



12 April 2022

Issued by the Working Group on Effective Treaty Implementation

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Dear all,

The Working Group on Effective Treaty Implementation (WGETI) held its first meeting in the context of the preparatory process for CSP8 on 15-16 February. This meeting focused its attention on three priority issues, namely implementation of ATT Articles 6 & 7, Article 9 as well Article 11. Discussions on these items were led by the three appointed facilitators.

Discussions at the February meetings were productive, although with a reduced timeframe and so we are not making progress as rapidly as we might have originally anticipated when preparing the multi-year work plans. Nevertheless, each of the Sub-working Groups managed to cover most of their respective agendas, and have taken forward the matters under review to the extent possible.

The second meeting of the WGETI will seek to build on and take forward the discussions of the February meeting. The structure of work and approach adopted for the previous meeting will be broadly maintained for the next meeting, and accordingly:

1. **Ambassador Ignacio SÁNCHEZ DE LERÍN** of Spain¹ will continue to facilitate the work on Articles 6&7;
2. **Mr. Rob WENSLEY** of South Africa² will continue to facilitate the work on Article 9; and
3. **Ms. Stela PETROVIĆ** of Serbia³ will continue to facilitate the work on Article 11.

Objectives and preparation for the WGETI meeting in April

The second meeting will seek to build on the achievements of the February meeting and complete some of the elements for which there was not sufficient time. In preparation for the WGETI meeting in April, facilitators of each WGETI sub-working group have prepared a programme for their respective session that you will find herewith. Furthermore, the programmes include revised documents, where appropriate, 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 second meeting of the WGETI will take place on 26 – 27 April 2022 at the Centre International de Conférences Genève (CICG) in Geneva, with the option to participate in the meetings remotely via Zoom. The WGETI has been given three two-hour sessions (six hours) to conduct its meetings, which will be allocated as follows:

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

	Tuesday	Wednesday
13:00 – 14:00	WGETI Sub-working Group on Articles 6&7	WGETI Sub-working Group on Article 9
14:00 – 15:00	WGETI Sub-working Group on Articles 6&7	WGETI Sub-working Group on Article 11
15:00 – 16:00	WGETI Sub-working Group on Article 9	WGETI Sub-working Group on Article 11

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, 26 APRIL 2022, 13:00-15:00****Introduction**

1. The first Chair of the Working Group on Effective Treaty Implementation (WGETI), Ambassador Sabrina DALLAFIOR of Switzerland, established the Sub-Working Group on Articles 6&7 (Prohibitions & Export and Export Assessment) at the commencement of the preparatory process for the Fourth Conference of States Parties (CSP4) to the Arms Trade Treaty (ATT) in January 2018. 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.

First meeting of the Sub-working group

3. During the first meeting of the Sub-Working Group on 15 February, the facilitator provided a brief overview of the 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. He prepared this based on the contributions received from States Parties to the methodology template exercise undertaken during the last cycle and the views exchanged during the discussions held so far during the meetings of the WGETI Sub-working Group on Articles 6 and 7.

4. During the open discussions that followed, delegations provided useful and detailed comments and suggestions on the draft text. These included: providing further details of the background to the methodology exercise, including the number of States Parties that responded to the methodology template circulated by the Facilitator; making it clear the lists of instruments highlighted in the text – and derived from States Parties' responses to the methodology template – are indicative and not exhaustive and reflect the views of some States Parties and do not represent the common understanding of all States Parties; including language that emphasizes that it is not the aim of the chapter to reinterpret concepts that have established interpretations in international law; and reiterating that, whilst the use of the guide under development may be voluntary, the international law reflected and listed in the guide is not.

5. The facilitator then commenced focused discussions on Article 6 obligations as contemplated in the multi-year plan. Given the short amount of time left, only a few interventions were possible and further discussion on this topic will be needed during the April meetings.

Second meeting of the Sub-working group

6. The second meeting of the Sub-Working group will build on progress made in the first meeting. To that end, the second meeting will briefly consider the revised 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 (Topic 5 of the multi-year workplan). The meeting will also conclude the discussions on Topic 6 of the multi-year workplan that were initiated during the February meeting, before moving to a discussion on Topic 7.

7. Attachment 1 provides an agenda for the Sub-Working group session of 26 April 2022. Attachment 2 is the revised 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. Participants are encouraged to consider these draft documents in advance of the Sub-Working group meeting and participate actively in the discussion.

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)
26 APRIL 2022**

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)?

Topic 7: Scope of Article 6 (continued...)

