



09 February 2018
Issued by the Working Group on Effective Treaty Implementation

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Dear all,

The Third Conference of States Parties (CSP) of the Arms Trade Treaty, held in Geneva on 11-15 September 2017, adopted the Terms of Reference for a standing Working Group on Effective Treaty Implementation (hereinafter WGETI). The Conference further endorsed a Work plan identifying priority issues for discussion until the Fourth CSP, indicating that the WGETI may focus on a subset of priorities.

WGETI Sub-working Groups

As the Chair of the WGETI and after careful consideration, I have decided to focus work until the Fourth CSP on three priority issues in particular. For reasons of efficiency, I have also decided that these priority issues would be addressed in three sub-working groups led by experienced facilitators. The priority issues and facilitators are as follows:

- **Article 5 (General Implementation) facilitated by Mr. Leonard Tettey (Ghana)**
- **Articles 6 (Prohibitions) and 7 (Export and Export Assessment) facilitated by Mr. Daniel Nord (Sweden)**
- **Article 11 (Diversion) facilitated by Mr. Damien Chifley (Australia)**

Objectives and preparation for the March meeting

The general exchange on Treaty implementation held in the framework of the WGETI last year provided the opportunity to identify priority issues going forward. They also highlighted the **need for work to take a more concrete form and the importance of achieving concrete results**. The activities of the WGETI will be undertaken with these two objectives in mind.

In order to prepare for the March meeting, I have asked the facilitators of each sub-working group to prepare a work plan for their respective session that you will find herewith as Annexes A,B and C.

These work plans cover organizational as well as substantive elements of the work ahead. They include an overview of the aims and objectives of each of the sub-working groups, a description of the key issues that each sub-group will address, include consideration on substance and/or a list of guiding questions designed to guide discussions. Annex B to the Co-chairs' Draft Report to CSP3 provides a central basis guiding the substance of these documents.

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 different 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.

For discussions to be as informed as possible at the March meeting, participants are also encouraged to **circulate working papers ahead of the meeting** via the ATT Secretariat highlighting their key considerations on issues addressed by the sub-working groups.

Indicative programme of work for the WGETI

The first meeting of the WGETI will take place on 06-07 March 2018, at the Centre International de Conférences Genève (CICG) in Geneva. The WGETI has been given 1.5 days to conduct its meeting, which will be allocated as follows:

Table 1. Schedule of WGETI Sub-group Meetings (March 2018)

	06 March		07 March
10:00 – 10:15	Opening remarks by CSP4 President and WGETI Chair	10:00 – 12:45	WGETI sub-working group on Article 5
10:15 – 13:00	WGETI sub-working group on Article 11	12:45 – 13:00	Conclusions by the Chair
13:00 – 15:00	Break	13:00 – 15:00	Break
15:00 – 18:00	WGETI sub-working group on Articles 6 & 7		WGTU

Yours sincerely,

Ambassador Sabrina DALLAFIOR

Permanent Representative of Switzerland to the Conference on Disarmament

Chair of the ATT Working Group on Effective Treaty Implementation

ANNEX A

**WORK PLAN SUB-GROUP ARTICLE 11 (DIVERSION)
TUESDAY, 06 MARCH 2018, 10:15-13:00**

The prevention of the diversion of conventional arms is one of the primary objectives of the ATT. Article 11 is one of the longest yet least prescriptive provisions in the Treaty, and there is much work to be done by the WGETI on Article 11 to help States Parties understand and implement the obligations in this Article.

The work of WGETI cannot ignore the fact that many international and regional instruments addressing/tackling the issue of diversion prevention – especially with respect to small arms and light weapons – were adopted *before* the ATT, and States have been implementing diversion prevention measures under and in the name of these instruments for many years. The WGETI should seek to capitalize on and benefit from the work already taking place under these other instruments, and to harness and build on the progress made. At a minimum, it should avoid duplicating efforts and it should look for ‘gaps’ in efforts to address diversion experienced by other processes.

1. Exchange of understandings on the scope of diversion covered by Article 11 (10:15-11:00)

Article 11 obliges States Parties to take measures to prevent diversion of both the transfer of conventional arms and of transferred conventional arms. It is important to discuss, by way of introduction, the breadth of scope of Article 11, including that it addresses both prevention of diversion during the transfer process, and the diversion conventional arms once transfer has already taken place, including from national stockpiles and throughout the life-cycle.

