



Arms Trade Treaty
Working Group Meetings
May 2023

Working Group on Effective Treaty Implementation (WGETI)

SUB-WG ON ARTICLES 6&7, TOPIC 10 (9 May 2023, 10:00-13:00): Voluntary Guide to assist States Parties in implementing Articles 6 and 7 – Revised draft elements for Chapter 2 (Article 6 (Prohibitions))

Mr. Facilitator,

Let me first of all express Switzerland's gratitude for your much appreciated work and preparation for this second meeting of the Working Group on Effective Treaty Implementation in the CSP9 cycle. In particular, Switzerland is thankful that the documentation has been provided to State Parties early before this 2nd session of the working group in the CSP9 cycle, providing sufficient time for delegations to prepare accordingly.

Switzerland thanks you for the presentation of the revised draft elements for Chapter 2 of the Voluntary Guide, which showed that comments made by State Parties during the 1st preparatory session in February have been taken into account.

In particular, Switzerland welcomes the addition of a reference to the Rome Statute in relation to the crime of genocide in paragraph 24. However, we wonder whether it would make more sense to have a new paragraph 21 to address this issue under the chapter related to genocide.

We have some remarks regarding paragraph 35 which we will send you in writing (**cf. next page**).

Switzerland also welcomes the fact that its comments on the relationship between Article 6 and Articles 7, 8, 9 and 10 have been reflected, namely:

- in paragraph 37, that the prohibitions in Article 6 and the export risk assessment criteria in Article 7 are jointly integrated in a single Article of the Swiss War Material Act,
- and in paragraph 39, that Switzerland applies the same assessment criteria to transit and brokering as it does for exports of war material, these criteria also being applied to import of ammunitions and parts and components.

Thank you, Mr. Facilitator.



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Specific comments to send in writing:

- Switzerland considers that serious violations of IHL constitute war crimes, as the rule 156 of the IHL Customary Study of the ICRC states. We suggest adjusting the wording of the last sentence of paragraph 35 as follows: *Some States parties apply Article 6 (3) to all war crimes, including serious violations of IHL listed in Rule 156 of the IHL Customary Study of the ICRC. This even if some of these war crimes are only war crimes under customary international law and that this approach therefore might go beyond the mandatory scope of Article 6 (3).*
- There is a typo in footnote 10: *This obligation applies to all war all war crimes in international and non-international armed conflicts, both under conventional and customary international humanitarian law.*



SUB-WG ON ARTICLES 6&7, TOPIC 11 (9 May 2023, 10:00-13:00): Discussion on Article 7.2 on mitigations measures when conducting assessments in accordance with Articles 7.1(a), 7.1(b), and 7.4.

Mr. Facilitator,

Switzerland welcomes the background paper that was circulated to State Parties in order to nourish this discussion on Article 7.2, as well as the presentation just made by Small Arms Survey.

In this framework, Switzerland would like to mention two measures our licensing process implements to mitigate risks related to undermining peace and security, possible violation of international humanitarian law and international human rights, and unintentionally contributing to terrorism or organized crime activities:

The first one is related to Art. 29 of Switzerland's War Material Act and the corresponding Art. 14. of the War Material Ordinance, which establishes the procedures of export requests' assessments. These procedures are designed in a way that the competent authority for export control, namely the State Secretariat for Economic Affairs, cannot approve an export request without the consent of at least one other government entity. These entities include mainly the Federal Department of Foreign Affairs, which encompass the Swiss Embassy in the country of destination, but can also involve the Federal Department of Defence, the Federal Intelligence Service, the Federal Office of Civil Aviation and the Federal Office of Energy. The intergovernmental exchange that takes place in this context helps to ensure the assessment of export requests are conducted in a thorough manner which mitigate risks mentioned in Article 7.1 and 7.4 of the ATT. If the result of the assessment made by these entities reach different conclusions, not agreeing on the approval nor the denial of the export request, the matter is submitted to the Federal Council for a decision, the Federal Council being the collective head of state of Switzerland composed by its 7 Ministers.

Furthermore, export request assessments are being conducted independently at least by two export control officers, applying the two-man rule. This means that an export control officer cannot approve alone an export, reducing the risks of error during the assessment procedure.

The second risk mitigation measure that Switzerland implements is the obligation, for the end-user, to explicitly mention in the end-user certificate the specific use of the war material it acquires (for example only for training or VIP protection). This end-user certificate also compels the end-user to refrain from selling, or otherwise transferring, this war material without Switzerland's consent.

We hope this overview of Switzerland's solution could be of some use to our fellow State party.

Thank you, Mr. Facilitator.



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SUB-WG ON ARTICLE 9, TOPIC 1 (9 May 2023, 15:00-16:30): revised draft elements of a voluntary guide to implementing Article 9

Mr. Facilitator,

Once again, Switzerland would like to congratulate you for the presentation of the revised draft elements for a Voluntary Guide to implementing Article 9, which showed once more that comments made by State Parties during the 1st preparatory session in February have been diligently taken into account.

In particular, Switzerland welcomes the inclusion of paragraph 51 which shows that few State Parties apply the same assessment criteria to transit and trans-shipment as they do to export.

Thank you, Mr. Facilitator.



SUB-WG ON ARTICLE 11, TOPIC 1 (9 May 2023, 16:30-18:00): Proposal for inclusion of operational steps in Diversion Prevention Measures document

Mr. Facilitator,

Let me first express Switzerland's gratitude for your availability to facilitate interim this sub-working group.

We welcome in principle the document of voluntary guidance on the introduction and implementation of post-shipment verification in concrete terms. With this voluntary guidance, however, we now have three documents dealing with the topic of post-shipment verification. The question arises whether these are not too many documents on this sole topic, especially since the voluntary guidance repeats the operational proposals of the German presidency working paper.

As we already stated during the February meeting, Switzerland would have welcomed a discussion on the views and challenges of States Parties displaying for review their arms during a post-shipment verification. After all, not all States are arms exporters; many States are only importers. Hearing the views and challenges of these States could have been reflected and taken into consideration in the documents on post-shipment verification.

Thank you, Mr. Facilitator.