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

Article 6(3)

- What constitutes ‘knowledge at the time of authorization’ under Article 6(3)?*
- How is ‘genocide’ defined under international law?*
- How are ‘crimes against humanity’ defined under international law?*
- What are grave breaches of the Geneva Conventions of 1949?*
- What are ‘attacks against civilian objects or civilians protected as such’?*
- What other ‘war crimes’ may be included?*

In addition, there will be expert kick-off presentation on how the term ‘knowledge’ and other relevant terms are interpreted in international law.

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. The exercise was not intended to prescribe, create new norms and standards or establish an agreement on a single interpretation of key concepts, nor to reinterpret established definitions.
3. The exercise received contributions from twenty (20) States Parties, one regional organization (the European Union) and three non-governmental organizations. 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~~ apply the key concepts to concrete transfers 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~~ conventional arms/items are more easily available enables IHRL/IHL violations
- if conventional arms/items~~weapons~~ could be used to commit IHRL/IHL violations
- if available conventional arms/items~~weapons~~ make a significant contribution⁴ to IHRL/IHL violations
- the capacity of the conventional arms/items~~weapons~~ to enable or contribute to violations, even if not directly used in the commission of the act
- if available conventional arms/items~~weapons~~ assist in bringing about a negative outcome
- whether [the use and presence of] conventional arms/items~~weapons~~ make[s] a violation of IHRL/IHL easier, including through intimidation and submission of individuals by the simple presence of a conventional arm suitable for this purpose.

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) as a source of guidance on how to approach the interpretation of the term ‘facilitate’.

“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 criterion~~ona~~ or negative consequence listed in Article 7(1)(b) that States Parties must consider and apply when conducting a risk assessment prior to authorizing an export.

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: ‘...a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:...(c) 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’. [References in this document to the International Criminal Court reflect the responses of certain States that indicated they use the Rome Statute and other International Criminal Court-related documents as sources of guidance on how to approach certain concepts in the ATT. The inclusion of the reference in this document is not intended to apply criminal law standards regarding individual criminal responsibility to these ATT provisions.]

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 humanitarian 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);
- 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
- ~~all other~~ war crimes in international and non-international armed conflicts both under conventional and 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. A violation of IHL must be considered to be ‘serious’ when it constitutes a breach of a rule protecting important values and the breach involves grave consequences for the victim.⁸ In addition to war crimes, ~~One or more~~ respondents also indicated that ~~they~~ it considers that, in order to implement Article 7.1.b(i), “serious violations of international humanitarian law” does not require a specific element of intent or some other mens rea, and includes conduct that is not itself criminalized, for example, where conduct that is not a war crime takes whether a violation takes on a ‘serious’ nature because of its systematic repetition or the circumstances. ~~and~~ Another respondent 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.⁹

“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.

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.

⁸ [ICTY, Prosecutor v Tadic, IT-94-1-AR72, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, §94. Based on an analysis of this case, and other international and national instruments and jurisprudence, the ICRC takes the view that violations of IHL are in practice treated as serious “if they endanger protected persons or objects or if they breach important values” \(ICRC, Customary IHL study, Rule 156\).](#)

⁹ Art 89 of 1977 Additional Protocol I to the Geneva Conventions refers to “situations of serious violations”. Such situations include “conduct ... which takes on a serious nature because of the frequency of the individual acts committed or because of the systematic repetition thereof or because of circumstances” or generalized nature in that “a particular situation, a territory or a whole category of persons or objects is withdrawn from the application of the [Geneva] Conventions or the Protocol.” ([Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, ICRC, 1987, §3592](#)).

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 Civil and Political Rights (1966)
- 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)
- Convention relating to the Status of Refugees (1951)

The above list is not exhaustive, and other international and regional instruments that were not explicitly mentioned by respondent States may also be relevant. In addition to being indicative only, the list does not reflect a common understanding of all States Parties, but may nevertheless be used as a reference by States Parties when they are implementing Article 7 of the Treaty, should they wish to do so.

Seriousness

17. Several States noted that any violations of the peremptory rules of public international law (*jus cogens*)¹⁰ 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 punishment¹¹
- Prohibition on slavery¹²
- Enforced disappearances
- Summary or arbitrary executions

This list is not exhaustive and other violations may also be relevant.

¹⁰ 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).

¹¹ (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. Here and throughout the document, this list is not exhaustive, and other international and regional instruments that may also be relevant. In addition to being indicative only, the list does not reflect a common understanding of all States Parties, but may nevertheless be used as a reference by States Parties when they are implementing Article 7 of the Treaty, should they wish to do so.)

