



22 January 2024

Issued by the Working Group on Effective Treaty Implementation

Original: English

Arms Trade Treaty
Tenth Conference of States Parties
Geneva, 19 – 23 August 2024

Dear all,

Following discussions on the review of the ATT programme of work and the future work of the Working Group on Effective Treaty Implementation (WGETI) during the preparatory process of the Ninth Conference of States Parties to the ATT (CSP9), the Conference adopted the proposal on the configuration and substance of the WGETI for its future work. The proposal sought to shift the focus of the Working Group from theoretical discussions to practical Treaty implementation issues and to progressive discussions on national implementation measures and exchanges on national implementation experiences.¹ The proposal also sought to no longer arrange the Working Group discussions according to distinct topics and articles, but rather along the lines of general phases of practical Treaty implementation. This would highlight the interconnectedness of Treaty articles, and to focus on the cross-cutting support functions of international cooperation and assistance. To streamline the WGETI work, the proposal committed to specific working arrangements for the structured discussions of the Working Group, focusing on practical presentations by States Parties and other stakeholders, Q&A sessions and information exchanges.

To operationalize this shift in approach and focus in an orderly fashion, the Conference mandated the Working Group to develop a multi-year workplan for its structured discussions, based on priority stages/phases of implementation, and to initiate discussions on a few selected general phases of Treaty implementation. For that purpose, a working document has been prepared, which sets out the suggested priority stages/phases to be addressed first, as well as possible topics to be discussed. This working document is complemented with a draft multi-year workplan, which elaborates on the topics to be discussed and includes practical implementation questions to be addressed, as well as interface arrangements between this Working Group and the Working Group on Treaty Universalization and the Working Group on Transparency and Reporting.

As a complement to these structured discussions, the proposal also provided the possibility for more in-depth discussions and/or the elaboration of voluntary guidance documents or other tools to assist national implementation, if that is deemed necessary about certain identified issues. In addition, the proposal also provided the opportunity for States Parties and other stakeholders to raise any current Treaty implementation issue, and call for an *ad hoc* discussion on this issue.

In this context, it is pertinent for the Working Group to take into account the different decisions and recommendations which States Parties adopted at CSP9 regarding specific topics to be discussed within the ATT process. At CSP9, this concerned in particular the role of industry in responsible international transfers of conventional arms, as well as the risk of conventional arms being used to

¹ See Annex D of the WGETI Chair's Draft Report to CSP9 ([ATT/CSP9.WGETI/2023/CHAIR/767/Conf.Rep](#)) and paragraph 24 (f) of the Final Report of CSP9 ([ATT/CSP9/2023/SEC/773/Conf.FinRep.Rev2](#)). Also see paragraphs 18 and 19 of the Management Committee Draft Proposal on the Review of the ATT Programme of Work ([ATT/CSP9.MC/2023/MC/765/Conf.Prop](#)).

commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.²

Concerning possible *ad hoc* discussions, in line with the agreed working arrangements for the Working Group, on 13 December 2023 I issued an invitation to States Parties and other stakeholders to raise any current implementation issue on which they seek such an *ad hoc* discussion in the WGETI.³

At the same time, the Sub-working Group on Articles 6 and 7 will still finalize its work in accordance with its multi-year workplan.⁴ In that regard, the Facilitator of this Sub-working Group has prepared a list of possible draft elements for Chapter 3 (Article 7 – Export and Export Assessment) of the proposed Voluntary Guide to implementing Articles 6 & 7, derived from national presentations and the views exchanged during the relevant discussions in the Sub-working Group since the CSP4 cycle. The Facilitator will present these draft elements for discussion during the meeting on 20 February. Chapter 3 is the last anticipated chapter of the proposed Voluntary Guide, next to Chapter 1 and 2, respectively dealing with the interpretation of key concepts in Articles 6 and 7 and the prohibitions in Article 6, for which draft elements were developed in the Sub-working Group and welcomed by States Parties at CSP8 and CSP9.⁵ Following agreement on the draft elements for Chapter 3, the Facilitator will prepare the completed version of the proposed Voluntary Guide for endorsement at CSP10, wrapping up the work of the Sub-working Group on Articles 6 and 7.⁶

Organization of work

In the past CSP cycles, the WGETI conducted its work through three Sub-working Groups, which each dealt with individual Treaty articles/issues endorsed by Conference for discussion in the WGETI, namely Article 5, Articles 6 & 7, Article 9 and Article 11. Of these, only the Sub-working Group on Articles 6 & 7 has not yet exhausted its multi-year workplan and will still be active in this CSP10 cycle.

Going forward, to organize the work of the Working Group in a manageable and transparent manner, it is proposed to split the work in the following three Sub-working Groups that reflect the anticipated approach and working arrangements in the adopted proposal on the configuration and substance of the WGETI and the CSP9 Final Report:

1. The Sub-working Group on exchange of national implementation practices;
2. The Sub-working Group on current and emerging implementation issues; and
3. The Sub-working Group on Articles 6 & 7.

The **Sub-working Group on exchange of national implementation practices** will be the main Sub-working Group of the WGETI going forward. It will facilitate structured discussions about practical Treaty implementation on the basis of the above-mentioned multi-year workplan to be considered for adoption by CSP10. During the CSP10 cycle, it will deal with the elaboration of that multi-year workplan

² See paragraph 22 (d) and (f-h) and paragraph 24 (g) of the Final Report of CSP9 ([ATT/CSP9/2023/SEC/773/Conf.FinRep.Rev2](#)).

³ Paragraph 11 (g) of the proposal on WGETI Configuration and Substance: “*At the beginning of each CSP cycle and ahead of the in-person WGETI meeting, the WGETI Chair will invite States Parties and other stakeholders to raise any current implementation issue on which they seek an ad hoc discussion in the WGETI.*”.

⁴ [Multi-year Workplan for the WGETI Sub-working Group on Articles 6 & 7 \(Prohibitions & Export and Export Assessment\)](#).

⁵ Draft Chapters 1 and 2 are available in respectively Annex A of the WGETI Chair’s Draft Report to CSP8 ([ATT/CSP8.WGETI/2022/CHAIR/733/Conf.Rep](#)) and Annex A of the WGETI Chair’s Draft Report to CSP9 ([ATT/CSP9.WGETI/2023/CHAIR/767/Conf.Rep](#)).

⁶ See paragraph 23 of the Final Report of CSP8 ([ATT/CSP8/2022/SEC/739/Conf.FinRep.Rev 2](#)).

for the structured discussions, as well as a first topic for discussion. Taking into account the priority theme of the CSP10 President, this will be “national control system” and “inter-agency cooperation” in general.

