key concepts), derived from the contributions received from States Parties to the methodology template exercise and the discussions during the 1st CSP7 Preparatory Meeting. Participants will have the opportunity to review and comment on the draft chapter and to consider it for endorsement by CSP7.</i>
<b>1h 30 mins</b>	<p><b>Topic 7: Scope of Article 6</b></p> <p><i>This discussion will explore the obligations in Article 6, including the following issues:</i></p> <p><i><u>Article 6</u>: What does ‘shall not authorize any transfer’ entail in the context of Article 6?</i></p> <p><i><u>Article 6(1)</u>: What ‘obligations under measures adopted by the United Nations Security Council’ are covered under Article 6(1)?</i></p> <p><i><u>Article 6(2)</u>: What ‘international obligations under international agreements’ are ‘<b>relevant</b>’ under Article 6(2)?</i></p>
<b>1<sup>st</sup> CSP8 Preparatory Meeting, (date TBC)</b>	
<b>3 hours</b>	<p><b>Topic 8: Scope of Article 6 (continued...)</b></p> <p><i>This discussion will explore the obligations in Article 6, including the following issues:</i></p> <p><i><u>Article 6(3)</u></i></p> <ul style="list-style-type: none"> <li>- <i>What constitutes ‘<b>knowledge</b> at the time of authorization’ under Article 6(3)?</i></li> <li>- <i>How is ‘genocide’ defined under international law?</i></li> <li>- <i>How are ‘crimes against humanity’ defined under international law?</i></li> <li>- <i>What are grave breaches of the Geneva Conventions of 1949?</i></li> <li>- <i>What are ‘attacks against civilian objects or civilians protected as such’?</i></li> <li>- <i>What other ‘war crimes’ may be included?</i></li> </ul> <p><i>In addition, there will be expert kick-off presentation on how the term ‘knowledge’ and other relevant terms are interpreted in international law.</i></p>
<b>2<sup>nd</sup> CSP8 Preparatory Meeting, (date TBC)</b>	
<b>1h 30 mins</b>	<p><b>Topic 9: Voluntary Guide – Chapter 2 (Article 6 (Prohibitions))</b></p> <p>Introduction by facilitator</p> <p>Open discussion</p>

	<p><i>The Facilitator will present the preliminary draft of Chapter 2 of the Voluntary Guide to Implementing Articles 6&amp;7 (Article 6 (Prohibitions)), derived from the discussions held during the 2<sup>nd</sup> CSP7 Preparatory Meeting and the 1st CSP8 Preparatory Meeting. Participants will have the opportunity to review and comment on the draft chapter.</i></p>
1h 30 mins	<p><b>Topic 10: Relationship between Article 6 and other Articles</b></p> <p><i>This discussion will explore the question: What are the implications of the phrase ‘shall not authorize any <b>transfer</b>’ 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"> <li>- <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></li> <li>- <i>What is the relationship between Article 6 and Article 8 (Import), since the term ‘transfer’ includes ‘import’ under Article 2(2)?</i></li> <li>- <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></li> <li>- <i>What is the relationship between Article 6 and Article 10 (Brokering), since the term ‘transfer’ includes ‘brokering’ under Article 2(2)?</i></li> </ul>
<b>1<sup>st</sup> CSP9 Preparatory Meeting, (date TBC)</b>	
1h 30 mins	<p><b>Topic 11: Voluntary Guide – Chapter 2 (Article 6 (Prohibitions)) (continued...)</b></p> <p>Introduction by facilitator</p> <p>Open discussion</p> <p><i>The Facilitator will present the revised draft of Chapter 2 of the Voluntary Guide to Implementing Articles 6&amp;7 (Article 6 (Prohibitions)), derived from the discussions held during the 1st and 2<sup>nd</sup> CSP8 Preparatory Meetings. Participants will have the opportunity to review and comment on the draft chapter and to consider it for endorsement by CSP9.</i></p>
1h 30 mins	<p><b>Topic 12: Article 7(2) - Mitigation measures</b></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’ when conducting assessments in accordance with Articles 7.1(a) and (b) as well as Article 7.4. The discussion will focus on State practice with respect to the following aspects:</i></p> <ul style="list-style-type: none"> <li>- <i>What do states believe constitute “mitigation measures”?</i></li> <li>- <i>What do states consider the purpose of mitigation measures?</i></li> <li>- <i>Under what circumstances would mitigation measures be explored?</i></li> <li>- <i>What kind of mitigation measures could an exporting state take under consideration in order to avoid the specific negative consequences in Article 7 (1)?</i></li> </ul>