Guiding questions

- What is your State’s understanding of the distinction between “diversion of the transfer of conventional arms” and the “diversion of transferred conventional arms” in Article 11?

2. Prevention of diversion (11:00-11:45)

Article 11(2) requires exporting States Parties to prevent diversion of the transfer of conventional arms through assessing the risks of diversion of the export and considering the establishment of preventive measures, examples of which are provided in the Article. Article 11(3) requires importing, transit, trans-shipment and exporting States to cooperate and exchange information to mitigate the risks of diversion.

Guiding questions

- What elements and measures does your State have in place to prevent, and mitigate the risk of diversion of the transfer of conventional arms?
- Describe some of the challenges your State faces in preventing diversion of the transfer of conventional arms?
- What mechanisms do you use and/or recommend States Parties use to exchange information to mitigate the risk of diversion?

- What advice or lessons learned in preventing diversion would you like to share with other States? Has your State or regional organization produced any guidance documents on preventing diversion which might be useful for other States to consider?

3. Addressing diversion (11:45-12:30)

Article 11(4) requires States Parties to take appropriate measures to address diversion of transferred conventional arms if they detect diversion. Article 11(5) encourages States to exchange information on effective measures to reduce the risk of diversion of transferred conventional arms. Article 11(6) encourages States Parties to report to other States Parties, through the Secretariat, measures taken to address diversion of transferred conventional arms.

Guiding questions

- What elements and measures does your State have in place to detect diversion of transferred conventional arms?
- Describe some of the challenges your State faces in detecting diversion of transferred conventional arms.
- What mechanisms do you use and/or recommend States Parties use to exchange information to prevent diversion of transferred conventional arms?
- What advice or lessons learned in detecting diversion of transferred conventional arms would you like to share with other States? Has your State or regional organization produced any guidance documents on preventing diversion which might be useful for other States to consider?

4. Concluding comments (12:30-13:00)

Guiding questions

Does your State have any views on outcomes which the WGETI should work towards for CSP4? Possible outcomes could include:

- Compiling/map a list of effective measures for preventing diversion.
- Compiling a list of Guidance documents on preventing diversion.
- Recommending further discussion of particular issues eg end-user certification, diversion risk indicators, technology for detecting diversion, how to address diversion via re-transfer.

ANNEX B**WORK PLAN SUB-GROUP ARTICLES 6-7
TUESDAY, 06 MARCH 2018, 15:00-18:00**

Articles 6 and 7 of the ATT contain some of the key elements of the Treaty, with the prohibitions that states need to abide by and the rules concerning export and the necessity that export assessments are being implemented. In between themselves the two articles contain many provisions where further discussion among states and non-governmental actors on how to implement them may be useful. It is not to be expected that there will be consensus on all issues, but even when there is none a broad discussion is always helpful to increase understanding of the Treaty and how to implement it. They can also help in identifying measures that could be helpful to States Parties in their implementation of these articles.

General outline of the work plan

With regard to Articles 6 and 7, the sub-group has been tasked in Annex B of the proposed work plan for WGETI to focus on “*practical implementation (national structures and processes required to implement the articles, experiences made in implementing the articles)*.” The work of the sub-group will start with a presentation, exchange of views and Q/A session where many of the issues with regard to practical implementation of the articles will be raised. This will then be followed with more specific discussion on certain issues of relevance for the articles. Given the limited time available it will be difficult at this time to address all issues that could be of relevance for articles 6 and 7.

Agenda

1. Presentation and discussion on working methods to implement Article 6 and 7 by the Swedish export control agency Inspectorate of Strategic Products (ISP),

This presentation will include, amongst others: how to ensure the prohibitions in Art 6 are respected; that the necessary risk assessments are made under Art 7 and based on what information; examples of sources for IHL and HR information; need for in-house expertise available vs access to external expertise; role of other parts of government and/or ministries; who takes the decision to grant or deny export license application – civil servants or political process.

