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Issued by the Working Group on Effective Treaty Implementation

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Dear all,

On 01 March 2021, States Parties welcomed the multi-year workplans of the sub-working groups of the Working Group on Effective Treaty Implementation (hereinafter WGETI), and so the important work of the sub-working group on Articles 6 and 7 (Prohibitions & Export and Export Assessment), the sub-working group on Article 9 (Transit or trans-shipment), and the sub-working group on Article 11 (Diversion) continues on the basis of the priority topics and issues identified and agreed by States Parties.

In this context, the WGETI will further facilitate discussions and exchange of views on the priority issues endorsed by States Parties 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, I decided that discussions on these priority issues would continue to be led by the facilitators appointed during the cycle of the Sixth Conference of States Parties (CSP6) to the Arms Trade Treaty, and 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 Spain¹;
2. Article 9 (Transit or trans-shipment) will be facilitated by **Mr. Rob WENSLEY** of South Africa²; and
3. Article 11 (Diversion) will be facilitated by **Ms. Stela PETROVIĆ** of Serbia³.

Objectives and preparation for the WGETI meeting in February

In preparation for the WGETI meeting in February, facilitators of each WGETI sub-working group have prepared work plans and background papers for their respective sessions 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 a summary of progress made so far in each of the sub-working groups and a description of the key issues that each sub-working group will address, drawn from the multi-year workplans agreed by States Parties.

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.

¹ Permanent Representative of Spain to the Conference on Disarmament

² Department of International Relations and Cooperation.

³ Ministry of Trade, Tourism and Telecommunications.

Programme of Work for the WGETI Sub-working Groups

The meeting of the WGETI will take place in hybrid format on 15 – 16 February 2022. The WGETI has been given three one-and-a-half hour sessions (four and a half hours) to conduct its meetings, which will be allocated as follows:

Table 1. Schedule of WGETI Sub-working Group Meetings (February 2022)

	Tuesday	Wednesday
13:00 – 14:30	WGETI Sub-working Group on Articles 6&7	WGETI Sub-working Group on Article 11
14:30 – 16:00	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 CSP8.

Yours sincerely,

Ambassador Sang-beom LIM
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, 15 FEBRUARY 2022, 13:00-14:30****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-working Group in the lead up to CSP4 and CSP5. The Sub-working 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 previous 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 CSP6). The current Chair of the WGETI, Ambassador Sang-beom LIM, re-appointed Ambassador Ignacio SÁNCHEZ DE LERÍN for the CSP7 and CSP8 cycles. The work of the Sub-working 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 first 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.

6. Following his appointment to facilitate the work of the Sub-working Group on Articles 6 and 7 at the commencement of the preparatory process for CSP6, Ambassador Ignacio SÁNCHEZ DE LERÍN further developed the multi-year workplan for the sub-working group, prepared a draft outline of a potential voluntary guide to implementing Articles 6&7, and prepared a draft methodology template designed to capture information and input from States Parties on their national practices and approaches to interpreting key concepts. The documents prepared by the facilitator were considered and discussed during the meeting of the Sub-working Group on Articles 6 and 7 on 04 February 2020, and participants were invited to complete the template and submit their inputs regarding national practice to the facilitator, via the ATT Secretariat.

7. The facilitator collated and reviewed all inputs to the methodology template that were received and prepared a summary report of the responses to the methodology template for unpacking key concepts, which he presented during the CSP7 preparatory meeting of the Sub-working Group on Articles 6 and 7 on 26 April 2021.

8. In addition, the multi-year workplan was further refined and was ultimately agreed by States Parties via silence procedure on 01 March 2021 (an extract pertaining to the agenda for the meeting of the sub-working group on 15 February 2022 is included as Attachment 1 to this Annex).

The work ahead

9. In accordance with the multi-year work plan, the facilitator has prepared 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, derived from the contributions received from States Parties to the methodology template exercise and the views exchanged during the discussions held so far the during the meetings of the WGETI Sub-working Group on Articles 6 and 7 (Attachment 2), and thereafter commence focused discussions on Article 6 obligations as contemplated in the multi-year plan.

ATTACHMENT 1

**DRAFT AGENDA FOR THE MEETING
OF THE SUB-WORKING GROUP ON ARTICLES 6&7
(PROHIBITIONS & EXPORT AND EXPORT ASSESSMENT)
(EXTRACT OF MULTI-YEAR WORKPLAN)
15 FEBRUARY 2022**

Topic 5: Voluntary Guide – Draft Elements of Chapter 1 (Key concepts)

Introduction by facilitator

Open discussion

The Facilitator will present 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, derived from the contributions received from States Parties to the methodology template exercise and the views exchanged during the discussions held so far during the meetings of the WGETI Sub-working Group on Articles 6 and 7. Participants will have the opportunity to review and comment on the draft elements.

Topic 6: Scope of Article 6

This discussion will explore the obligations in Article 6, and participants will exchange views on the following issues:

Article 6: What does ‘shall not authorize any transfer’ entail in the context of Article 6?

Article 6(1): What ‘obligations under measures adopted by the United Nations Security Council’ are covered under Article 6(1)?

Article 6(2): What ‘international obligations under international agreements’ are ‘relevant’ under Article 6(2)?

