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**ATT WORKING GROUP ON EFFECTIVE TREATY IMPLEMENTATION
CHAIR'S DRAFT REPORT TO CSP7**

INTRODUCTION

1. The Draft Report to the Seventh Conference of States Parties (CSP7) is presented by the Chair of the Working Group on Effective Treaty Implementation (WGETI) to reflect on the work conducted by the WGETI since CSP6 and to put forward a recommendation for consideration by CSP7.

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. In accordance with the CSP5 decision, the WGETI focused its work during intersessional period of the Seventh Conference of States Parties on Articles 6, 7, 9 and 11 in dedicated sub-working groups.

Appointment of WGETI Chair

4. On 05 November 2020, the President of CSP7 appointed Ambassador Sang-beom LIM of the Republic of Korea as Chair of the WGETI for the period between CSP6 and CSP7.

WGETI Sub-working Groups and appointment of facilitators

5. After consultation and guided by decisions of CSP5, the Chair of the WGETI decided to focus work until CSP7, first and foremost, on 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.

MEETINGS OF THE WGETI

6. The WGETI Sub-working Groups held their meetings from 27 - 29 April 2021 in a virtual format. The WGETI virtual meetings were attended by an average of 240 participants involving States Parties, Signatory States, Observer States, International and Regional Organisations, Civil Society and Industry.

Sub-working Group on Article 6 and Article 7

7. During its meeting, the Facilitator of the Sub-working Group on Articles 6&7, Ambassador Ignacio SÁNCHEZ DE LERÍN of Spain, provided a brief presentation of the findings of his report on the methodology exercise for the exchange of national practices and interpretation of some key concepts in Articles 6 and 7. The Facilitator noted that the exercise was both ambitious and complex. The exercise received contributions from twenty States Parties, one regional organization (the European Union) and three non-governmental organizations, which were all carefully analyzed.

8. The report confirmed that the conceptual underpinnings of national practices analyzed were generally similar except for national nuances and variations. The Facilitator emphasized that the purpose of the exercise was to promote the exchange of national practices, and was not intended to prescribe, create new norms and standards or establish an agreement on a single interpretation of key concepts.

9. Two presentations were made during the meeting with a view to helping delegations understand the concepts from complementary perspectives and these were:

- a. Serious violations of international humanitarian law, by Ms. Maya BREHM, Legal Adviser - Arms Unit - Legal Division, International Committee of the Red Cross (ICRC); and
- b. Serious violations of international human rights law, by Professor Andrew CLAPHAM, Professor of International Law, Graduate Institute of International and Development Studies.

10. During the open debate, delegations considered positively the outcome of the exercise, especially the fact that it does not establish new obligations or prescriptions. Many delegations emphasized that vigilance must be exercised in order not to reinterpret concepts that already have an accepted international definition. Delegations also discussed the available international, multilateral, and regional instruments as well as existing academic publications. Some participants raised concerns about the low number of contributions received, which makes the findings of the exercise inconclusive. Other

delegations emphasized that national application of concepts in Articles 6 and 7 must be exercised in good faith. The role of civil society was considered valuable, as they provide independent views that can help to highlight gaps and vulnerabilities.

11. Conclusion and Way forward. In accordance with multi-year work plan for the Sub-working Group, the Facilitator will begin his work on a list of possible draft elements for Chapter 1 (Key concepts) of the proposed Voluntary Guide to assist States Parties in implementing Articles 6 and 7. The draft elements will be derived from the contributions received from States Parties to the methodology template exercise and the views exchanged during the discussions held so far. The Facilitator will present the draft elements to the first meeting of the Sub-working Group in the CSP8 cycle in 2022, and thereafter commence focused discussions on Article 6 obligations as contemplated in the multi-year plan.

Sub-working Group on Article 9

12. The meeting of the WGETI Sub-working Group on Article 9, facilitated by Mr. Rob WENSLEY of South Africa, began the substantive work of the group, and focused on two preliminary topics: a discussion on national approaches to the terms ‘transit’ and ‘trans-shipment’ and a discussion on the phrases ‘under its jurisdiction’ and ‘through its territory in accordance with international law’.

