
SUB-WORKING GROUP ON ARTICLES 6 & 7 – WORK PLAN

During the WGETI meeting in March, the sub-working group had a presentation by a state party's authorizing agency on implementation of articles 6 and 7 followed by a comprehensive interactive discussion with questions, comments and reflections from participants. While fully acknowledging that states parties implement the articles from different baselines, some having since many years an established export control system while other have just recently set one up or were in the process of doing so, many delegations saw the discussions as both being useful and a practical example of transparency with regard to implementation of the treaty. The meeting in March also discussed some specific issues that were on the agenda, such as the legal and structural framework that would be valuable to ensure implementation of UNSC arms embargoes and abide by article 6(1) of the treaty

The second meeting in May will be seek to build on the March meeting and will be structured along the lines proposed in the March 22 report.

1) Experiences of implementing articles 6 and 7 – Presentation by Japan

Director Hidetaka NISHIMURA, of the Security Trade Control Policy Division, Trade and Economic Cooperation Bureau, Japan, will give a presentation of implementation of articles 6 and 7. This will be followed by an interactive discussion among delegations. As with the March meeting, delegations are encouraged to prepare by identifying what they see as challenges in the implementation of these articles and if possible what measures were taken to address them, as well as provide comments and questions with regard to the opening presentation.

2) Example of legal framework needed to implement article 6 (1)

A presentation of a national legislation to implement UNSC arms embargoes as an example of what type of legal framework that is needed to ensure the implementation of article 6(1). This will be followed by Q/A and a discussion on the paper prepared by the facilitator on the implementation of that article and the issue of legal framework that is annexed to this work plan.

3) Draft guidance document on possible sources to be used for risk assessment under articles 6 and 7

A paper has been prepared with draft list of possible sources for information that could be of use in a risk assessment under article 6 and 7, for consideration and discussion. This document is annexed to the work plan and comments on the list ahead of meeting in May are welcome with a view of issuing an updated list shortly before or at the meeting. Comments can of course relate both to the proposed sources, as well as the structure of the document.

Delegations are also encouraged to prepare some comments with regard to the proposal of an ATT guidance document for risk assessment (best practice?, guidance? etc), which received support by several delegation at the meeting in March. Issues that could be raised include: scope; level of detail needed vs. the reluctance by many state parties to risk “renegotiating” the treaty; already existing

guidance documents that can be drawn from. Other aspects of this topic may of course also be raised by delegations.

4) Gender based violence – articles 7 (4)

The facilitator would like to have a discussion aimed at identifying what aspects of GBV 7(4) the working group should focus on to help states in their implementation of their obligations under this sub-article. Delegations are encouraged to provide proposals at the meeting in May or preferably before, which could then be circulated allowing for better preparations for the discussion.

5) Conclusions and recommendations

The sub-working group will need to discuss possible conclusions and recommendations resulting from its work. Beside conclusions and recommendation resulting from the points above, participants may want also want to:

- indicate from their standpoint what are the key take-aways from the work of the sub-group?
- Indicate how articles 6 and 7 implementation should be taken forward after CSP4 in the context of the WGETI?
- discuss whether projects related to articles 6 and 7 should constitute a priority for the VTF,

These initial conclusions and recommendations from the sub-group will be transmitted to the Chair of the WGETI for further consolidation.

ANNEX A**ATT ARTICLE 6.1 – SOME POSSIBLE GUIDANCE AND SUPPORT IN IMPLEMENTING THE OBLIGATION**

Article 6.1 of the treaty prohibits international transfers of conventional arms, their ammunition and parts and components to entities subject to UN arms embargoes – using the definition of transfer provided in Article 2 of the ATT. The purpose of the sub-para is to ensure in particular that the sanctions decreed by the UNSC are respected. All export licences should be assessed on a case-by-case basis and consideration should be given to the article when there are concerns over the inconsistency with international obligations under existing UN arms embargoes.