The **Sub-working Group on current and emerging implementation issues** will deal with issues that States Parties and other stakeholders have identified as requiring more in-depth discussions in the context of the structured discussions of the Working Group, as well as any other issue raised upon invitation of the WGETI Chair or as part of Conference decisions and/or recommendations. In that regard, its meetings will be demand driven. In the CSP10 cycle, this Sub-working Group will, first, hold further discussions on the role of industry in responsible international arms transfers and the risk of conventional arms being used to commit or facilitate gender-based violence or violence against women and children, as suggested by CSP9. The initial focus of these discussions will be to delineate which specific aspects of these broad topics the Sub-working Group should still address and whether any concrete outcomes should be proposed. In doing so, the Sub-working Group will take into account the existing body of work on these topics to avoid repeating discussions, as well as the purpose and scope of the Treaty and the overall mandate of the WGETI included in its Terms of Reference. After these discussions, the Sub-working Group will advance with the *ad hoc* discussions on current or emerging implementation issues that have been raised by delegations.

The **Sub-working Group on Articles 6 & 7** will finalize the proposed Voluntary Guide in accordance with its multi-year workplan and thereby end its activities during this CSP10 cycle.

Facilitators of the discussions

The discussions in the Sub-working Groups will be facilitated as follows:

1. Facilitation of discussions on the multi-year workplan for the structured discussions of the Working Group and on selected general phases of Treaty implementation is under consideration;
2. Discussions on current and emerging implementation issues will be facilitated by Ms. Grisselle RODRIGUEZ of Panama; and
3. Facilitation of discussions on Articles 6 & 7 (Prohibitions & Export and Export Assessment) is under consideration.

I would like to express my heartfelt appreciation to Ms. RODRIGUEZ for her willingness to assume the role of facilitator of discussions on current and emerging implementation issues. For the facilitation of discussions in the other the Sub-working Groups, the CSP10 President, Ambassador Răzvan RUSU of Romania, will circulate a proposal in due course.

Objectives and preparation for the WGETI meeting in February

In preparation for the WGETI meeting in February, facilitators of each Sub-working Group have prepared documentation within the remit of their task outlined above. You will find these documents as Annexes to this letter and an overview is provided in the table of contents below. The facilitators of the newly established Sub-working Group on exchange of national implementation practices and Sub-working Group on current and emerging implementation issues have prepared a draft agenda and a working document that explain the background of the Sub-working Groups and elements for discussion including on aspects that have already been identified. The facilitator of the Sub-working Group on Articles 6 & 7 has prepared a draft agenda and draft elements for Chapter 3 (Article 7 –

Export and Export Assessment) of the proposed Voluntary Guide to implementing Articles 6 & 7. 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 as their success is exclusively dependent on the level of commitment and engagement of States Parties and other stakeholders. Especially the exchange of information on national approaches to Treaty implementation is key for the WGETI to be able to fulfil its mandate and deliver concrete outcomes.

Programme of Work for the WGETI Sub-working Groups

The meeting of the WGETI will take place on 20 – 21 February 2024. The WGETI has been given four three-hour sessions (twelve hours) to conduct its meetings, which will be allocated as follows:

Table 1. Schedule of WGETI Sub-working Group Meetings (February 2024)

| | Tuesday | Wednesday |
|---------------|---|---|
| 10:00 – 13:00 | WGETI Sub-working Group on Articles 6&7 | WGETI Sub-working Group on exchange of national implementation practices |
| 15:00 – 18:00 | WGETI Sub-working Group on exchange of national implementation practices | WGETI Sub-working Group on current and emerging implementation issues |

Delegations are informed that this schedule is indicative. The meetings of the Sub-working Groups will be held on a rolling basis.

I look forward to working closely with all of you in steering our work towards a successful CSP10.

Yours sincerely,

Ambassador Christian GUILLERMET FERNÁNDEZ
Permanent Representative of Costa Rica
Chair of the ATT Working Group on Effective Treaty Implementation

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SUB-WORKING GROUP ON ARTICLES 6&7

This section contains the following documents:

- Annex A-1: [Draft agenda for the meeting of the Sub-Working group on Articles 6&7](#)
- Annex A-2: [Voluntary Guide to implementing Articles 6 and 7 – Draft Elements of Chapter 3 \(Article 7 \(Export and Export Assessment\)\)](#)

ANNEX A-1

**DRAFT AGENDA FOR THE MEETING OF
THE SUB-WORKING GROUP ON ARTICLES 6&7
(EXTRACT OF MULTI-YEAR WORKPLAN)**

Tuesday, 20 February 2024, 10:00-13:00

1. Voluntary Guide to implementing Articles 6 and 7 – Draft Elements of Chapter 3 (Article 7 (Export and Export Assessment))

Introduction by Facilitator

Open discussion

The Facilitator will also present a list of possible draft elements for Chapter 3 (Article 7 (Export and Export Assessment) of the proposed Voluntary Guide to assist States Parties in implementing Articles 6 and 7, derived from national presentations and the views exchanged during the discussions held so far during the meetings of the WGETI Sub-working Group on Articles 6 and 7, including the CSP4 and CSP5 cycles. Participants will have the opportunity to review and comment on the draft elements.

ANNEX A-2

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

Draft Chapter 3 – Article 7 (Export and Export Assessment)

Draft

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BACKGROUND

1. These draft elements concern the third and final chapter of the Voluntary Guide on Implementing Articles 6 & 7, which was proposed by States Parties as part of the multi-year workplan for the Sub-working group on Articles 6 & 7 that was welcomed during the CSP7 cycle.¹ This Chapter follows Chapters 1 and 2 of the proposed guide, for which draft elements were developed in the Sub-working Group and welcomed by States Parties at CSP8 and CSP9, respectively dealing with the interpretation of key concepts in Articles 6 and 7 and the prohibitions in Article 6.²

2. The third chapter is intended to deal with Article 7 more generally.

3. In line with the multi-year workplan, the draft elements below first deal with the relevant topics that were addressed in national presentations and exchanges of views during the meetings of the Sub-working Group on Articles 6 & 7 during the CSP4 and CSP5 cycles (before the multi-year workplan was developed). During these cycles, the Sub-working group discussed a variety of topics relevant to the practical implementation of Article 7. During the CSP4 cycle, the Sub-working Group focused on national structures and processes required to implement Articles 6 & 7, as well as some specific questions related to risk assessment, while also addressing gender-based violence (GBV).³ These discussions were systematically informed by working papers and presentations of States Parties and other ATT stakeholders. Among other documents, during the CSP4 cycle the Sub-working Group also developed a list of possible reference documents to be considered by States Parties in conducting risk assessment under Article 7.⁴ During the CSP5 cycle, the Sub-working Group continued to focus on national structures and processes required to implement Articles 6 & 7 and more in-depth discussions on Article 7 (4).⁵ The Sub-working Group also expanded the list of possible reference documents to be used by States Parties in conducting risk assessment under Article 7.⁶ These topics provide the structure of the draft elements below.