- Participants are encouraged to react and present their views on these issues, and possibly others, and for states if possible to provide a brief description of their own structures and working methods.
 - Participants are also encouraged to highlight key challenges they faced in implementing these articles.
2. Discussion – Article 6 (1) Sanctions
 - Presentation on what type of framework needs to be in place to ensure UN arms embargoes are being respected.
(Q/A, States are invited share information on how they from a legal point ensure that UN sanctions/arms embargoes can be implemented)

3. Discussion – Article 6 (2) “relevant international instruments”

- Presentation and discussion on what these international instruments may be.

4. Discussion – Article 7

The discussion will seek to address the following points in particular:

- Does type of conventional arms matter in risk assessment? Are any types of military equipment more sensitive or less sensitive?
- Is it the direct effect or the indirect effect of an export of conventional arms that needs to be assessed?
- What type of mitigation measures can be useful to reduce risks? (Art 7.2) (This will also feature in discussions under Article 11 – Diversion.)
- Gender Based Violence – What is the relationship between Art 7.4 and Art 6?

ANNEX C

WORK PLAN SUB-GROUP ARTICLE 5 WEDNESDAY, 07 MARCH 2018, 10:00-12:45

Article 5 of the ATT obliges ATT States Parties to establish and maintain a national control system in order to implement the provisions of ATT, including a national control list, competent national authorities and one or more national points of contact to exchange information on matters related to the implementation of the ATT. A national control system will require appropriate legislation, regulations and administrative procedures. Without the administrative infrastructure contemplated in Article 5 in place, a State Party will not be able to fulfil the other obligations in the Treaty effectively or at all.

The session on Article 5 will break down the article in its constituent parts with a view to addressing the different steps required to implement it. One of the key objectives of these exchanges shall be for each key provision of the article to:

- identify experience made in implementing it,
- draw lessons learned,
- identify challenges and possible ways to overcome them.

The session on Article 5 will successively address the different points below. Some may be informed by presentations. **I am inviting you to consider the elements and questions listed below for each of these points and to come prepared to address them.** Any consideration circulated ahead of the meeting in the form of working papers is welcome.

1. What are the considerations for establishing a national control list?

Review national approaches for ensuring a national control list, at a minimum, fulfils ATT obligations under Articles 2, 3, 4 and 5, including:

- Share national experience on considerations and processes for establishing, maintaining/updating national control lists, including national actors involved in the process
- Identify the most common sources of guidance and control lists developed via multilateral forums that are used by States to establish and update their national control lists
- Exchange of national experience on measures to put in place a national control list to fulfil ATT obligations and commitments, the definitions for items and the level of detail of the list, whether it is made public or not
- Consideration of the utility of a “Model Control list” made available to States Parties or other forms of guidance to support implementation
- Address how often a national list should be updated and the necessary mechanism to fulfil this task,
- Indicate what are the key challenges in establishing and maintaining a national control list

Initial deliberations will be informed by national control lists provided to the ATT Secretariat and information contained in submitted initial reports.

2. How does your national legislative framework support implementation of the ATT?

Review national approaches to put in place legislation, regulations and administrative procedures to implement the ATT, including:

- National reviews of legislation to ensure compliant with ATT obligations and commitments.
- Share national experience of measures to put in place or amend legislation to fulfil ATT obligations and commitments (i.e. amendments to legislation, drafting new legislation, etc).
- Consideration of the utility of the “Model Law” approach or other forms of guidance to support implementation

Initial deliberations will be informed by information contained in initial reports submitted by ATT States Parties.

3. What are the practical considerations for establishing competent national authorities?

Review national approaches for establishing competent national authorities in order to have an effective and transparent national control system, including

- Share national experience on processes for establishing / designating competent national authorities to implement the national control system to regulate international transfers of controlled items / conventional arms, their parts and components and ammunition
- Indicate which ministries/departments are involved and whether one authority oversees all transfers (imports and exports) or whether different authorities oversee different activities
- An exchange of national experience on roles and responsibilities for designating competent national authorities and on inter-agency cooperation in order to have an effective and transparent national control system
- Underline what are the key challenges in establishing an effective and efficient national authority

Initial deliberations will be informed by information contained in initial reports submitted by ATT States Parties.