ATTACHMENT 2

**ELEMENTS OF A VOLUNTARY GUIDE TO IMPLEMENTING ARTICLES 6 & 7
OF THE ARMS TRADE TREATY
Draft Chapter 1 – Key concepts**



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

Draft Chapter 1 – Key concepts

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Background

1. On 17 February 2020, the Facilitator of the ATT Working Group on Effective Treaty Implementation (WGETI) Sub-working Group on Articles 6&7, Ambassador Ignacio SÁNCHEZ DE LERÍN of Spain, circulated a *Methodology Template for Unpacking Key Concepts in Articles 6&7 of the Arms Trade Treaty* to all ATT States Parties, and invited them to complete the template on a voluntary basis by inserting an explanation of their approach to the interpretation of each concept listed in the template.
2. The aim of the exercise was to provide a picture of how States Parties approach the implementation of the Treaty and to give an overview of national practices with respect to the interpretation of key concepts in Articles 6&7. It was hoped that this, in turn, may help States Parties that are in the process of establishing their export control systems in accordance with their ATT commitments, to identify options for approaching the interpretation and application of these concepts in their national practice.
3. The inputs received during the exercise are summarized in this chapter, and references made to legal instruments and concepts by respondents have been elaborated to give readers a fuller picture and better understanding of some of the jurisprudence and ongoing legal discussions which surround some of these key concepts. These key concepts are further explored in more detail in the relevant chapters of this Voluntary Guide.

Treaty text

4. The text of Articles 6 and 7 is included below to help readers/users situate the key concepts in the context in which they appear in the Treaty. The key concepts that are examined in this chapter are highlighted in the text.

ARTICLE 6 – PROHIBITIONS

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

ARTICLE 7 – EXPORT AND EXPORT ASSESSMENT

1. *If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items:*
 - a. *would contribute to or undermine peace and security;*
 - b. *could be used to:*
 - i. *commit or **facilitate** a **serious violation of international humanitarian law**;*
 - ii. *commit or **facilitate** a **serious violation of international human rights law**;*
 - iii. *commit or **facilitate** an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or*
 - iv. *commit or **facilitate** an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.*
2. *The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.*
3. *If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an **overriding risk** of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export.*
4. *The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or **facilitate serious acts of gender-based violence or serious acts of violence against women and children**.*
5. *Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.*
6. *Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.*
7. *If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.*

Findings/National practices and approaches to key concepts

5. The inputs received during the exercise are summarized below. Notably, in addition to what is reflected below, as a general comment, most respondent States indicated that they approach the interpretation of each of the key concepts on a ‘case-by-case’ basis.

“facilitate”

6. The term ‘facilitate’ is used in Articles 7(1)(b)(i)–(iv) and 7(4) as part of the obligation on the part of States Parties to assess whether conventional arms or items ‘could be used commit or facilitate’ one or more of the negative consequences listed.

7. In describing what they consider when assessing whether conventional arms or items could be used to ‘facilitate’ one or more of the negative consequences listed in Article 7, some respondent States indicated that they consider one or more of the following:

- if the fact that weapons are more easily available enables violations
- if weapons could be used to commit IHL violations
- if available weapons make a significant contribution⁴ to violations
- the capacity of the weapons to enable or contribute to violations, even if not directly used in the commission of the act
- if available weapons assist in bringing about a negative outcome
- whether [the presence of]weapons make[s] a violation easier, including through intimidation.

8. One State referred to Article 25(3)(c)⁵ of the Rome Statute of the International Criminal Court (the Article on individual criminal responsibility).

“serious violation of international humanitarian law” (7.1.b(i))

9. The phrase ‘serious violation of international humanitarian law’ is used in Article 7(1)(b)(i) and is the first criteria or negative consequence States Parties must consider and apply when conducting a risk assessment prior to authorizing an export.

10. In describing what they consider when assessing whether conventional arms or items could be used to commit or facilitate a ‘serious violation of international humanitarian law’, most respondent States specified that they consider ‘serious violations of international law’ to cover:

- grave breaches as specified under the four Geneva Conventions of 1949 (Articles 50, 51, 130, 147 of Conventions I, II, III and IV respectively);

⁴ The use of the phrase ‘significant contribution’ is a reference to the International Law Commission’s (ILC) Commentary to Article 16 (Aid or assistance in the commission of an internationally wrongful act) of the *Draft Articles on State Responsibility*, in which the ILC makes it clear that for a State to be held internationally responsible for aiding and assisting another State in the commission of an internationally wrongful act, ‘There is no requirement that the aid or assistance should have been essential to the performance of the internationally wrongful act; it is sufficient if it *contributed significantly* to that act’ (emphasis added)(Draft Articles on State Responsibility, commentary, 2001, UN doc. A/56/10 (ILC Commentary), Commentary to Article 16, para. 5).

⁵ Article 25(3)(c) stipulates: ‘For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission’.

- grave breaches as specified under Additional Protocol I of 1977⁶ (Articles 11 and 85);
- war crimes as specified under Article 8 of the Rome Statute of the International Criminal Court; and
- other war crimes in international and non-international armed conflicts in customary international humanitarian law.

11. The relevant provisions of the Geneva Conventions, Additional Protocol I and the Rome Statute are included in Annex 1 to this Chapter.