¹ The multi-year workplan for the Sub-working group on Articles 6 & 7 is available on the *Tools and Guidelines* page of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>.

² Draft Chapters 1 and 2 are available in respectively Annex A of the WGETI Chair's Draft Report to CSP8 (<ATT/CSP8.WGETI/2022/CHAIR/733/Conf.Rep>) and Annex A of the WGETI Chair's Draft Report to CSP9 (<ATT/CSP9.WGETI/2023/CHAIR/767/Conf.Rep>).

³ See in that regard the workplans for the 06 March 2018 meeting (<ATT/CSP4.WGETI/2018/CHAIR/248/M1.AgendaWorkPlans>) and the 29 May 2018 meeting (<ATT/CSP4.WGETI/2018/CHAIR/301/M2.WorkPlanArt6&7>) of the Sub-working Group on Articles 6 & 7 and the relevant presentations and working papers for these meetings, available at <https://www.thearmstradetreaty.org/csp-4-first-preparatory-process-schedule-of-meetings.html> and <https://www.thearmstradetreaty.org/2nd-working-group-and-preparatory-meetings-csp-4>.

⁴ See in the regard Annex B of the WGETI Chair's Draft Report to CSP4 (<ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep>). The document is also available on the *Tools and Guidelines* page of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>.

⁵ See in that regard the workplans for the [29 January 2019](#) and the [02 April 2019](#) meetings of the Sub-working Group on Articles 6 & 7 and the relevant presentations and working papers for these meetings, available at <https://www.thearmstradetreaty.org/1st-working-group-and-preparatory-meeting-csp5> and <https://www.thearmstradetreaty.org/2nd-working-group-and-preparatory-meetings>.

⁶ See in the regard Annex B of the WGETI Chair's Draft Report to CSP5 (<ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep>) and the *Tools and Guidelines* page of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>.

4. In addition, the draft elements deal with the specific topic of mitigating measures, which was the last substantive topic in the Sub-working group's multi-year workplan. This topic was introduced by expert presentations and discussed during the meeting of the Sub-working group on 09 May 2023.

5. As several topics relevant to the implementation of Article 7 were already addressed in Chapters 1 and 2, where applicable, these draft elements refer back to Chapter 1 and 2 and reiterate the relevant aspects with a focus on the implementation of Article 7.

6. Just like the draft elements for Chapters 1 and 2, these draft elements aim to provide a picture of how States Parties approach the implementation of the relevant obligations. They were drafted to reflect and build on the presentations and interventions of delegations during the relevant sessions of the Sub-working Group, as well as the documents that were presented and/or noted in that context. The draft elements do not intend to prescribe, create new norms and standards or establish an agreement on a single interpretation of the Article 7 obligations, nor to reinterpret established definitions. They are also subject to change; like draft Chapters 1 and 2, the draft Chapter 3 is intended as a living document of a voluntary nature, to be reviewed and updated by the WGETI, as appropriate.

TREATY TEXT

7. The text of Article 7 is recited below to help readers/users situate the various elements of the Article 7 obligations that were discussed in the WGETI.

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.*

NATIONAL STRUCTURES AND PROCESSES REQUIRED TO IMPLEMENT ARTICLES 6 & 7

5. During the CSP4 and CSP5 cycles, States Parties addressed their national structures and processes in discussions on the practical implementation of Article 5 and Articles 6 & 7. General information and experiences shared by States Parties in the context of Article 5 are reflected in the Voluntary Basic Guide to Establishing a National Control System, welcomed at CSP5.⁷ Several States Parties, however, did also present their national structures and processes with a specific focus on the application of the prohibitions in Article 6 and the export assessment in Article 7.⁸

⁷ The Voluntary Basic Guide to Establishing a National Control System is available on the *Tools and Guidelines* page of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>. The relevant section about the topic at hand is the section about “Institutions”, as from page 10.

⁸ See, for example, presentations by Sweden (https://www.thearmstradetreaty.org/hyper-images/file/Sweden_ISP_06_March_2018/Sweden_ISP_06_March_2018.pdf), Japan (https://www.thearmstradetreaty.org/hyper-images/file/180529_WGETI_Overview_of_Japans_Strategic_Trade_Control_29_May_2018Rev1/180529_WGETI_Overview_of_Japans_Strategic_Trade_Control_29_May_2018Rev1.pdf), Serbia (<https://www.thearmstradetreaty.org/hyper-images/file/20190129%20-%20Serbia%20-%20Arms%20export%20control/20190129%20-%20Serbia%20-%20Arms%20export%20control.pdf>) and South Africa ([https://www.thearmstradetreaty.org/hyper-images/file/South%20Africa%20\(02%20April%202019\)/South%20Africa%20\(02%20April%202019\).pdf](https://www.thearmstradetreaty.org/hyper-images/file/South%20Africa%20(02%20April%202019)/South%20Africa%20(02%20April%202019).pdf)).

What kind of structure do States Parties use for arms export risk assessment and decision-making?

6. Concerning structures, presentations and interventions indicated that most of States Parties have a dedicated structure for risk assessment and decision-making that may or may not be enshrined in legislation or administrative regulations. The assessment entity is often hosted within a particular ministry or department, most likely the ministry of Defence, Foreign Affairs or Trade. It sometimes nevertheless is made up of representatives of several relevant departments or agencies, charged with, *inter alia*, defence (armed forces), foreign affairs, internal security (police), state security and oversight over public enterprises. In such cases, these representatives usually have a designated role that is defined in regulations in light of their expertise. Some States Parties have a fully independent and stand-alone assessment entity, not hosted within a particular ministry or department.

7. While the assessment entity is mostly an administrative body, the decision-making entity is often political or made up of political authorities, with exceptions. The decision-making entity can be a single person, for example a cabinet minister, or an (interministerial) committee. Sensitive cases are regularly decided on the highest political level. In some States Parties, however, also the final decisions are made at the administrative level.

8. In terms of personnel, it is considered important that an assessment entity is staffed with different profiles, in order to cover all relevant aspects of export risk assessments. These include foreign policy experts (including desk officers dealing with the relevant countries), defence/military experts, human rights and international humanitarian law (IHL) experts, technical experts (such as engineers) and legal experts. Other States Parties rather rely on systematic consultations with other entities for different experts to weigh in, in which case the assessment entity itself has more of a coordination role (see the next section's reference to inter-agency coordination). Other States Parties combine comprehensive expertise within the assessment entity with external consultations.

How does the procedure for assessing export applications work?