A) What to do

State parties should control the stated or probable destination of export and the location of end-user against the embargoes enforced by the UN. As the list of embargoed countries, non-state entities and individuals (such as terrorist groups and individual terrorists) is subject to regular changes, it is important to take recent developments into account and consult with updated lists of arms embargoes in force.

While fully acknowledging that state parties themselves decide what sources they will use in carrying out the risk assessment under art 6.1, the following non-exhaustive list of sources of information could be of value.

- Foreign affairs desk officers dealing with the particular country and with respective disarmament, SALW or export control agreements.
- Information from state parties diplomatic missions and other governmental institutions, including police, customs and intelligence sources.
- Information provided through regional organisations, if applicable.
- Information provided through export control arrangements, if applicable.
- UN Sanctions Committee Implementation Assistance Notices (provides information on the detection of an attempted violation of UN Arms embargoes – identifying entities involved in the violation, route, vessel, types of items concealed and method for concealment)
- Reports of UN Panels or Groups of experts mandated to monitor the implementation of UN sanctions and investigate alleged violations
- iTrace <http://www.conflictarm.com/itrace/>
- Non-governmental research organizations

Non-exhaustive list of where information about embargoes in force can be found:

United Nations - <https://www.un.org/sc/suborg/en/sanctions/information>

SIPRI - <http://www.sipri.org/databases/embargoes>

B) The importance of legal and structural framework to implement UNSC arms embargoes and accordingly ATT article 6.1

Proper implementation of an arms embargo decided by the UNSC is facilitated if the necessary national legal and structural framework is in place in the state party. Otherwise there is a risk that national authorities may not be able to implement the obligations under the arms embargo.

When reviewing state parties initial reports to the ATT, there seems to be two main options that can be identified, that each provide a clear legal basis for implementation of UNSC arms embargoes:

1. Specific United Nations Act, which enables the ‘fast-track’ introduction of government regulations (decree) for specific sets of sanctions imposed by UNSC
2. Strategic trade control (export control) legislation that prohibits the issuing of licences for export, import, transit, brokering, technical assistance etc. if the end user is subject to an UNSC arms embargo.

Furthermore, some state parties use policy guidelines to ensure transfers to embargoed entities are prohibited, instead of a UN Act or strategic trade control legislation. While this method on its own may provide less legal clarity, it can of course also be combined with legislation to provide more specific guidance within an existing legal framework.

But when going through the ATT database of initial reports, as well as other open sources (such as Council of Europe’s Committee of Legal Advisers on Public International Law Database on how UN sanctions, including arms embargoes, are implemented <http://www.cahdidatabases.coe.int/Search/Index/>), there are state parties that declare a respect for UN arms embargoes in their initial report, but for whom it is difficult to identify the legal basis to implement the provisions, enforce the arms embargo, or impose penalties and sanctions on entities identified as violating UN arms embargoes.

Way forward to strengthen implementation of article 6.1

It would therefore be valuable if state parties to the ATT ensure that the necessary national legal framework is in place to properly implement art 6.1 of the treaty.

International work on how to improve design and national implementation of UNSC arms embargoes is nothing new and state parties to the ATT need not invest time and resources to develop proposals on legal mechanisms and practical measures to improve implementation. Examples of previous international processes to strengthen UNSC arms embargoes are:

- Bonn/Berlin Process on Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions
- Stockholm Process on Implementation of UN Sanctions

The two processes were initiated and funded by the Germany and Sweden respectively and were international efforts involving some 70 states and organisations with a wide geographic distribution, aimed at strengthening UNSC sanctions and improve their implementation. The reports contain examples of model national legislation for the implementation of UNSC arms embargoes as well as practical guidance on what type of resources and organisational structure which are useful or needed for the implementing authority. The reports date from 1999 and 2001 respectively, but the vast majority of the recommendations are still valid.

State parties to the ATT which would like to strengthen their national legal and structural framework to implement article 6.1, may decide to look at these reports, or others not mentioned, for guidance and inspiration.

A possible source of funding for an activity or project to strengthen implementation of art 6.1 could be the ATT Voluntary Trust Fund.