	<ul style="list-style-type: none"> <li>- <i>At what point would other states in the transfer chain (i.e. transit or importing states) be involved in discussions concerning mitigation measures?</i></li> <li>- <i>What do states view as the roles of different parties (exporting State, importing State, exporters and/or industry) with regard to mitigation measures?</i></li> <li>- <i>What considerations might be taken into account when developing and applying mitigation measures?</i></li> <li>- <i>Do states have public examples of mitigation measures being applied effectively or not (whether by ATT States Parties or not)?</i></li> <li>- <i>What 'confidence-building measures' have States undertaken to mitigate risks?</i></li> <li>- <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"> <li>o <i>What are the practicalities of developing and implementing such programmes?</i></li> <li>o <i>What are the characteristics/elements or prerequisites for successful programmes (i.e. those that have mitigated identified risks)?</i></li> </ul> </li> <li>- <i>How do States determine when/that an identified risk has been adequately mitigated?</i></li> </ul>
<b>2<sup>nd</sup> CSP9 Preparatory Meeting, (date TBC)</b>	
<b>3h</b>	<p><b>Topic 13: Voluntary Guide – Chapter 3 (Article 7 (Export and Export Assessment))</b></p> <p>Introduction by facilitator</p> <p>Open discussion</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 CSP9 Preparatory Meeting. Participants will have the opportunity to review and comment on the draft chapter.</i></p>

\*\*\*

**ANNEX B**  
**DRAFT MULTI-YEAR WORK PLAN FOR THE WGETI SUB-WORKING GROUP ON ARTICLE 9 (TRANSIT OR TRANS-SHIPMENT)**

<b>21 April – 21 May 2020 (CSP6 intersessional period)</b>	
<b>Online consultations</b>	<p><b>Draft Multi-year Work Plan</b></p> <p><i>The Facilitator, with the support of the ATT Secretariat, will circulate a draft multi-year work plan for the Sub-working group on Article 9 (Transit or trans-shipment) to ATT stakeholders on 21 April. ATT stakeholders will be invited to review the draft multi-year plan and provide written comments to the Facilitator via the ATT Secretariat by 21 May 2020.</i></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"> <li><i>a. Has sufficient time has been allocated to each topic?</i></li> <li><i>b. Have any key concepts that should be ‘unpacked’ been omitted?</i></li> <li><i>c. Has any consideration been omitted?</i></li> </ol> <p><i>The Facilitator will submit a revised draft multi-year plan, incorporating the feedback on the initial multi-year plan circulated for consultation during the intersessional period leading up to CSP6, to CSP6 for consideration and possible adoption/endorsement.</i></p>
<b>1<sup>st</sup> CSP7 Preparatory Meeting, (date TBC)</b>	
<b>1 hour</b>	<p><b>Topic 1: Discussion on national approaches to the terms ‘transit’ and ‘trans-shipment’</b></p> <p><i>This discussion will explore how and whether States Parties distinguish between ‘transit’ and ‘trans-shipment’, and what this means in practice. The discussion will explore the following aspects:</i></p> <ul style="list-style-type: none"> <li><i>- How do States Parties approach the term “transit” in their national practice?</i></li> <li><i>- How do States Parties approach the term “trans-shipment” in their national practice?</i></li> <li><i>- Do States Parties apply the same regulations to ‘transit’ and ‘trans-shipment’ in their national control systems?</i></li> </ul> <p><i>In addition, there will be expert kick-off presentations on the national practice of one or more States Parties in the regulation of the transit and trans-shipment of arms.</i></p>
<b>2 hours</b>	<p><b>Topic 2: Discussion on the phrases ‘under its jurisdiction’ and ‘through its territory in accordance with international law’</b></p> <p><i>This discussion will explore the terms ‘under its jurisdiction’ and ‘through its territory in accordance with international law’ in Article 9 of the Treaty. The discussion will explore the following aspects:</i></p> <ul style="list-style-type: none"> <li><i>- How does international law define ‘under its jurisdiction’?</i></li> <li><i>- How do States Parties approach the application of the term “under its jurisdiction” in their national practice?</i></li> <li><i>- What are the general obligations and the role of flag States?</i></li> </ul>