12. Respondent States either referred to the Geneva Conventions and/or the Rome Statute directly or indirectly by indicating that their national implementation of this provision as well as their national approach of the interpretation of their “key concepts” is guided by the [User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment](#) (EU Users' Guide) as amended by Council Decision (CFSP) 2019/1560⁷ (see paragraph 2.11)

13. One or more respondents also indicated that they consider whether a violation takes on a ‘serious’ nature because of its systematic repetition or the circumstances, and another indicated that it considers reports on the importing State’s respect for international humanitarian law and the nature, scale, and effect of any previous violations by that State.

“serious violation of international human rights law” (7.1.b(ii))

14. The phrase ‘serious violation of international human rights law’ is used in Article 7(1)(b)(ii) and is the second criteria or negative consequence States Parties must consider and apply when conducting a risk assessment prior to authorizing an export.

15. In describing how they approach their interpretation of the phrase ‘serious violation of international human rights law’, respondent States provided information on the following elements of the concept:

International human rights law

16. Respondent States gave numerous examples of the international instruments they are party to and rely on as a source of human rights law, including:

- Covenant on Economic, Social and Cultural Rights (1966)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Convention on the Rights of the Child (1989)
- Convention on the Rights of Persons with Disabilities (2006)
- Convention on the Prevention and Punishment of the Crime of Genocide (1948)
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)

⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

⁷ The User’s guide was revised in 2019 in particular to take into account the provisions of the Arms Trade Treaty to which all EU member states are parties.

— Convention relating to the Status of Refugees (1951)

Seriousness

17. Several States noted that violations of the peremptory rules of public international law (*jus cogens*)⁸ are considered a ‘serious’ violations of internationally recognized human rights, while noting that for human rights that do not belong to this narrow circle of peremptory norms of international law, the threshold to consider a violation as ‘serious’ is likely to be higher. Only a few States gave examples of the human rights they consider to be *jus cogens*:

- Prohibition on torture or to cruel, inhuman or degrading treatment or punishment⁹
- Prohibition on slavery¹⁰
- Enforced disappearances
- Summary or arbitrary executions

18. Others noted that violations may be ‘serious’ violations based on their nature and effects, such as:

- Violations of the right to life¹¹, including murder and massacre, and extrajudicial and summary executions
- Arbitrary arrest and detention¹²
- Excessive use of force by law-enforcement officials
- Rape and other sexual violence

19. Several respondent States noted that they approach the concept of ‘serious violation of international human rights law’ in accordance with the *EU User’s Guide* (see paragraph 2.6).

“serious acts of gender-based violence or serious acts of violence against women and children” (7.4)

20. The phrase ‘serious acts of gender-based violence or serious acts of violence against women and children’ is used in Article 7(4) and is another risk States Parties must consider when conducting a risk assessment prior to authorizing an export.

21. In describing how they approach their interpretation of the phrase ‘serious acts of gender-based violence or serious acts of violence against women and children’, respondent States provided information on the following elements of the concept:

Seriousness

⁸ The International Law Commission has defined a peremptory norm of general international law (*jus cogens*) as ‘a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character’ ([Report of the International Law Commission](#), (A/74/10), Chapter V, paragraph 56, Conclusion 2).

⁹ (International Covenant on Civil and Political Rights (ICCPR), art. 7; European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), art. 3, American Convention on Human Rights (ACHR), art. 5.)

¹⁰ (ICCPR, art. 8; ECHR, 64, art. 4; ACHR, art. 6.)

¹¹ (ICCPR, art. 6)

¹² (ICCPR, art. 9; ECHR, 64, art. 5; ACHR, art. 7.)

22. Some respondent States noted that there is an overlap between Articles 7(1)(b)(i) and (ii), and Article 7(4), such that acts of gender-based violence and violence against women and children appear to be covered by article 7 paragraphs (1)(b)(i) and (ii). Accordingly, they are of the view that the threshold of ‘seriousness’ will be the same. Some States referred to the *EU User’s Guide* on this point (see paragraph 2.12).

23. Others indicated that whether specific acts qualify as ‘serious’ should be determined both qualitatively and quantitatively by both the gravity of the violation (its character) and the manner of its commission (the extent of harm to victims, which need not be systematic or widespread).

Gender-based violence

24. Many respondent States indicated that they interpret ‘gender-based violence’ to mean violence directed against a person on the basis of gender¹³ or sex, including acts that can inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and deprivations of liberty. This definition is/appears to be derived from the interpretation given by the Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). [General Recommendation 19](#) of the CEDAW Committee of 1992 interpreted the term ‘discrimination’ in Article 1 of the Convention as including gender-based violence, that is ‘violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty’.

25. One State Party responded that it considers the International Criminal Court’s Office of the Prosecutor’s position in its [Policy Paper on Sexual and Gender-Based Crimes](#), which defines “Gender-based crimes”¹⁴ as ‘those committed against persons, whether male or female, because of their sex and/or socially constructed gender roles’.¹⁵

Violence against women

26. In addition to CEDAW, some States referred to specific international and/or regional instruments they perceive as relevant to the interpretation of the phrase ‘serious acts of violence against women’, including:

- The Declaration on the Elimination of Violence against Women¹⁶
- The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)¹⁷

27. The definition of ‘violence against women’ enshrined in the Declaration on the Elimination of Violence against Women is included in Box 1 below.