¹² (ICCPR, art. 8; ECHR, 64, art. 4; ACHR, art. 6.)

18. Others noted that violations may be ‘serious’ violations based on their nature and effects, such as:
- Violations of the right to life¹³, including murder and massacre, and extrajudicial and summary executions
 - Arbitrary arrest and detention¹⁴
 - Excessive use of force by law-enforcement officials
 - Rape and other sexual violence

This list is not exhaustive and other violations may also be relevant.

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

22. Some respondent States noted that there is an overlap between Articles 7(1)(b)(i) and (ii), and Article 7(4), such that serious acts of gender-based violence and violence against women and children ~~appear to will often~~ be covered by article 7 paragraphs (1)(b)(i) and (ii). ~~Accordingly, they are of the view that~~In such cases, 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 gender¹⁵ 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’.

¹³ (ICCPR, art. 6)

¹⁴ (ICCPR, art. 9; ECHR, 64, art. 5; ACHR, art. 7.)

¹⁵ Some broadened this to ‘gender identity, gender expression or perceived gender’.

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"¹⁶ as 'those committed against persons, whether male or female, because of their sex and/or socially constructed gender roles'.¹⁷

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 Women¹⁸
- The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)¹⁹
- [The Council of Europe Convention on preventing and combating violence against women and domestic violence, better known as the Istanbul Convention.](#)

[With regard to serious acts of gender-based violence or serious acts of violence against women and children, this list is not exhaustive and other instruments may also be relevant.](#)

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

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;

¹⁶ Not necessarily sexual *violence*, but also non-sexual attacks.

¹⁷ ~~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.'~~ 'Gender', in accordance with article 7(3) of the Rome Statute ("Statute") of the ICC, refers to males and females, within the context of society. This definition acknowledges the social construction of gender, and the accompanying roles, behaviours, activities, and attributes assigned to women and men, and to girls and boys" (*Policy Paper on Sexual and Gender-Based Crimes*, International Criminal Court, The Office of the Prosecutor, June 2014, p3). See also: *Draft Articles on Prevention and Punishment of Crimes Against Humanity, with Commentaries*, International Law Commission, A/74/10, 2019, Commentary to Article 2, §§41-42, pp45-46.

¹⁸ Proclaimed by General Assembly resolution 48/104 of 20 December 1993.

¹⁹ 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'.

(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 Child²⁰
- 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, 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). A State Party must not authorize an export if it determines, after considering available mitigating measures, that there is an ‘overriding risk’.

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”

²⁰ 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.’

- “high” potential
- A negative consequence set out in Article 7(1) is “very likely” or “more likely than not” to occur even after the expected effect of any mitigating measure has been considered.

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’

This list is not exhaustive and furthermore, some information listed in some of the bullet points above may not be sufficient on their own.

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, 26 APRIL 2022, 15:00-16:00/ 27 APRIL 2022, 13:00-14:00****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.

First meeting of the Sub-working group

2. The first meeting of the Sub-working Group on Article 9 focused on two preliminary topics: measures to regulate the transit and trans-shipment of arms by land, and measures to regulate the transit and trans-shipment of arms by air. The aim of this discussion was to explore options and common practice for regulating the transit and trans-shipment of arms by land and air, and to hear from States what their efforts and experiences are.

3. Dr. Julia Hörnig, Assistant Professor at the Erasmus University of Rotterdam, gave a kick-off presentation on 'Transport and transit of arms by road and air'. The presentation was delivered with a view to helping delegations understand the existing international and regional laws and regulations relevant to this topic.

4. The facilitator steered the discussions using as a guide the questions included in the background paper he prepared for the meeting. The questions were designed to elicit information on national approaches to monitoring and controlling the transport of arms over land and by air. Many participants gave detailed accounts of national practice, especially from States in Africa and particularly the ECOWAS region, where much attention has been paid to the issue of the transit of small arms and light weapons through ECOWAS states, and a prohibition on such transit is included in the ECOWAS Convention.

Second meeting of the Sub-working group

5. The second meeting of the Sub-working Group will address Topic 5 (Measures to regulate the transit and trans-shipment of arms by sea) and Topic 6 (The role of the private sector in the transit and trans-shipment of arms) of the multi-year workplan.

ATTACHMENT 1

**DRAFT AGENDA FOR THE MEETING
OF THE SUB-WORKING GROUP ON ARTICLE 9 (TRANSIT OR TRANS-SHIPMENT)
(EXTRACT OF MULTI-YEAR WORKPLAN)
26-27 APRIL 2022**

Topic 5: Measures to regulate the transit and trans-shipment of arms *by sea*

This discussion will explore options and common practice for regulating the transit and trans-shipment of arms by sea. The discussion will explore the following aspects:

- How do States regulate the transit and trans-shipment of arms by sea 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 sea?