	<p>- <i>What are the options by States for regulating transit or trans-shipment “through its territory in accordance with relevant international law”?</i></p> <p><i>States Parties will be encouraged to share information on national practices in this area. In addition, there will be expert kick-off presentations on the interpretation given by international law to the phrase ‘under its jurisdiction’; the relevant international law applicable to the transit and trans-ship of arms through States’ territory; and the international obligations of flag states.</i></p>
<b>2nd CSP7 Preparatory Meeting, (date TBC)</b>	
<b>1h 30 mins</b>	<p><b>Topic 3: Measures to regulate the transit and trans-shipment of arms <i>by land</i></b></p> <p><i>This discussion will explore options and common practice for regulating the transit and trans-shipment of arms by land. The discussion will explore the following aspects:</i></p> <ul style="list-style-type: none"> <li>- <i>How do States regulate the transit and trans-shipment of arms <u>by road</u> in practice?</i></li> <li>- <i>How do States regulate the transit and trans-shipment of arms <u>by rail</u> in practice?</i> <ul style="list-style-type: none"> <li>• <i>What form do regulatory measures take at the national level?</i></li> <li>• <i>Which Government departments and agencies are involved in implementing the regulatory measures?</i></li> </ul> </li> <li>- <i>What are the international and regional instruments governing transit and transportation of goods <u>by road</u>?</i></li> <li>- <i>What do these instruments say about the transit and trans-shipment of arms <u>by road</u>?</i></li> <li>- <i>What are the international and regional instruments governing transit and transportation of goods <u>by rail</u>?</i></li> <li>- <i>What do these instruments say about the transit and trans-shipment of arms <u>by rail</u>?</i></li> <li>- <i>What are the implications of free trade/free movement of goods zones for the transit and trans-shipment of arms?</i></li> </ul> <p><i>In addition, there will be expert kick-off presentations on international regulations governing the transit and trans-shipment of goods, including arms, by road and by rail.</i></p>
<b>1h 30 mins</b>	<p><b>Topic 4: Measures to regulate the transit and trans-shipment of arms <i>by air</i></b></p> <p><i>This discussion will explore options and common practice for regulating the transit and trans-shipment of arms by air. The discussion will explore the following aspects:</i></p> <ul style="list-style-type: none"> <li>- <i>How do States regulate the transit and trans-shipment of arms <u>by air</u> in practice?</i> <ul style="list-style-type: none"> <li>• <i>What form do regulatory measures take at the national level?</i></li> <li>• <i>Which Government departments and agencies are involved in implementing the regulatory measures?</i></li> </ul> </li> <li>- <i>What are the international and regional instruments governing transit and transportation of goods <u>by air</u>?</i></li> <li>- <i>What do these instruments say about the transit and trans-shipment of arms <u>by air</u>?</i></li> </ul> <p><i>In addition, there will be expert kick-off presentations on international regulations governing the transit and trans-shipment of goods, including arms, by air.</i></p>

1st CSP8 Preparatory Meeting, (date TBC)	
2 hours	<p><b>Topic 5: Measures to regulate the transit and trans-shipment of arms <i>by sea</i></b></p> <p><i>This discussion will explore options and common practice for regulating the transit and trans-shipment of arms by sea. The discussion will explore the following aspects:</i></p> <ul style="list-style-type: none"> <li>- <i>How do States regulate the transit and trans-shipment of arms <u>by sea</u> in practice?</i> <ul style="list-style-type: none"> <li>• <i>What form do regulatory measures take at the national level?</i></li> <li>• <i>Which Government departments and agencies are involved in implementing the regulatory measures?</i></li> </ul> </li> <li>- <i>What are the international and regional instruments governing transit and transportation of goods <u>by sea</u>?</i></li> <li>- <i>What do these instruments say about the transit and trans-shipment of arms <u>by sea</u>?</i></li> </ul> <p><i>In addition, there will be expert kick-off presentations on international [and regional] regulations governing the transit and trans-shipment of goods, including arms, by sea.</i></p>
1 hour	<p><b>Topic 6: The role of the private sector in the transit and trans-shipment of arms</b></p> <p><i>This discussion will explore the role of the private sector, including arms manufacturers/industry and shipping companies and agencies, in the transit and trans-shipment of arms by land, air and sea. There will be expert kick-off presentations by experts from the private sector.</i></p>
2 <sup>nd</sup> CSP8 Preparatory Meeting, (date TBC)	
2 hours	<p><b>Topic 7: Relationship between Article 9 and other Articles</b></p> <p><i>This discussion will explore other areas of the Treaty where transit and trans-shipment States may have obligations or responsibilities, including:</i></p> <ul style="list-style-type: none"> <li>- <i>What is the relationship between Article 6 (Prohibitions) and Article 9 (Transit and Trans-shipment), since the term ‘transfer’ includes ‘transit’ and ‘trans-shipment’ under Article 2(2)?</i></li> <li>- <i>What is the relationship between Article 7(6) (Export and Export Assessment) and Article 9, since Article 7(6) contemplates that transit or trans-shipment States Parties may request information pertaining to export authorizations?</i></li> <li>- <i>What is the relationship between Article 11(1) (Diversion) and Article 9, since Article 11(1) obliges each State Party ‘involved in the transfer’ of conventional arms to take measures to prevent their diversion and ‘transfer’ is described or defined under Article 2(2) to include transit and trans-shipment?</i></li> <li>- <i>What is the relationship between Article 11(3) (Diversion) and Article 9, since Article 11(3) obliges transit and trans-shipment States Parties to cooperate and exchange information, pursuant to their national laws, to mitigate the risk of diversion?</i></li> <li>- <i>What is the relationship between Article 12(2) (Record keeping) and Article 9, since Article 12(2) encourages States Parties to maintain records of conventional arms that are authorized to transit or trans-ship territory under its jurisdiction?</i></li> </ul>