13. The Facilitator steered the discussions during the first topic using as a guide three questions designed to elicit information on national approaches to the terms ‘transit’ and ‘trans-shipment’ and whether and to what extent States distinguish between them. Dr. Diederik COPS of the Flemish Peace Institute gave a kick-off presentation on transit controls of military goods in seven European countries, based on a study the Institute is conducting.

14. In the discussions that followed, the Facilitator emphasized the importance of sharing information on national practices in order that States Parties may draw on what they perceive to be common practices. Several States explained their national approaches to defining and regulating transit and trans-shipment, including the challenges associated with efforts to enforce transit controls at the national level and the need for international cooperation. Participants also heard how other international conventions approach and consider the issue of transit.

15. With respect to the second topic under discussion, Professor Anna PETRIG of the University of Basel gave a kick-off presentation on the implications of the phrases ‘under its jurisdiction’ and ‘through its territory in accordance with international law’ from a Law of the Sea perspective. The presenter gave a comprehensive overview of the law in this area and highlighted many areas where further work by the Group will be needed to clarify the relationship between Article 9 and existing international law and to harness common understandings of these legal concepts so that States Parties may operationalize them in their Treaty implementation efforts.

16. The Facilitator emphasized that his focus for the Sub-working Group is to see where the Group can reach ‘common understandings’ on the terms contained in Article 9. He raised the possibility of exploring the development of a compendium of national practice and/or voluntary guide in the context of the WGETI Sub-working Group on Article 9 to support implementation of Article 9, whilst noting that this may be an easier task in the context of the second topic compared to first topic.

17. Conclusion and Way forward. The Facilitator of the Sub-working Group will begin preparations for a more in-depth look at the measures to regulate the transit and trans-shipment of arms by *land*, which will be the focus of the next meeting of the Sub-working Group in the CSP8 cycle as contemplated in the multi-year plan.

Sub-working Group on Article 11

18. The meeting of the WGETI Sub-working Group on Article 11, facilitated by Ms. Stela PETROVIĆ of Serbia, began with an overview by the Facilitator of her draft paper outlining elements of a process for assessing the risk of diversion, based on the discussion that took place during the meeting of the Sub-working Group in February 2020. In the exchanges that followed, participants reflected on the complementarity of the draft paper with other documents produced by the Sub-working Group, including the *List of possible reference documents to be considered by States Parties to prevent and address diversion* and *Possible measures to prevent and address diversion* welcomed by CSP4. The possibility of including diversion risk assessment indicators in the draft paper was mentioned. In terms of the next steps, the Facilitator clarified that the paper serves as a summary of discussions so far and that a separate document will be put to States Parties for consideration at CSP7.

19. Following a discussion of the Facilitator's paper, participants continued 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. Participants were invited to examine a series of questions aimed at exploring State practice with respect to assessing the risk of diversion and information exchange mechanisms.

20. They noted the important role of industry as both partners and responsible parties in arms transfers, as well as the role of civil society in providing information and raising awareness on diversion risks. Several participants also noted the potential role of ATT National Points of Contact in the risk assessment process, and this may be any area for further exploration.

21. Participants also noted the importance of sharing information on end-use and other documentation requirements among States to aid the process of documentation certification.

22. Several delegations also reflected on the importance of improving of delivery verification measures, with one State Party [Canada] announcing that it is elaborating a Working Paper on post-delivery verification measures, to be tabled at CSP7.

23. Participants also welcomed the newly established Diversion Information Exchange Forum and noted the need for meaningful engagement in the Forum.

24. Conclusion and Way forward. Following the Sub-working group's discussions in April, the Facilitator prepared and circulated to ATT stakeholders a draft paper outlining the elements of a process for assessing the risk of diversion for consultation remotely (on-line) during the intersessional period. The draft paper incorporating input received during the remote consultations is being submitted to CSP7 for consideration and endorsement.

WGETI RECOMMENDATIONS

25. On the basis of discussions during WGETI meetings and progress made since CSP6, the following is presented for consideration by CSP7:

- a. To endorse the document listed below, which has been prepared on the basis of exchanges during the WGETI meetings held in February 2020, April 2021 and input received through consultations held remotely during the intersessional period, as a living document of a voluntary nature to be reviewed and updated regularly by the Working Group, as appropriate:
 - i. The *Draft paper outlining the elements of a process for assessing the risk of diversion* (Annex A).
- b. To welcome the publication of the document on the ATT website.