- What do these instruments say about the transit and trans-shipment of arms by sea?

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

Topic 6: The role of the private sector in the transit and trans-shipment of arms

This discussion will explore the role of the private sector, including arms manufacturers/industry and shipping companies and agencies, in the transit and trans-shipment of arms by land, air and sea. There will be expert kick-off presentations by experts from the private sector

ANNEX C**WORK PLAN SUB-WORKING GROUP ON ARTICLE 11 (DIVERSION)
WEDNESDAY, 27 APRIL 2022, 14:00-16:00****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).

First meeting of the Sub-working group

2. The first meeting of the Sub-working Group on 16 February considered the role of transit and transshipment states in preventing diversion. The meeting began with an overview by the Facilitator of her draft background paper on the role of transit and transshipment States in preventing diversion, which draws on the paper titled '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.

3. In the exchanges that followed, participants reflected on the complementarity of the topic being addressed in this Sub-working Group and the Sub-working Group on Article 9, noting that a joint session between the two Sub-working Groups might be useful (as is contemplated in the final session of the multi-year work plan of the Sub-working Group on Article 9, which will look at the relationship between Article 9 and other articles, including Article 11 and Article 7).

4. Many transit States, including several landlocked States, shared information on the measures they take to control arms in transit, noting the important role of Customs agencies in this endeavour. They explored the difficulties in controlling transit through airspace versus land, where it is much harder to intercept air cargo. Some States explained that they treat arms as 'dangerous goods' for the purposes of air transport, giving them great opportunity to control their movement.

5. In the context of information exchange, the need for timely provision of information was emphasized. A suggestion was made to have a list of the entities in different States that are responsible for issuing import and export licenses, as well as end-use/r certificates, within the framework of the ATT to facilitate direct contact with these agencies and better cooperation among States. It was also noted that ATT national points of contact could play a role in sharing information on these matters, and that the Diversion Information Exchange Forum (DIEF) has important work to do in this area. The importance of inter-agency cooperation at the domestic level was emphasized, and the need for mapping or oversight of which agencies are involved in transit controls.

6. Some States also gave examples of case studies and national experiences where they denied the transit of arms through their territory based on a risk assessments conducted and effective control measures in place, noting the need for follow up and continued engagement to thwart diversion attempts. They also noted the importance of fulfilling UN Security Council arms embargoes to prevent diversion of arms in transit, whilst also highlighting the challenges many transit States face in terms of the resources needed to implement transit control measures at border crossings.

7. States also discussed their national compliance measures for transport operators and systems for 'qualifying' transport operators and freight forwarders to transport arms. The need to engage transport actors and providers in diversion prevention measures was emphasized.

Second meeting of the Sub-working group

8. In accordance with the multi-year work plan, the second meeting of the Sub-working Group will explore the following topics:

- a. The role of importing States in preventing diversion;
- b. Post-delivery cooperation; and
- c. The role of the private sector and civil society in mitigating diversion risk post-delivery.

ATTACHMENT 1

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

Session 1: The role of importing States in preventing diversion

This discussion will explore the measures that can and are being taken by importing States to mitigate the risk of diversion post-delivery, including

- *Issuing delivery notification by the importing State (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Articles 8(1) and 11(3));*
- *Registering and maintaining records of conventional arms entering their national territory, as well as the secure transfer of these to the authorised end-user (Article 12 (2)); and*
- *Ensuring robust stockpile management procedures (including routine security inspections and audits of the conventional arms stockpiles of all end users). Note: it is anticipated that the topic of post-delivery storage and stockpile management would be discussed as part of a future multi-year work plan that will address Transfer chain 4.*
- *Effective legislation for investigating and/or punishing diversion-related offences.*

Session 2: Post-delivery cooperation

This discussion will explore the possibility of exporting States conducting post-delivery checks in cooperation with competent authorities in the importing State to verify compliance with end-use conditions, such as the condition that no re-export can take place without prior notification to the country of origin. It will examine the political and resource implications of such checks.

- *What are some challenges/concerns regarding post-delivery cooperation?*
- *What are some of the options for strengthening cooperation between exporters and importers?*

Session 3: The role of the private sector and civil society in mitigating diversion risk post-delivery

This discussion will explore the role of private sector and civil society in order to prevent diversion at or after importation