¹³ Some broadened this to ‘gender identity, gender expression or perceived gender’.

¹⁴ Not necessarily sexual *violence*, but also non-sexual attacks.

¹⁵ The Paper sought to give a broader interpretation to the definition of ‘gender’ than Article 7(3) of the Rome Statute of the ICC, which stipulates: ‘For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.’

¹⁶ Proclaimed by General Assembly resolution 48/104 of 20 December 1993.

¹⁷ Article 1 of the Convention stipulates: ‘For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere’.

Box 1. 'Violence against women' (*Declaration on the Elimination of Violence against Women*)*Article 1*

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Violence against children

28. Some States referred to specific international and/or regional instruments they perceive as relevant to the interpretation of the phrase 'serious acts of violence against ... children', namely:

- The Convention on the Rights of the Child¹⁸
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

29. The definition of 'violence' in the context of the Convention on the Rights of the Child given by the Committee on the Rights of the Child is included in Box 2.

Box 2. 'Violence against children' (*Committee on the Rights of the Child*)

Definition of violence. For the purposes of the present general comment, "violence" is understood to mean "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse" as listed in article 19, paragraph 1, of the Convention. The term violence has been chosen here to represent all forms of harm to children as listed in article 19, paragraph 1, in conformity with the terminology used in the 2006 United Nations study on violence against children, although the other terms used to describe types of harm (injury, abuse, neglect or negligent treatment, maltreatment and exploitation) carry equal weight. In common parlance the term violence is often understood to mean only physical harm and/or intentional harm. However, the Committee emphasizes most strongly that the choice of the term violence in the present general comment must not be interpreted in any way to minimize the impact of, and need to address,

¹⁸ Article 19(1) of the Convention stipulates: 'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.'

non-physical and/or non-intentional forms of harm (such as, inter alia, neglect and psychological maltreatment).

([General Comment No. 13 \(2011\)](#), paragraph 1.4)

“overriding risk” (7.3.)

30. The phrase ‘overriding risk’ is used in Article 7(3) and indicates the threshold States Parties must apply when assessing the potential of any of the negative consequences listed in Article 7(1)(b).
31.

In describing how they interpret or apply the term ‘overriding risk’ in their national control systems, respondent States reported that they interpret the phrase to mean one or more of the following:

- “substantial risk”
- “clear risk”
- “high” potential
- A negative consequence is “very likely” or “more likely than not” to occur

32. Some State respondents linked their interpretation of ‘overriding risk’ to the obligation to *mitigate* any risk identified contained in Article 7(2), indicating it is an identified risk that cannot be mitigated sufficiently or at all.

33. The respondent States that referenced the phrase “clear risk” were generally EU States who noted that they interpret ‘overriding risk’ to broadly conform with the meaning of ‘clear risk’ threshold elaborated in the *EU User’s Guide*.

“knowledge at the time of authorization” (6.3)

34. The phrase ‘knowledge at the time of authorization’ is used in Article 6(3) and denotes the point at which a State Party shall not authorize a transfer of arms or items.

35. Generally, respondent States indicated they interpret “knowledge” as (sufficiently) reliable facts or information that are available to the State at the time it authorizes the transfer of arms. Some indicated that this covers information that the State is aware of or *should* (normally) have been aware of (‘and thus establishes an obligation to actively seek out information’). Others indicated that it includes:

- information ‘that can be reasonably obtained’
- information that is ‘public’
- ‘facts at its disposal’ at the time of the authorization
- ‘information in its possession or that is reasonably available to it’
- facts or information ‘that are or become available at the time of assessing the authorization request’
- information that is ‘normally expected to be known by the importing States’

36. Some also touched on the sources of such information, noting it includes information from ‘domestic and overseas sources’ or ‘internal or external sources’. With others indicating it implies assessing the current and past behaviour of the recipient.

Conclusion

37. This chapter is based on the information received from the States Parties that voluntarily responded to the *Methodology Template for Unpacking Key Concepts in Articles 6&7 of the Arms Trade Treaty* circulated by the Facilitator of the ATT Working Group on Effective Treaty Implementation (WGETI) Sub-working Group on Articles 6&7, Ambassador Ignacio SÁNCHEZ DE LERÍN of Spain, in February 2020.

38. The exercise enabled the exchange of national practice and the sharing of information on approaches to some of the key concepts in Articles 6 and 7. The findings are intended to illustrate possible options for approaching the interpretation of these concepts, particularly for those States Parties that are still developing their export control systems and processes.

39. While the exercise identified many synergies between States' approaches to these concepts, it did not lead to recommendations (nor was it intended to) or come to a final conclusion. Indeed, the findings in this chapter may be revisited as other topics are discussed during future meetings of the WGETI Sub-working Group on Articles 6 and 7 and in this sense, it should be seen as an open-ended/ongoing exercise that will be built on as more States share their national practices and experiences.