<b>1 hour</b>	<i>[The topic(s) for discussion is to be determined according to previous discussions and may include continuation of themes addressed in previous sessions that require more time, or new themes or elements of Article 9 that have arisen during previous sessions, but have not yet been addressed.]</i>
---------------	---

\*\*\*

**ANNEX C**  
**REVISED MULTI-YEAR WORK PLAN FOR THE WGETI SUB-WORKING GROUP ON ARTICLE 11 (DIVERSION)**

1 <sup>st</sup> CSP5 Preparatory Meeting, 30 January 2019	
<b>10.00-11.00</b>	<p><b>Draft Multi-year Work Plan</b></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"> <li>a. <i>Has sufficient time has been allocated to each topic?</i></li> <li>b. <i>Have any topics been omitted that should be included?</i></li> <li>c. <i>Has any consideration been omitted?</i></li> </ol>
<b>11.00-13.00</b>	<p><b>1. Import documentation<sup>8</sup></b></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"> <li>- <i>What types of written documents exist?</i></li> <li>- <i>How are such documents prepared? Which ministries and agencies are involved?</i></li> <li>- <i>What is the role and/or responsibilities of the importing State regarding such documents?</i></li> <li>- <i>What is the role and/or responsibilities of the transit/transshipment State(s)?</i></li> <li>- <i>What is the role and/or responsibilities of the brokering State(s)?</i></li> <li>- <i>What is the role of the exporting State (i.e. verification and authentication as part of diversion risk assessment)?</i></li> <li>- <i>In practice, what are the common elements of such documents? What assurances are provided? What is the minimum that should be required?</i></li> </ul> <p><i>It will also examine the role of <b>information exchange</b> in verifying and authenticating import documentation and identify the types of information exchange that are relevant and necessary.</i></p>

<sup>9</sup> Paragraphs 3, 6 and 7 of the Sub-working group paper : [Possible measures to prevent and address diversion](#) (available in other languages [here](#)).

2 <sup>nd</sup> CSP5 Preparatory Meeting, 03 April 2019		
Transfer chain stage 1: Before the transfer	3 hours	<p><b>2. Import documentation<sup>9</sup> (continued)</b></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 2<sup>nd</sup> series of CSP5 meetings to facilitate discussion, including the following elements:</i></p> <ul style="list-style-type: none"> <li>- <i>What types of written documents exist?</i></li> <li>- <i>How are such documents prepared? Which ministries and agencies are involved?</i></li> <li>- <i>What is the role and/or responsibilities of the importing State regarding such documents?</i></li> <li>- <i>What is the role and/or responsibilities of the transit/transshipment State(s)?</i></li> <li>- <i>What is the role and/or responsibilities of the brokering State(s)?</i></li> <li>- <i>What is the role of the exporting State (i.e. verification and authentication as part of diversion risk assessment)?</i></li> <li>- <i>In practice, what are the common elements of such documents? What assurances are provided? What is the minimum that should be required?</i></li> <li>- <i>What sanctions do exporting States impose for non-compliance with end-use/r assurances and undertakings?</i></li> </ul> <p><i>It will also examine the role of <b>information exchange</b> 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"> <li>- <i>How do exporting States verify and authenticate import documents as a part of a broader risk assessment framework?</i></li> <li>- <i>What mechanisms are used?</i></li> <li>- <i>Which agencies are involved?</i></li> <li>- <i>How long does it take?</i></li> <li>- <i>What steps are taken if the documentation is found to be fraudulent?</i></li> </ul>
	1 hour	<p><b>3. The role of the private sector in import documentation</b></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"> <li>- <i>What is the role of industry in helping State agencies verify and authenticate import documentation?</i></li> <li>- <i>What could be done to encourage industry to develop internal control compliance programmes?</i></li> </ul>

<sup>9</sup> Paragraphs 3, 6 and 7 of the Sub-working group paper : [Possible measures to prevent and address diversion](#) (available in other languages [here](#)).