9. The presentations and interventions of States Parties indicate that an export assessment procedure mostly starts with an export application followed by a desk analysis within the assessment entity. This might involve either systematic or ad hoc consultations with other relevant bodies within their own State (intra-agency cooperation) or the competent authorities in other States (international cooperation). These consultations can be formal, for example on the basis of national legislation, administrative regulations or regional cooperation agreements, or informal, on the basis of practice. They can also be mandatory or voluntary. And their outcomes can be binding or non-binding. As a subsequent step, the desk analysis and consultations usually result in some kind of memorandum or opinion that is further discussed internally, in the assessment entity, and then forwarded to the decision-making entity for a decision. Alternatively, as an intermediary step between the assessment and the final decision, the assessment (memorandum or opinion) is transmitted to an interagency committee that will discuss the export and provide a recommendation to the final decision-making entity.

10. Not all export applications follow the same route. The level of analysis and experts or entities involved might differ according to the sensitivity of a case. In-depth analysis will mostly happen with sensitive recipients/destination and/or sensitive material and focus on the overall criteria of most concern.

States Parties also employ simplified procedures for low-risk transfers which they generally consider unproblematic in light of Articles 6 and 7 of the Treaty, for example, where based on a relationship of trust (confidence) between the states involved.

11. The stage in the transfer chain at which the assessment process starts – and therefore an authorization is required – differs between States Parties. While some States Parties only require authorization for the actual export of the arms, others already require this at the start of the negotiations about a potential export or even at both stages.⁹

12. States Parties also shared more intricate details about their export assessment processes, such as timelines and possible appeals procedures on arms export decisions. In that respect, it appears that while most States do not have formal time limits, sixty to ninety days is a common timeframe for taking decisions, with shorter timelines applying to straightforward transfers and sensitive cases taking up to six months or more. On the possibility of appealing arms export decisions, States practices differ significantly, *inter alia*, due to different legal systems. In some States arms export decisions cannot be challenged at all; they are considered political decisions that are beyond (judicial) review. In States that have some kind of review, differences concern both the nature, scope and outcomes of challenges, as well as the actors that can introduce challenges. In terms of the nature, scope and outcomes, this varies from non-binding administrative challenges to judicial challenges that can lead to overturning of an original decision, suspending or annulling specific export authorizations or (temporarily) freezing exports to a certain destination all together. The scope of challenges is often limited, allowing the administrative or judicial body only to conduct a narrow review of the legality and the reasonableness or rationality of an original decision. In terms of actors, some States allow exporters who have been denied an arms export authorization to challenge the original decision, while in some States non-governmental organisations with a relevant corporate purpose, such as promoting responsible arms transfers, (also) have legal standing to challenge the government's arms export decisions.

Box 1. No one-size-fits-all structure

13. As indicated in the WGETI Chair's Draft Report to CSP4, it was acknowledged in the discussions following the presentations that States Parties have different baselines when it comes to arms exports and the structures to control those. In that respect, not all States Parties need to establish an export control system like those that have a sizeable arms industry and arms exports.¹⁰ The Treaty allows flexibility and variation based on States Parties' national situation, provided that the structures and processes established allow a State Party to conduct an export risk assessment as foreseen in Article 7. Delegations also emphasized the importance of flexibility within a State Party's national control system itself, to be able to deal with any issue that might come up in an effective manner.

⁹ Some States Parties also provide risk assessments in the phase of marketing towards potential recipient countries before any concrete export contracts are on the radar. This is mostly done in the context of some form of voluntary informal advice that is made available to potential exporters on their request.

¹⁰ See paragraphs 17 and 18 of the WGETI Chair's Draft Report to CSP4 ([ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep](#)).

EXPORT ASSESSMENT UNDER ARTICLE 7

14. During the CSP4 and CSP5 cycles, the Sub-working group on Articles 6 & 7 discussed a number of practical and substantive questions regarding the mandatory export assessment in Article 7, with some States Parties presenting their approach, including their export criteria and sources of information. These practical and substantive questions are addressed below. In addition to States Parties presentations, an expert presentation by the Geneva Centre for Security Policy (GCSP) also provided an overview of States Parties' implementation of Articles 6 and 7.¹¹

15. As indicated above, in CSP4 and CSP5 cycles, the Sub-Working group also developed two guidance documents relevant to the application of the mandatory export assessment under Article 7. Specifically concerning Article 7, the Sub-working Group developed a list of possible reference documents to be considered by States Parties in conducting the risk assessment under Article 7, which was welcomed by CSP4 and subsequently updated by CSP5. The Sub-working Group also developed a list with possible voluntary guiding and supporting elements in implementing obligations under article 6 (1), which was also welcomed at CSP4 and is also helpful for the risk assessment under Article 7.¹²

16. It is further noted that that some relevant aspects of the export assessment under Article 7 were also addressed in the discussions about the prohibitions in Article 6 and subsequently in draft Chapter 2 of the proposed Voluntary Guide. Where applicable, this work will be reiterated and applied specifically to the export assessment under Article 7.

How have States Parties integrated the export assessment criteria of Article 7 in their national control system?

17. Presentations of States Parties and an expert presentation by GCSP demonstrated that States Parties do not always transpose the mandatory risk assessment criteria of Article 7 into national legislation, thereby taking into account the basic tenets of their legal system. There are States that apply the criteria directly on the basis of the Treaty itself, or on the basis of policy guidance documents, general principles, etc. Other States Parties apply the mandatory risk assessment on the basis of their existing national legislation, which already included criteria that are similar to those in Article 7 (as well as criteria about the risk of diversion, which is important in light of Article 11 of the Treaty). This particular aspect was also addressed in the discussions about the prohibitions in Article 6 and the ensuing Chapter 2. As described in the section on the relationship between Article 6 and Article 7 (paragraphs 36 and 37 of Chapter 2), one State Party explained that it had integrated the prohibitions in Article 6 and the export risk assessment criteria in Article 7 *jointly* in its national legislation. It was indicated, in that regard, that “*while States*

¹¹See [https://www.thearmstradetreaty.org/hyper-images/file/GCSP%20-%20Prohibitions%20and%20Export%20Assessment%20-%20Tracking%20Implementation%20of%20the%20Arms%20Trade%20Treaty%20\(02%20April%202019\)/GCSP%20-%20Prohibitions%20and%20Export%20Assessment%20-%20Tracking%20Implementation%20of%20the%20Arms%20Trade%20Treaty%20\(02%20April%202019\).pdf](https://www.thearmstradetreaty.org/hyper-images/file/GCSP%20-%20Prohibitions%20and%20Export%20Assessment%20-%20Tracking%20Implementation%20of%20the%20Arms%20Trade%20Treaty%20(02%20April%202019)/GCSP%20-%20Prohibitions%20and%20Export%20Assessment%20-%20Tracking%20Implementation%20of%20the%20Arms%20Trade%20Treaty%20(02%20April%202019).pdf). This presentation was based on the GCSP publication “Prohibitions and Export Assessment: Tracking Implementation of the Arms Trade Treaty, available at: <https://www.gcsp.ch/publications/prohibitions-and-export-assessment-tracking-implementation-arms-trade-treaty>.”