ANNEX A. PROVISIONS OF THE GENEVA CONVENTIONS AND THE ROME STATUTE THAT DEFINE /ARE RELEVANT TO ‘SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW’

Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949

ARTICLE 50

Grave breaches ... shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949

ARTICLE 51

Grave breaches ... shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949

ARTICLE 130

Grave breaches ... relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949

ARTICLE 147

Grave breaches ... shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

Article 11 -- Protection of persons

1. The physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1 shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty.

2. It is, in particular, prohibited to carry out on such persons, even with their consent:

(a) physical mutilations;

(b) medical or scientific experiments;

(c) removal of tissue or organs for transplantation, except where these acts are justified in conformity with the conditions provided for in paragraph 1.

3. Exceptions to the prohibition in paragraph 2 (c) may be made only in the case of donations of blood for transfusion or of skin for grafting, provided that they are given voluntarily and without any coercion or inducement, and then only for therapeutic purposes, under conditions consistent with generally accepted medical standards and controls designed for the benefit of both the donor and the recipient.

4. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person who is in the power of a Party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol.

5. The persons described in paragraph 1 have the right to refuse any surgical operation. In case of refusal, medical personnel shall endeavour to obtain a written statement to that effect, signed or acknowledged by the patient.

6. Each Party to the conflict shall keep a medical record for every donation of blood for transfusion or skin for grafting by persons referred to in paragraph 1, if that donation is made under the responsibility of that Party. In addition, each Party to the conflict shall endeavour to keep a record of all medical procedures undertaken with respect to any person who is interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1. These records shall be available at all times for inspection by the Protecting Power

Article 85 -- Repression of breaches of this Protocol

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.

2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons in the power of an adverse Party protected by Articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse Party who are protected by this Protocol,

or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse Party and are protected by this Protocol.

3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

- (a) making the civilian population or individual civilians the object of attack;
- (b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii);
- (c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii);
- (d) making non-defended localities and demilitarized zones the object of attack;
- (e) making a person the object of attack in the knowledge that he is ' hors de combat ';
- (f) the perfidious use, in violation of Article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol.

4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:

- (a) the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;
- (b) unjustifiable delay in the repatriation of prisoners of war or civilians;
- (c) practices of ' apartheid ' and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;
- (d) making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, sub-paragraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;
- (e) depriving a person protected by the Conventions or referred to in paragraph 2 of this Article of the rights of fair and regular trial.

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

ROME STATUTE

[Article 8](#)

War crimes

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
 - (xii) Declaring that no quarter will be given;
 - (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - (xvi) Pillaging a town or place, even when taken by assault;
 - (xvii) Employing poison or poisoned weapons;
 - (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
 - (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts

committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or

hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(xiii) Employing poison or poisoned weapons;

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

ANNEX B

**WORK PLAN SUB-WORKING GROUP ON ARTICLE 9
TUESDAY, 15 FEBRUARY 2022, 14:30-16:00**

Background

1. The previous 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 CSP6 in December 2019, and appointed South Africa, who nominated Mr. Rob WENSLEY to facilitate the work of the Sub-working Group in the lead up to CSP6. The current Chair of the WGETI, Ambassador Sang-beom LIM, re-appointed Mr. Rob WENSLEY to facilitate the work of the Sub-working Group in the lead up to CSP7 and CSP8.

2. The Facilitator of the sub-working group prepared a background paper, which was derived from the list of topics and elements for consideration that was compiled by the WGETI to guide the work of a WGETI sub-working group on Article 9 and was included as Annex E to the WGETI Chair's Draft Report to CSP5 (contained in document ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep). The background paper was considered and discussed during the first meeting of the sub-working on Article 9 on 05 February 2020.

3. Following the first meeting of the sub-working group, the Facilitator developed a programme of work and multi-year work plan for the sub-working group, which was agreed by States Parties via silence procedure on 01 March 2021 (an extract pertaining to the agenda for the meeting of the sub-working group on 15 February 2022 is included as Attachment 1 to this Annex). The work of the Sub-working Group will build on the work undertaken and progress made during the previous cycle.

The work ahead

4. The facilitator has prepared a background paper on measures to regulate the transit and trans-shipment of arms by land and air to facilitate the discussion that will take place during the meeting of the Sub-working Group on Article 9 on 15 February 2022 (Attachment 2).

ATTACHMENT 1

**DRAFT AGENDA FOR THE MEETING
OF THE SUB-WORKING GROUP ON ARTICLE 9 (TRANSIT OR TRANS-SHIPMENT)
(EXTRACT OF MULTI-YEAR WORKPLAN)
15 FEBRUARY 2022**

Topic 3: Measures to regulate the transit and trans-shipment of arms by land

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:

- *How do States regulate the transit and trans-shipment of arms by road in practice?*
- *How do States regulate the transit and trans-shipment of arms by rail in practice?*
 - *What form do regulatory measures take at the national level?*
 - *Which Government departments and agencies are involved in implementing the regulatory measures?*
- *What are the international and regional instruments governing transit and transportation of goods by road?*
- *What do these instruments say about the transit and trans-shipment of arms by road?*
- *What are the international and regional instruments governing transit and transportation of goods by rail?*
- *What do these instruments say about the transit and trans-shipment of arms by rail?*
- *What are the implications of free trade/free movement of goods zones for the transit and trans-shipment of arms?*

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.