ANNEX A: VOLUNTARY PAPER OUTLINING THE ELEMENTS OF A PROCESS FOR ASSESSING THE RISK OF DIVERSION

Introduction

The ATT obliges States Parties to “seek to prevent the diversion of the transfer of conventional arms through its national control system, established in accordance with Article 5 (2), by assessing the risk of diversion of the export and considering the establishment of mitigation measures ...”. This paper, in accordance with the mandate given to the WGETI sub-working group on Article 11, identifies the “key elements for a process for assessing the risk of diversion” when considering an export authorization.

Many States Parties undertake a comprehensive risk assessment before authorizing an export of items contained on their national control list. Therefore, an assessment for the risk of diversion is often undertaken alongside an assessment of the risks outlined in Article 7 (1) of the treaty.

This document is intended for use in conjunction with the ATT treaty text, the [list of possible reference documents](#), the [possible measures to prevent and address diversion](#), and other relevant national guidelines/handbooks, international/multilateral best/good practice guidelines etc. This document is a living documents of a voluntary nature, which may be reviewed and updated by the Working Group.

Elements in a process

- 1. Key elements of a national transfer system for the diversion risk assessment process.** In order to be able to conduct a diversion risk assessment, it is recommended that a national transfer system has the following key elements in place:
 - An appropriate legal and regulatory framework for the regulation of international arms transfers and appropriate sanctions for violations;
 - Clear administrative procedures for the regulation of international arms transfers;
 - Appropriate resources, training programmes, personnel with [appropriate] skills and knowledge to implement and enforce the transfer control system;
 - Inter-agency information-sharing mechanisms;
 - The capacity and willingness to participate in international cooperation and international exchange mechanisms; and
 - Appropriate measures for conducting outreach to industry, including, *inter alia*, awareness raising events, easily accessible information on transfer control procedures and risk indicators via websites, publications and manuals, and provisions for bilateral consultations.
- 2. Guidance for the application process for an export authorization.** Encourage ATT States Parties to provide clear guidance on the requirements regarding the application form and other required documentation to be provided to the competent authorities in the exporting State as part of an application for an authorization to export conventional arms.

- The competent national authority could use a government website, handbook, or other measures to provide guidance on the application process and requirements to be satisfied before an application can be accepted for consideration. This could extend to including measures to take to prevent diversion and help to detect possible diversion attempts.
 - Several ATT states Parties provide guidance for an internal compliance programme for commercial enterprises that engage in the international arms trade, covering issues relating to the appointment of a “responsible person”, training, record-keeping, understanding of law and regulations, reporting requirements.
3. **Application form and documentation to be used for an application for an export authorization.** In order to conduct a comprehensive, consistent, and objective risk assessment, the exporting state party needs to receive information on the proposed international arms transfer. ATT States Parties require applicants for an export authorization to complete an application form and require particular documents to be provided in support of an application for an export authorization. The application form and required documents will provide details on the parties to the transfer, the intended end user and end use, the conventional arms to be exported, as well as other information determined to be of relevance for an assessment to determine the risk of diversion.
- An application form will request the applicant for an export authorization to provide the necessary detailed information on the proposed international arms transfer.
 - Required documentation could include end-use/r certificates (EUC), international import certificates (IIC), import authorizations, transit/transshipment authorizations, brokering authorizations, contracts or agreements, and other documents providing information on the proposed transfer or assurances from the end user or other parties to the transfer. The [possible measures to prevent and address diversion](#) provides the recommended essential and optional details to be contained in an EUC issued by the competent authorities in the importing state. Some of these details could also be contained in an import authorization.
4. **Authentication of documents provided in an application for an export authorization.** In order to prevent the use of forged or fraudulent documents being used to facilitate diversion, when deemed necessary, ATT States Parties should authenticate the required documentation submitted as part of an application for an export authorization. There are several methods and modalities for the document authentication process:
- Conduct a check via appropriate diplomatic channels and/or the ATT national point of contact.
 - Maintain records of required documents (EUCs, licences, permits etc.) and signatures from the importing countries with which the State is engaged in arms transfers. Check the documents against the records to ensure consistency with documents, including the authorized signatories and their signatures, previously received from the importing country.
 - Maintain a database of the competent authorities for issuing and certifying EUC for every country. The database may also include the names and positions of persons authorised to sign such documents.