1 <sup>st</sup> CSP6 Preparatory Meeting, 05 February 2020		
Transfer chain stage 1: Before the transfer	3 hours	<p><b>1. Assessing the risk of diversion<sup>10</sup></b></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 1<sup>st</sup> series of CSP6 meetings to facilitate discussion, including the following elements:</i></p> <ol style="list-style-type: none"> <li><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></li> <li><i>b. How to identify certain diversion risk indicators;</i></li> <li><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></li> <li><i>d. How to examine the risks arising from the proposed shipment arrangements;</i></li> <li><i>e. How to assess the reliability of controls in the importing country and the transit country (if applicable); and</i></li> <li><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></li> <li><i>g. What are the options for mitigating detected risk(s)?</i></li> </ol> <p><i>It will also examine the role of information and <b>information exchange</b> 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><b>5. The role of the private sector in mitigating diversion risk</b></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>

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

2nd CSP6 Preparatory Meeting, (cancelled)		
	3 hours	<i>Meeting cancelled due to the COVID-19 crisis.</i>
1 <sup>st</sup> CSP7 Preparatory Meeting, (date TBC)		
Transfer chain stage 1: Before the transfer	3 hours	<p><b>6. Assessing the risk of diversion<sup>11</sup> (continued)</b></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"> <li>- <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></li> <li>- <i>How to identify certain diversion risk indicators;</i></li> <li>- <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></li> <li>- <i>How to examine the risks arising from the proposed shipment arrangements;</i></li> <li>- <i>How to assess the reliability of controls in the importing country and the transit country (if applicable); and</i></li> <li>- <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></li> <li>- <i>What are the options for mitigating detected risk(s)?</i></li> </ul> <p><i>It will also examine the role of information and <b>information exchange</b> 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><b>7. Discussion on paper outlining elements of a process for assessing the risk of diversion</b></p> <p><i>The Facilitator will circulate a paper in advance of the 1<sup>st</sup> series of CSP7 meetings outlining the elements of a process for assessing the risk of diversion, based on the discussion that took place during the 1<sup>st</sup> meeting, for consideration and possible adoption at CSP7.</i></p>

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

2nd CSP7 Preparatory Meeting, (date TBC)	
Transfer chain stage 2: During the transfer	<p><b>3 hours</b></p> <p><b>1. The role of transit and transshipment States in preventing diversion</b></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 1<sup>st</sup> series of CSP7 meetings to facilitate discussion, including the following elements:</i></p> <ul style="list-style-type: none"> <li>- <i>Issuing delivery notification (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Article 11(3));</i></li> <li>- <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></li> <li>- <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></li> </ul> <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 <b>information exchange</b> 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"> <li>- <i>What mechanisms are used in ensuring cooperation and information exchange to mitigate diversion?</i></li> <li>- <i>Which ministries or agencies are involved in the information exchange process?</i></li> <li>- <i>Are there national legal restrictions that can impact the information exchange process?</i></li> </ul>
	<p><b>1 hour</b></p> <p><b>2. The role of the private sector and civil society in mitigating diversion risk</b></p> <p><i>This discussion will explore the role of the private sector and civil society, in particular transporters (road, rail, air and sea), freight forwarders/intermediate consignees, etc mitigating diversion risk during transfer.</i></p>

1<sup>st</sup> CSP8 Preparatory Meeting, (date TBC)

Transfer chain stage 3: At or after importation / Post-delivery	2 hours	<p><b>1. The role of importing States in preventing diversion</b></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"> <li>- <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></li> <li>- <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></li> <li>- <i>Ensuring robust stockpile management procedures (including routine security inspections and audits of the conventional arms stockpiles of all end users). <b>Note:</b> 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></li> <li>- <i>Effective legislation for investigating and/or punishing diversion-related offences.</i></li> </ul>
	1 hour	<p><b>2. Post-delivery cooperation</b></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"> <li>- <i>What are some challenges/concerns regarding post-delivery cooperation?</i></li> </ul>
	1 hour	<p><b>3. The role of the private sector and civil society in mitigating diversion risk post-delivery</b></p> <p><i>This discussion will explore the role of private sector and civil society in order to prevent diversion at or after importation.</i></p>

\*\*\*