Topic 4: Measures to regulate the transit and trans-shipment of arms by air

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:

- *How do States regulate the transit and trans-shipment of arms by air in practice?*
 - *What form do regulatory measures take at the national level?*
 - *Which Government departments and agencies are involved in implementing the regulatory measures?*
- *What are the international and regional instruments governing transit and transportation of goods by air?*
- *What do these instruments say about the transit and trans-shipment of arms by air?*

In addition, there will be expert kick-off presentations on international regulations governing the transit and trans-shipment of goods, including arms, by air

ATTACHMENT 2

**BACKGROUND PAPER: MEASURES TO REGULATE THE TRANSIT AND TRANS-SHIPMENT
OF ARMS BY LAND AND AIR**



31 January 2022

Issued by the Working Group on Effective Treaty Implementation

Original: English

BACKGROUND PAPER: MEASURES TO REGULATE THE TRANSIT AND TRANS-SHIPMENT OF ARMS BY LAND AND AIR

Background

The Working Group on Effective Treaty Implementation's (WGETI) Sub-working Group on Article 9 (Transit and transshipment) is due to discuss the following topics during the meeting scheduled to take place on 15 February 2022, in accordance with the [agreed [multi-year work plan for the WGETI Sub-working Group on Article 9 \(Transit or trans-shipment\)](#)]:

1. Topic 3: Measures to regulate the transit and trans-shipment of arms by land
2. Topic 4: Measures to regulate the transit and trans-shipment of arms by air

This background paper has been prepared by the Facilitator of the WGETI Sub-working Group on Article 9 to facilitate the discussion on this topic that will take place during the meeting on 15 February 2022.

The paper expands on some of the questions posed in the multi-year work plan and provides examples of some of the international and regional instruments relevant to the topics under discussion (see Annex A).

Topic 3: Measures to regulate the transit and trans-shipment of arms by land

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:

1. How do States regulate the transit and trans-shipment of arms by road in practice?
 - a. What form do regulatory measures take at the national level?
 - i. Are there specific laws, regulations and/or standards regarding the transport of arms and other defence equipment by road?
 - ii. Are there specific laws, regulations and/or standards governing the transport of sensitive or dangerous goods by road? And if so, to what extent do these relate to arms/military equipment (e.g. are ammunition and explosives covered)?
 - iii. Are there specific regulations, standards and/or codes of conduct governing transport agents engaged in the transport of arms by road?
2. How do States regulate the transit and trans-shipment of arms by rail in practice?
 - a. What form do regulatory measures take at the national level?
 - i. Are there specific laws, regulations and/or standards regarding the transport of arms and other defence equipment by rail?
 - ii. Are there specific laws, regulations and/or standards governing the transport of sensitive or dangerous goods by rail? And if so, to what extent do these

ANNEX A. EXAMPLES OF INTERNATIONAL AND REGIONAL INSTRUMENTS GOVERNING TRANSIT AND TRANSPORTATION**1. Examples of international and regional instruments governing transit and transportation of goods by road*****International***

- *Convention on the Contract for the International Carriage of Goods by Road 1956 (CMR)* (seeks to standardize the conditions governing the contract for the international carriage of goods by road, particularly with respect to the documents used for such carriage and to the carrier's liability)
- *Protocol to the Convention on the Contract for the International Carriage of Goods by Road 1978*

Regional

- *Convention Regulating Inter-State Road Transportation between ECOWAS Member States 1982* (aimed at developing transportation in general and road transportation in particular with a view to promoting trade and encouraging movement of persons, goods and services through the harmonization of transport policies)
- *Convention relating to Inter-States Road Transit of Goods 1982 (ECOWAS)*
- *Agreement on the Adoption of the Inter-American Manual on Traffic Control Devices for Streets and Highways 1979 (Agreement of Caracas)*, Organization of American States (aimed at creating uniformity of traffic control devices in order to contribute toward improving communications)
- *Inter-American Convention on Contracts for the International Carriage of Goods by Road 1989*, Organization of American States
- *European Agreement concerning the International Carriage of Dangerous Goods by Road 1957 (ADR)*
- *Intergovernmental Agreement on the Asian Highway Network 2003* (aimed at developing a highway network to strengthen relations and promote international trade and tourism among members)

2. Examples of international and regional instruments governing transit and transportation of goods by rail***International***

- *International Convention to Facilitate the Crossing of Frontiers for Goods Carried by Rail 1952* (aimed at facilitating the examination of goods crossing a frontier by both sides)
- *Convention on International Customs Transit Procedures for the Carriage of Goods by Rail under Cover of SMGS Consignment Notes 2007* (aimed at simplifying administrative formalities in international transport by rail, with a view to reducing, in particular, border controls)
- *United Nations Convention on International Multimodal Transport of Goods* (not in force)

Regional

- *Agreement on International Railways in the Arab Mashreq 2003* (aimed at adopting a railway network in the region)

3. Examples of international and regional instruments governing transit and transportation of goods by air

International

International conventions on carriage by air include the Warsaw system of Conventions comprising the *Convention for the Unification of Certain Rules relating to International Carriage by Air* (the so-called Warsaw Convention of 1929) and its protocols and supplementary instruments (including the Hague Protocol of 1955, Guadalajara Convention 1961, the Guatemala City Protocol 1971 (not yet in force), Montreal Additional Protocols Numbers 1, 2, and 3 of 1975, and the Montreal Additional Protocol Number 4 of 1975. In addition, the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* (the so-called Montreal Convention of 1999) was adopted in an effort to consolidate the fragmented system established by the Warsaw system of conventions.