- Other examples of methods used to reduce the risk of forgery and support the authentication process include:
 - Several ATT States Parties request that importing certificates issued by the importing state are delivered to the exporting State via the appropriate diplomatic channels in the importing state.
 - Where appropriate, only accept legalised documents or documents accompanied by an apostille.
 - The proper document could be on “bank” paper or other forms of anti-forgery paper.
 - The possible use of a standardised electronic signature.

5. **Verify the details provided in the application for export authorization to contribute to the prevention of diversion as part of a comprehensive, consistent, and objective case-by-case export risk assessment.** As noted above, an assessment of the risk of diversion is often undertaken as part of a broader risk assessment process conducted before a decision is made on whether to authorize or not authorise an export of conventional arms [items contained in a national control list]. ATT States Parties have emphasized that proper documentation, such as an EUC, plays an important role in the risk assessment process. A rigorous examination of the application for export authorization and accompanying documents against other relevant sources of information is essential for determining the risk of diversion.

The following relevant sources, among others, can be utilized to verify the information provided in an export authorization application and related documents as part of a comprehensive, consistent, and objective case-by-case export risk assessment:

- Databases of the competent authority regarding previous applications that have been authorized or denied, or other relevant databases that identify natural or legal persons previously sanctioned and /or involved in illicit trafficking, corruption, illicit sources of supply, trafficking routes, etc.
- Other relevant government agencies, departments or ministries and their databases (e.g. diplomatic service, customs, intelligence services, finance, etc.).
- Competent authorities, relevant government agencies, departments or ministries in other states involved in the transfer chain.
- Bilateral or multilateral information exchange frameworks– i.e. the ATT Diversion Information Exchange Forum.
- Industry associations and [trusted] arms trading entities.
- International and regional organizations’ databases and reports.
- Authoritative and credible NGO databases and reports on individual diversion cases and patterns of diversion.
- Open sources, such as media.

6. **Consideration of risk indicators.** States Parties can turn to existing multilateral guidance for risk indicators and questions to address regarding the proposed export, as outlined in the [list of possible reference documents](#) and the [possible measures to prevent and address diversion](#). When seeking to determine the risk of diversion, the following elements of a proposed transfer could be scrutinised:
- The importing state's security requirements (e.g. are the arms being purchased consistent with the importing state's defence needs according to quantity, model, calibre?);
 - The importing state's capacity to control the arms being transferred (e.g. does the importing state have an adequate system of laws and administrative procedures in place to effectively regulate the movement, storage, possession and use of the arms being transferred?);
 - Risks associated with the type of conventional arms and related items (e.g. do the arms to be transferred contain sensitive technologies that could have a major impact if diverted? Is the proposed export high-tech in nature and does this fit with the importing state's defence profile?);
 - Legitimacy and reliability of the intended end user/end use of the exported conventional arms and related items (e.g. have any arms exported by the exporting state to the importing state been diverted in the past? Does the importing state have a good record of honouring EUC conditions or assurances given to the exporting state in the context of previous transactions?);
 - Legitimacy and reliability of the other entities involved in the proposed export (e.g. has the importing entity been able to provide details of the brokers, shipping agents, freight forwarders, distributors and other entities involved in the export and are these entities authorized by the importing state?);
 - The importing state's geographic position in relation to the states under arms embargo and war- affected areas, the state's record of respecting arms embargos as well as importing state's defence cooperation agreements;
 - The importing state's past conduct with regards to ascertained diversion (e.g. has the importing state addressed previous cases of diversion and taken implemented mitigating measures?).
7. **Consideration of measures to mitigate the risk of diversion.** The [list of possible reference documents](#) and the [possible measures to prevent and address diversion](#) provide guidance on measures that can be used to further mitigate the risk of diversion in cases where an export is authorized.