¹² Both documents are available on the *Tools and Guidelines* page of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>.

Parties can apply Articles 6 & 7 jointly in one assessment, they need to respect the different nature of these respective obligations". This was further clarified as follows: "If a State Party establishes that one of the prohibitions in Article 6 is applicable, it needs to simply halt the export; there is no question of taking into account certain other considerations or considering mitigating measures as there is when conducting the risk assessment under Article 7."

Box 2. Additional national criteria

18. Presentations also reflected the important point that the Treaty does not restrict States Parties risk assessments to the criteria in Article 7 (and the prohibitions in Article 6). As the Treaty provides "the floor, not the ceiling" for States Parties transfer controls, they can also apply additional, national criteria.¹³

Presentations also showed that States Parties also look at other positive and negative aspects such as:

- their own national security, and/or that of their allies and friendly States;
- the enhancement of their security and defence cooperation, as well as their foreign policy, economic and industrial interests; and
- the impact on development and human security.

Some States Parties also deny all exports if the recipient country is involved in an armed conflict, albeit with exceptions for situations such as self-defence. Other States Parties deny all exports if the end-user is a non-State actor.

Which information sources do States Parties use to assess export applications?

19. The following information sources were mentioned in presentations by States Parties and subsequent interventions:

- Various government entities, including the ministries of Foreign Affairs and Defence, intelligence services, diplomatic missions, governmental research institutions, and national human rights institutions;
- bilateral and regional cooperation arrangements which involve information-sharing;
- international organisations and their bodies, including the UN Human Rights Council, international commissions of inquiry and fact-finding missions;
- other multilateral institutions, including multilateral export control regimes; and
- think tanks, media, and other international, regional and national non-governmental organizations.

20. Many of these sources are included in the aforementioned list of possible reference documents to be considered by States Parties in conducting risk assessment under Article 7, among others (cf. paragraphs 3 and 15). A good practice mentioned was to create a database on the national, the regional level or even the ATT level that collects all the relevant information from these sources, in order to facilitate the work of the assessment entities in the involved States. In that respect, also existing open-source databases could be useful. One State Party explicitly referred to the Wisconsin Project on Nuclear

¹³ The expert presentation of the GCSP indicated that 47% of the 58 States Parties which had submitted publicly available Initial Reports as of March 2019, applied additional export criteria.

Arms Control, an open-source database used for strategic trade control.¹⁴ Similarly, focusing on human rights-related criteria, States Parties could consider consulting UNHCR's *refworld* and the related *ecoi.net*, which collect up-to-date human rights and security information about countries, in their case for the benefit of officials involved in all forms of international protection.¹⁵ Concerning IHL and peace and security, reference was made to databases of the Geneva Academy of IHL and Human Rights and the International Institute for Strategic Studies.¹⁶

21. While some of these sources are authoritative by nature, it is up to States Parties to make an assessment of the level of reliability of information sources and the available information, as well as their weight. This assessment needs to be done in good faith, taking into account all available information.

22. This information obviously complements the information that licence applicants, consignees and/or end-users need to provide to the exporting State, such as end-user certificates. In order to make a comprehensive assessment, this sometimes also includes information about transport routes and all parties that are involved in the export, such as brokers and transport companies. In that regard, reference can be made to Article 8 (1) of the Treaty, which obliges importing States Parties to “*take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment under Article 7*”. More generally, Article 15 of the Treaty obliges all States Parties to “*cooperate with each other, consistent with their respective security interests and national laws, to effectively implement this Treaty*”, which includes exchanging relevant information.¹⁷

23. The discussions on this specific topic and risk assessment in general made clear that access to comprehensive, reliable and pertinent information remains a challenge for all States Parties. These challenges concern capacity, resources as well as difficult coordination between relevant agencies. In that respect, States Parties and other stakeholders called for further discussions on this topic, *inter alia*, to explore how to optimize inter-agency exchanges of information, as well as to explore possibilities of international cooperation between States Parties.

How do States Parties conduct the risk assessment under Article 7 substantively?

24. In terms of the substance of their risk assessment, presentations and interventions demonstrated that States Parties mostly conduct an overall assessment of the recipient country's attitude to human rights and IHL principles, terrorism, transnational organised crime and gender, as well as a targeted analysis that takes into account the specific type of materiel that is exported, the specific consignee and end-user and the anticipated use of the materiel. This twofold analysis is considered important to assess the potential use of the materiel for the acts included in Article 7 (1) and (4), as well as the risk of diversion, in a comprehensive manner. The analysis will look at past and present behaviour of the recipient/end-user

¹⁴ See in that regard <https://www.wisconsinproject.org/>.

¹⁵ See <https://www.refworld.org/> and <https://www.ecoi.net/>.

¹⁶ See in that regard <https://www.geneva-academy.ch/research/rule-of-law-in-armed-conflicts> and <https://www.iiss.org/the-military-balance-plus/>.

¹⁷ For clarity, the Treaty also includes requirements for exporting States Parties to share information with importing States Parties, as well as transit and trans-shipment States Parties, but these do not fall within the scope of this section.

and will anticipate future behaviour on the basis of that. In doing that analysis, States Parties will take into account their own export history, whilst maintaining a case-by-case approach. Special caution is exercised when there is a conflict situation in the recipient country (with some States Parties applying a principled ban on export to countries involved in armed conflict; see paragraph 18). It is because of this diverse nature of aspects to take into account that most States run a system of intra-agency cooperation as explained in paragraph 9 and following, with different entities focusing on their fields of expertise and providing different perspectives. In order to facilitate the risk assessment and to ensure consistency in assessment and decision-making, the work is often carried out on the basis of substantive guidelines which clarify the interpretation and practical application of the export assessment criteria.

25. In terms of the risk threshold that States Parties apply in order to determine when an export is problematic and should be denied authorization, reference is made to Chapter 1 of the Voluntary Guide, which unpacks the key concept of “overriding risk” in Article 7 (3). The CSP4 cycle discussions already clarified that States Parties apply different thresholds, using terms such as “clear risk”, “high risk”, “substantial risk” or “reasonable suspicion”, without necessarily defining their remit. States Parties also have different views on the level of causality that would be needed between (the export of) the conventional arms at hand and the acts included in Article 7 (1) and (4). While Chapter 1 (paragraph 6-8) unpacks the key concept of “facilitate” that is used in Articles 7(1)(b)(i) –(iv) and 7(4), it was already indicated during the CSP4 cycle discussions by some States Parties that they are of the understanding that they have to take into account the *indirect* effects of the transferred conventional arms.