Furthermore, this could be an area in which assistance and cooperation could be rendered by states that have found effective solutions for implementing Article 6.1.

ANNEX B**DRAFT GUIDANCE DOCUMENT ON POSSIBLE SOURCES TO BE USED FOR RISK ASSESSMENT UNDER ARTICLES 6 AND 7**

The following sources with associated links are listed to support state parties in their risk assessment process under articles 6 and 7 and are not to be seen as being mandatory to be consulted in that process. A State party may have other sources of information which allows it to fully implement the obligation to carry out risk assessments, such as reports from its Ministries, embassies and government agencies, as well as regional organisations.

The list is not exhaustive and the fact that an organisation appears on the list does not in itself imply that state parties agrees with the findings of that organisation.

Fundamental human rights and freedoms

- United Nations Office of the High Commissioner for Human Rights Report, <http://www.ohchr.org>
- **United Nations Human Rights Council reports as part of the Universal Periodic Review**, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>
- **United Nations Development Programme (UNDP) Human Development Reports:** <http://hdr.undp.org/en>
- Amnesty International Annual Report 'The State of the World's Human Rights' and country reports, <http://www.amnesty.org/en/human-rights>
- Human Rights Watch 'World Report' and country reports, <http://www.hrw.org/home>
- Cingranelli-Richards (CIRI) Human Rights Dataset, <http://ciri.binghamton.edu/>
- Fédération internationale des ligues des droits de l'homme, <http://www.fidh.org>
- Organisation mondiale contre la torture, <http://www.omct.org>
- Association for the Prevention of Torture, <http://www.apt.ch>
- International Commission of Jurists, <http://www.icj.org>
- Political Terror Scale Database, <http://www.politicalterror scale.org>

Stability

- International Crisis Group CrisisWatch and country reports, <http://www.crisisgroup.org/>
- Center for Systemic Peace 'State Fragility Index', <http://www.systemicpeace.org/inscr/inscr.htm>
- Fund for Peace 'Failed States Index', <http://www.fundforpeace.org/global/?q=fsi>
- Uppsala University Conflict Data Programme, <http://www.pcr.uu.se/research/UCDP/>

Political and civil rights and democracy

- EU External Action Service 'Human Rights and Democracy in the World Report', http://eeas.europa.eu/human_rights/index_en.htm
- Freedom House 'Freedom in the World' reports, <http://www.freedomhouse.org>
- Economist Intelligence Unit (EIU) Democracy Index, <http://www.eiu.com>
- **Bertelsmann Transformations Index**, <http://www.bertelsmann-transformation-index.de>
- Center for Systemic Peace Polity IV Project: Political Regime Characteristics and Transitions, <http://www.systemicpeace.org/polity/polity4.htm>

Freedom of the press and media

- Freedom House 'Freedom of the Press Index', <http://www.freedomhouse.org>
- ICT Database (ITU), <http://www.itu.int/ITU-D/ict/>
- Reporters Without Borders Press Freedom Index, <http://en.rsf.org/>

International humanitarian law (IHL)

- United Nations treaties, <http://untreaty.un.org>
- International Committee of the Red Cross, <http://www.icrc.org>
- Human Rights Watch 'World Report' and country reports, <http://www.hrw.org/home>
- International Criminal Court, <http://www.icc-cpi.int/>
- Coalition to Stop the Use of Child Soldiers, <http://www.child-soldiers.org/>

General information on international arms transfers

- Reports of the UN-appointed groups or panels of experts that monitor UN Security Council sanctions, <http://www.un.org/sc/committees/>
- Stockholm International Peace Research Institute (SIPRI), <http://www.sipri.org/>
- Small Arms Survey, <http://www.smallarmssurvey.org/>
- Other research institutes

Other sources of information

- Judgments and reports by the International Criminal Court and ad hoc tribunals
- International agencies operating in the recipient state
- Local media reports

- Reports by NGOs on country situations, which may include relevant information regarding compliance with international humanitarian law
- Military doctrine, manual and instructions