These instruments apply to all international carriage of persons, baggage or cargo performed by aircraft for reward (i.e. commercial flights). The focus of these instruments was to standardise the documents of carriage and rights and address the liabilities of the passengers and carriers.

The *Convention on International Civil Aviation* of 1944 (Chicago Convention) established the International Civil Aviation Organization (ICAO), a specialized UN agency charged with coordinating international air travel. The Convention establishes rules of airspace, aircraft registration and safety, security, and sustainability, and details the rights of the signatories in relation to air travel. The Convention includes specific provisions on the right of contracting States to require a civil aircraft to land if it is flying above it the State's territory 'without authority or if there are on reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention' (Article 3bis).

General

Wassenaar Arrangement:

- [Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons \(SALW\) through Air Transport](#)
- [Elements for Controlling Transportation of Conventional Arms Between Third Countries](#)

ANNEX C

WORK PLAN SUB-WORKING GROUP ON ARTICLE 11 (DIVERSION) WEDNESDAY, 16 FEBRUARY 2022, 13:00-14:30

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). Article 11 (Diversion) is recognized as one of the key objectives of the Arms Trade Treaty (ATT).

Summary of progress so far

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, which was welcomed by CSP5 (this formed Annex C to the WGETI Chair's Draft Report to CSP5, contained in document ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep). The multi-year plan was further refined and a revised version was agreed by States Parties via silence procedure on 01 March 2021 (an extract pertaining to the agenda for the meeting of the sub-working group on 16 February 2022 is included as Attachment 1 to this Annex).

3. 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

4. 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.

5. The meeting of WGETI Sub-working group on Article 11 held during the CSP6 cycle on 05 February 2020, focused on chain stage 1 – Before the transfer, namely: Assessing the risk of diversion, and the role of private sector in mitigating diversion risk.

6. During the meeting of the WGETI Sub-working group on Article 11 held during the CSP7 cycle on 28 April 2021, the facilitator presented a draft paper outlining the elements of a process for assessing the risk of diversion, based on the discussion that took place during the meeting on 05 February 2020. CSP7 endorsed a revised version of the draft paper, that incorporated comments received from ATT stakeholders, as a living document of a voluntary nature to be reviewed and updated regularly by the Working Group, as appropriate, and welcomed the publication of the document on the ATT website.

The work ahead

7. In accordance with the multi-year work plan, the facilitator has prepared a background paper on the role of transit and transshipment states in preventing diversion to facilitate the discussion that will take place during the meeting of the Sub-working Group on Article 11 on 16 February 2022 (Attachment 2). Following the presentation of the paper, participants will be invited to continue the discussion on the topic: the role of transit and transshipment states in preventing diversion. Thereafter, the Sub-working Group will explore the role of the private sector and civil society in mitigating diversion risk.

ATTACHMENT 1

**DRAFT AGENDA FOR THE MEETING
OF THE SUB-WORKING GROUP ON ARTICLE 11 (DIVERSION)
(EXTRACT OF MULTI-YEAR WORKPLAN)
16 FEBRUARY 2022**

Session 1: The role of transit and transshipment States in preventing diversion

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:

- Issuing delivery notification (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Article 11(3));*
- 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*
- 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).*

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.

- What mechanisms are used in ensuring cooperation and information exchange to mitigate diversion?*
- Which ministries or agencies are involved in the information exchange process?*
- Are there national legal restrictions that can impact the information exchange process?*

Session 2: The role of the private sector and civil society in mitigating diversion risk

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.

ATTACHMENT 2

**BACKGROUND PAPER: THE ROLE OF TRANSIT AND TRANSHIPMENT STATES
IN PREVENTING DIVERSION**



BACKGROUND PAPER: THE ROLE OF TRANSIT AND TRANSHIPMENT STATES IN PREVENTING DIVERSION

Background

The Working Group on Effective Treaty Implementation's (WGETI) Sub-working Group on Article 11 completed its discussion on '*Transfer chain stage 1: Before the transfer*' during the cycle of the Seventh Conference of States Parties (CSP7), and is now due to commence work on '*Transfer chain stage 2: During the transfer*', in accordance with the agreed [multi-year workplan for the WGETI Sub-working Group on Article 11](#).

The multi-year workplan contemplates that the next meeting of the WGETI Sub-working Group on Article 11 will discuss the following topic: *the role of transit and transshipment States in preventing diversion*. The aim of the discussion is threefold:

3. Explore the **measures** that can and are being taken by transit and transshipment States to mitigate the risk of diversion during a transfer;
4. 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); and
5. Examine 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.

This background paper has been prepared by the Facilitator of the WGETI Sub-working Group on Article 11 to facilitate the discussion on this topic that will take place during the meeting on 16 February 2022.