26. It is noted that this substantive aspect of the export assessment under Article 7 was also addressed in the discussions about the prohibitions in Article 6 and the ensuing Chapter 2 of the proposed Voluntary Guide. In paragraph 15 of Chapter 2, reference is made to the expert presentation of the International Committee of the Red Cross (ICRC) in the Sub-working Group about the interpretation of the term ‘knowledge’ in international law and the obligation in Article 6 (3) in general. In its presentation, the ICRC outlined the ambit of a risk assessment that is also relevant to Article 7 in light of the requirement in Article 7 (1)(b)(i) to assess the potential that the conventional arms or items in question could be used to commit or facilitate a serious violation of IHL.¹⁸ The ICRC indicated that States Parties need to make a prospective assessment of the future behaviour of a recipient, how they are likely to behave and how the arms to be transferred will likely be used. Next to present circumstances and reasonable expectations, this can be based on the historic behaviour, yet without any requirement of evidence beyond reasonable doubt of past crimes. Also taking into account States’ due diligence requirements of international law, States have an obligation to actively seek out information to make their assessment.

27. By the same token it is also relevant to refer to paragraph 30 of Chapter 2, and to reiterate the reference by the ICRC to States Parties’ underlying general obligation to ensure respect for the Geneva Conventions in all circumstances, laid down in Article 1 common to the Geneva Conventions. In that regard, the (updated) Commentary to Article 1 explicitly mentions the context of arms transfers as an illustration of the negative obligation not to encourage, nor aid or assist in violations of the Convention.¹⁹

¹⁸ Paragraph 15 of draft Chapter 1.

¹⁹ Geneva Convention (III) of 12 August 1949 relative to the Treatment of Prisoners of War, commentary of 2020, article 1 : respect for the convention, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=24FD06B3D73973D5C125858400462538#83_B.

It indicates that common Article 1 requires High Contracting Parties to refrain from transferring weapons if there is an *expectation, based on facts or knowledge of past patterns*, that such weapons would be used to violate the Conventions. In terms of their positive obligation to prevent violations, the Commentary to Article 1 identifies this as a due diligence obligation to act if there is a foreseeable risk that violations will be committed and to prevent further violations in case they have already occurred. It should be noted that this obligation concerns all violations of the Conventions, not only grave breaches.

28. Following the risk assessment as such, Article 7 (3) requires States Parties to consider measures that could mitigate the risks they have identified, which could include post-shipment controls. Mitigating measures are dealt with in a separate section of this Chapter, while post-shipment controls are extensively addressed in another voluntary guiding document that was developed within the WGETI, with possible measures to prevent diversion.²⁰

GENDER-BASED VIOLENCE AND VIOLENCE AGAINST WOMEN AND CHILDREN

29. As gender and gender-based violence (GBV) was the priority theme of the CSP5 President, the Sub-working Group on Articles 6 & 7 also addressed this topic extensively during the CSP5 cycle.²¹ These discussions were informed by expert presentations by Control Arms, presenting its *“Practical Guide For Risk Assessment on How to use the ATT to address Gender-Based Violence”*, and the ICRC, explaining GBV in the context of IHL.²² Both documents seek to establish what types of GBV are covered as violations under Articles 6 & 7 of the Treaty, how their prevalence in the recipient country can be identified, and how

²⁰ This document is also available on the *Tools and Guidelines* page of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>.

²¹ The topic was first addressed substantively in a working paper submitted by Ireland to CSP3, which included policy recommendations for further discussions: *“Article 7(4) and Gender Based Violence Assessment”* (<ATT/CSP3/2017/IRL/183/Conf.WP>). The topic was subsequently addressed in the WGETI during the CSP4 cycle, but the discussions were limited due to time restrictions and mostly constituted an initial impetus for the discussions during the CSP5 cycle, highlighting the need to clarify the scope of GBV, develop GBV risk indicators and share national experiences with GBV risk assessments. In addition to discussions in Sub-working Group on Articles 6 & 7, the WGETI also considered GBV more generally on the basis of a discussion paper *“Gender and ATT Implementation”* (Annex A of the WGETI Chair letter for the 02-03 April 2019 WGETI meeting; <ATT/CSP5.WGETI/2019/CHAIR/441/M2.LetterWorkPlans>).

²² For the presentation by Control Arms, see <https://www.thearmstradetreaty.org/hyper-images/file/20190129%20-%20Control%20Arms%20-%20GBV/20190129%20-%20Control%20Arms%20-%20GBV.pdf>. For the Control Arms Practical Guide itself, see https://controlarms.org/wp-content/uploads/2018/08/GBV-practical-guide_ONLINE.pdf. For the presentation by the ICRC, see [https://www.thearmstradetreaty.org/hyper-images/file/ICRC%20-%20ATT%20WGETI%20GBV%20IHL%20\(02%20April%202019\)/ICRC%20-%20ATT%20WGETI%20GBV%20IHL%20\(02%20April%202019\).pdf](https://www.thearmstradetreaty.org/hyper-images/file/ICRC%20-%20ATT%20WGETI%20GBV%20IHL%20(02%20April%202019)/ICRC%20-%20ATT%20WGETI%20GBV%20IHL%20(02%20April%202019).pdf) and the related working paper *“International Law and Gender-Based Violence in the Context of the ATT”* at <https://www.thearmstradetreaty.org/hyper-images/file/CSP5%20-%20working%20paper%20-%20GBV%20and%20IHL/CSP5%20-%20working%20paper%20-%20GBV%20and%20IHL.pdf>. The Guide and the working paper are also among the guidance documents relating to the implementation of Article 7 (4) that were included in the updated version of the previously mentioned *“list of possible reference documents to be considered by States Parties in conducting a risk assessment under Article 7”*, which was welcomed at CSP5.

the risk of conventional arms being used to commit or facilitate such violations can be assessed, including indicators, information sources and examples.²³ These are paraphrased in the box below.

Box 3. Expert presentations about GBV: types of GBV, prevalence of GBV, state capacity and risk indicators

In terms of what types of GBV are covered, both presentations emphasized that these concern both sexual violence and other acts committed against an individual because of their sex and/or socially constructed gender role. In that respect, the following acts were identified:

- *sexual acts: Sexual: rape, forced prostitution, sexual violence, forced abortion, forced sterilization, forced pregnancy; and*
- *Other acts: assault; human trafficking and slavery; honour killings; attacks targeting women human rights defenders, activists or politicians; attacks targeting LGBTQI individuals.*

In terms of prevalence of GBV in a recipient State and that State's capacity to respond, the presentation of Control Arms included several criteria with related indicators and information sources. These criteria were: i) *Use of weapons in intentional killings, particularly of women (femicide) and of children (both in and outside armed conflict); ii) Use of weapons to commit/threaten acts of torture or violence against specific groups, particularly based on gender-identity/sexual orientation; iii) Use of firearms in domestic violence, which may constitute a serious violation of international human rights law; iv) Existence of human trafficking networks, or of systematic modern slavery, including forced labour; and v) Strategic use or high levels of rape and sexual violence.*

Concerning the capacity of a State to respond, the criteria were: i) *Existence or risk of armed conflict within the recipient state; ii) Existence of insecure communities within recipient state; iii) Existence of GBV prevention and punishment laws and policies including as IHL and international human rights law violations; iv) Ability of the state to uphold and enforce GBV prevention laws and policies including as IHL and international human rights law violations; v) Ability of the state to protect against diversion; and vi) Effectiveness of the state of developing laws that minimize violence perpetrated with illicit arms.*

In terms of concrete risk assessments, the presentation of ICRC included similar questions for States Parties to consider when assessing the risk that the relevant arms or other items could be used to commit or facilitate serious acts of GBV which constitute war crimes:

- *Whether the proposed recipient has complied with IHL and international human rights law in the past, and what steps it has taken to prevent, end or punish serious violations of the rules (including serious acts of GBV or serious acts of violence against women and children that amount to violations);*
- *What formal commitments the proposed recipient has made to abide by IHL and international human rights law, how it has enshrined those commitments in law and doctrine, and how they are reflected in training for its armed and security forces and other personnel;*

²³ For the aspect of the definition of the phrase '*serious acts of gender-based violence or serious acts of violence against women and children*', see paragraph 31.

- *Whether the proposed recipient has sufficiently robust legal, judicial and administrative procedures to prevent, halt and punish violations of IHL and international human rights law.*

30. In the follow-up discussions, based on a number of guiding questions of the Facilitator, States Parties and other stakeholders mostly identified relevant elements for applying the GBV risk assessment of Article 7 (4) in practice, and the related challenges. These included getting the right data for GBV risk assessments, access to relevant expertise and training of licensing officers, as well as sharing information between States Parties, for example about licence denials based on Article 7 (4), possibly in a regional context.²⁴

31. Following adoption of the CSP5 Final Report, and the observation that the implementation of Article 7 (4) implementation would need to be addressed in the broader context of the implementation of Articles 6 & 7 rather than in isolation, the topic of GBV was further addressed during the CSP7 and CSP8 cycles in the context of the “methodology exercise” for unpacking key concepts in Articles 6 & 7 of the Treaty. In that regard, draft Chapter 1 includes a section about how States Parties approach their interpretation of the phrase *‘serious acts of gender-based violence or serious acts of violence against women and children’*.

32. The topic was also revisited during the CSP9 cycle, as part of the discussions about mitigating measures. These discussions are reflected in paragraphs 54-60 of this chapter. As indicated in that section, many of the elements included in the paragraphs above were also raised in the discussion in the presentations and discussions about GBV mitigating measures.

33. Going forward, CSP9 encouraged States Parties to keep the risk of conventional arms being used to commit or facilitate serious acts of GBV or serious acts of violence against women and children as an important topic of attention and to initiate the discussion and exchange of information and good practices on this topic in the CSP10 cycle. In that respect, the Conference also took note of the working papers presented on this topic by Argentina and by Mexico, and Spain supported by Small Arms Survey. In possible further discussions and development of dedicated voluntary guidance, it will be important to take stock of all preceding discussions on the topic in the WGETI, the guidance that is already in this Voluntary Guide to implementing Articles 6 & 7, as well as the existing guidance on implementing Article 7 (4) of several stakeholders, mentioned above, in order to avoid duplication of efforts. The issues that would benefit from further clarification should first be identified.

²⁴ See in that regard the work plan for the Sub-Group in Annex B of the WGETI Chair letter for the 29-30 January 2019 WGETI meeting ([ATT/CSP5.WGETI/2019/CHAIR/400/M1.LetterWorkPlans](https://www.un.org/peacekeeping/mediation/2019/01/29-30-january-2019-wgeti-meeting)), as well as paragraphs 10 and 18 of the [WGETI Chair’s Draft Report to CSP5](#).

MITIGATING MEASURES

34. The topic of mitigating measures was specifically discussed during the meeting of the Sub-working Group on Articles 6 & 7 on 09 May 2023, in accordance with the multi-year workplan of the Sub-working Group. That workplan directed the Sub-working Group to address several questions about the implementation of their obligation in Article 7 (2), which are reproduced in the box below. During the meeting, the Sub-working Group had a general discussion on mitigating measures, as well as a dedicated discussion about mitigating measures concerning GBV and violence against women and children. To inform these discussions, the Facilitator presented a general background paper and invited Small Arms Survey and Argentina to give presentations.²⁵

Box 4. Guiding questions about mitigating measures in multi-year workplan

This discussion will explore the obligation in Article 7(2) for exporting States Parties to ‘consider whether there are measures that could be undertaken to mitigate risks identified’ when conducting assessments in accordance with Articles 7.1(a) and (b) as well as Article 7.4. The discussion will focus on State practice with respect to the following aspects:

- *What do states believe constitute “mitigation measures”?*
- *What do states consider the purpose of mitigation measures?*
- *Under what circumstances would mitigation measures be explored?*
- *What kind of mitigation measures could an exporting state take under consideration in order to avoid the specific negative consequences in Article 7 (1)?*
- *At what point would other states in the transfer chain (i.e. transit or importing states) be involved in discussions concerning mitigation measures?*
- *What do states view as the roles of different parties (exporting State, importing State, exporters and/or industry) with regard to mitigation measures?*
- *What considerations might be taken into account when developing and applying mitigation measures?*
- *Do states have public examples of mitigation measures being applied effectively or not (whether by ATT States Parties or not)?*
- *What ‘confidence-building measures’ have States undertaken to mitigate risks?*
- *What ‘jointly developed and agreed programmes’ have been developed or adopted by export and importing States to mitigate risks?*
 - O What are the practicalities of developing and implementing such programmes?*
 - O What are the characteristics/elements or prerequisites for successful programmes (i.e. those that have mitigated identified risks)?*
- *How do States determine when/that an identified risk has been adequately mitigated?*

35. During the discussions, the following aspects were addressed: i) what actually constitute “mitigating measures”; ii) which “mitigating measures” do States Parties apply (or could apply); iii) how to reconcile the long-term nature of many mitigation measures and the instant decision that States Parties

²⁵ The background paper on mitigating measures is included as Attachment 3 of Annex A in the WGETI Chair letter for the 09-10 May 2023 WGETI meeting ([ATT/CSP9.WGETI/2023/CHAIR/748/M2.LetterSubDocs](https://www.thearmstradetreaty.org/csp9-2nd-working-group-and-preparatory-meeting)). The presentations by Small Arms Survey and Argentina are available on the ATT website at <https://www.thearmstradetreaty.org/csp9-2nd-working-group-and-preparatory-meeting>.

need to make about proposed arms exports; and iv) measures to mitigate the risk of GBV and violence against women and children.