The paper focuses on diversion in the strict sense, where the exporting State has authorized the shipment and the diversion happens en route in the territory of States where the goods are transiting or trans-shipped. Once legally exported arms are en route to their authorized end-user in the country of import, they may be diverted as a consequence of 'partial or complete loss, leakage, theft and/or unauthorized rerouting during transport, transit, transloading or trans-shipment' ([GGE](#) para. 9(c)), thus never reaching their final (intended) destination.

The paper draws upon the [Possible measures to prevent and address diversion](#) welcomed by the Fourth Conference of States Parties as a starting point for considering measures that can be taken by governments of transit States to prevent and address diversion, as well as options for enhanced information exchange and international cooperation provided for by the ATT.

1. *What are the practical and legal challenges faced by transit and transshipment States in preventing diversion during transit (by sea, air or land – road and rail)?*

Practical challenges: Some of the factors that contribute to the risk of diversion during transit include:

- It can be difficult for transit States to rely on exporting States to systematically provide data about the shipment to the transit State. For example, information on the means and route of

transport is not always known at the licensing stage (as transportation is often only secured *after* obtaining the export licence) and may be subject to change;

- Difficulties involved and resources required in investigating, searching or seizing suspect cargo among a high (and growing) volume of legitimate trade (without causing unnecessary delays and impacting movement of goods); and
- A negative view of enforcement of controls among businesses.

Legal challenges: Some of the legal challenges facing transit States in preventing diversion include:

- National agencies need the statutory authority and legal basis to intervene and interdict consignments where there are grounds for believing that they will be diverted from their intended recipient and would pose a threat to national security, or where a shipment is adjudged to be destined for proscribed or illicit end-users (including those subject to a UN or other arms embargo);
- Multiple jurisdiction issues for inspection and seizure of vessels and aircraft (i.e. flag state involvement); and
- Impact of increased complexity of global supply chains (including the ownership and operation of vessels in the maritime industry in particular), as well as international supply routes.

Questions for discussion:

- The list provided above is indicative rather than comprehensive/exhaustive. What other practical and legal challenges are faced to prevent diversion during transit?
- What types of international assistance and cooperation can help to overcome these challenges?

2. *What measures can and are being taken by transit and transshipment States to mitigate the risk of diversion during a transfer?*

Some of the transit and transshipment controls that allow a state to monitor, verify, permit, deny or seize shipments passing through their territory include:

- Establishing a transit licensing or authorization system (whereby a transit licence, permit or other authorization is required before arms can be transited or trans-shipped through a State's territory);
- Requesting/requiring exporters to identify the means and route of transport, including all transit States, in advance of the export;
- Verification of documentation that is presented when a shipment is declared, to detect forgeries and inconsistencies. Ideally the verification would be facilitated by the exporting State having already provided data about the shipment to the transit State – including the export licence and depending on the situation, a copy of the import licence/certificate or a copy of the end-user statement;
- Maintaining open communication and cooperation across licensing, customs, law enforcement, intelligence and other government agencies domestically and amongst States;
- Physical inspections of cargo to verify the correspondence between the actual shipment and the information that is provided in documentation;

- 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
- Monitoring and protecting conventional arms shipments, in cooperation with customs services, law enforcement and other industry parties involved (e.g. freight forwarders/intermediate consignees, transporters etc)¹⁹. This could include:
 - The use of real-time tracking devices to facilitate the detection of lengthy delays or changes in route;
 - Awareness-raising and due diligence requirements towards freight forwarders, shipping agents, customs agents and carriers etc., to help them become partners in preventing or detecting diversion. E.g., a prior authorization requirement for service providers that want to handle transit operations involving the transport of arms.

Questions for discussion:

- The list provided above is indicative rather than comprehensive/exhaustive. What other measures are taken or have proven effective to mitigate the risk of diversion during a transfer/transit?
- What other measures are taken or have proven effective for detecting and/or preventing diversion during a transfer/transit?
- Which legal and administrative measures are taken/most effective to enable competent national authorities to seize shipments of conventional arms that are suspected of being diverted during a transfer/transit?

3. *What is the role of cooperation and **information exchange** among States involved in a transfer during the transfer phase?*

Under Article 11(3), importing, transit, trans-shipment and exporting States Parties are obliged to cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms. In addition to the provision of documentation by the exporting State to the transit or trans-shipment State in advance of the export:

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

¹⁹ [Possible measures to prevent and address diversion](#) welcomed by the Fourth Conference of States Parties.

Questions for discussion:

- What mechanisms are used in ensuring cooperation and information exchange to mitigate diversion during a transfer?
- Which ministries or agencies are involved in the information exchange process?
- Are there national legal restrictions that can impact the information exchange process?

4. *How can the ATT framework enhance the exchange of information for preventing and mitigating diversion during a transfer / transit?*

Article 11(5) stipulates that, in an effort to prevent diversion, ‘States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.’

The Diversion Information Exchange Forum (DIEF) could be used by States to share their diversion experiences in the transit phase, as Rule 19 of the [DIEF Terms of Reference](#) explicitly lists the elements mentioned in Article 11 (5) as diversion-related information that States should share in the DIEF.

Questions for discussion:

- How can States exchange information on effective measures to prevent and mitigate diversion?
- How can States ensure the [Possible measures to prevent and address diversion](#) paper is up-to-date for transit?
- What are the reasons that States consider to be obstacles in exchanging such information?