What constitute “mitigating measures”?

36. The Treaty’s understanding of mitigating measures is reflected in the structure of Article 7. Article 7 provides a three-step export assessment in which mitigating measures constitute step number two. In step one, States Parties are required to assess the risks included in paragraph one. In step two, they are required to consider whether there are measures that could be undertaken to mitigate the risks identified in step one. In step three, deciding on the export, they are requirement to not authorize the export if they determine that there is an overriding risk of the negative consequences in paragraph 1.

37. During the discussions, some delegations located risk mitigation within their own risk assessment process, step number one in the paragraph above. They remarked that to mitigate risks, they conduct in-depth analyses before granting export licences, insist on detailed descriptions of the specific use of weapons by the end-user and have the flexibility in their systems to react to changes in circumstances after the export.

38. In that context of risk assessment, delegations also referred to the identification of mitigating policies or processes in the importing State, aimed to prevent or address the acts included in Article 7 (1) and (4), as a form of mitigating measures. This could also include formal commitments of the recipient State to relevant international instruments and their implementation on the national level.

39. Still in this context of risk assessment, some delegations put forward that also the application of due diligence by exporters plays a role in risk mitigation.

40. Other delegations noted that risk mitigation stretches beyond the initial risk assessment, requiring the exporting State to look at what could be done to reduce the risks it has identified. This could be specific actions of the exporting State, requests for actions by the importing State, or joint actions, as encouraged in Article 7 (2) of the Treaty. In that regard, one delegation described that arms sales are dealt with as part of a partnership with the importing State, which imply a long-term-dialogue on the safe and legal use of exported arms.

41. Finally, concerning their nature, it is reiterated that the consideration of mitigating measures only applies to the risks in article 7, not to the prohibitions in Article 6. As explained in paragraph 36 of Chapter 2 of the Voluntary Guide, the prohibitions in Article 6 are absolute, which means that when a State Party establishes that one of the prohibitions in Article 6 is applicable, it needs to simply halt the export. There is no question of taking into account certain other considerations or considering mitigating measures as there is when conducting the risk assessment under Article 7.

Which mitigating measures do States Parties apply or could States Parties apply?

42. In Article 7 (2), the Treaty itself refers to “*confidence-building measures or jointly developed and agreed programmes by the exporting and importing States*” as concrete examples of mitigating measures. Article 11 (2) repeats these examples in the specific context of mitigating the risk of diversion, while Article

11 (3) also includes the general requirement for importing, transit, trans-shipment and exporting States Parties to cooperate and exchange information to mitigate the risk of diversion (pursuant to their national laws, where appropriate and feasible). In that regard, the background paper of the Facilitator indicated that measures to mitigate the risk of diversion have been extensively discussed in the WGETI Sub-Working Group on Article 11, and are also incorporated in the document with Possible Measures to Prevent and Address Diversion, welcomed at CSP4, which was complemented at CSP9 with an Annex dedicated to the specific mitigating measure of post-shipment cooperation.²⁶

43. For the discussion in the WGETI Sub-Working Group on Articles 6 & 7 and this Chapter of the Voluntary Guide, the focus was put on measures that could mitigate the relevant risks under Articles 7 (1) and 7(4), namely the risk of international law violations, in particular those related to peace and security, human rights, IHL, terrorism and transnational organized crime, as well as GBV and violence against women and children. These risks in particular could also include potential abuse or misuse of the conventional arms in question by the *intended* recipient or end-user.

44. The background paper continued with a reference to State practices that were included in ATT Initial Reports submitted to the ATT Secretariat, and a non-exhaustive overview of good practices taken from documents of a broad range of ATT stakeholders. While the input of States Parties in their Initial Reports mostly focused on diversion-related measures such as end-user documentation, end-user assurances and post-delivery cooperation, the cited documents of other stakeholders included measures that were more specific to the risks under Articles 7 (1) and 7(4). To paint a picture, these examples from the background paper are included in the box below.

Box 5. Non-exhaustive overview of ATT stakeholders' examples of mitigating measures

The UN Office for Disarmament Affairs (UNODA) addresses mitigating measures in its ATT Implementation Toolkit, which provides examples of confidence-building measures and jointly developed and agreed programmes.²⁷ Many examples are diversion-related: i) an undertaking by the importing State not to re-export or re-transfer in a manner that would run counter to the provisions of the ATT; ii) provision of information on weapons or items stolen, lost or otherwise unaccounted for; iii) post-delivery monitoring/cooperation programmes; and iv) joint programmes to enhance the capacity of importing States to control weapons and prevent their diversion. Examples that relate more to the risks under Article 7 (1) and 7 (4) are the following: i) a declaration by the importing State of intended use of the transferred weapons or items, accompanied by the undertaking/assurance/guarantee not to use them for other purposes; ii) disclosure by the importing State of its records regarding observation of relevant international human rights law, international humanitarian law, international conventions or protocols relating to terrorism and to transnational organized crime; iii) enhancement of transparency on military matters; and iv) joint programmes to enhance the implementation by importing State of, and compliance with, relevant international human rights law, international humanitarian law, international conventions or protocols relating to terrorism and to transnational organized crime.

²⁶ This document is available on the *Tools and Guidelines* page of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>.

²⁷ UN Office for Disarmament Affairs (UNODA), ATT Implementation Toolkit, Module 6 – Export, 18, available at <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2015/08/2015-08-21-Toolkit-Module-6.pdf>.

The Geneva Centre for Security Policy (GCSP), in addressing the measure of end-user certificates, incorporated in the abovementioned document with Possible Measures to Prevent and Address Diversion, writes that *“a few states explicitly mention in the end-user certificates that the weapons cannot be used for committing certain violations of international human rights and humanitarian law”*. It adds that *“other than that, States rarely use measures specifically and directly addressed to mitigate risks listed in Article 7, such as Security Sector Reform or training in international humanitarian law, due to the limited resources typically available”*. It also points out that *“another point made during the treaty negotiations was that mitigation measures that take the form of training courses rarely have observable effects until long after a license is issued, and sometimes may not have sustainable effects at all”*.²⁸

The latter was also addressed by the ICRC, indicating that *“specific risk-mitigation measures could include training by the exporting State of the recipient’s armed and security forces in IHL and human rights”*, but that *“the ability of training to effectively offset the risk of violations will depend on the circumstances, including the time lapse between the training and its practical effects”*. Next to a reference to post-delivery cooperation, the ICRC also made the general point that risk mitigation measures *“must be assessed cautiously in terms of what is realistically achievable in the circumstances to offset the risk of violations”*; *they can be a positive tool as long as they are timely, robust and reliable, and as long as the exporter and importer have the capacity to effectively implement them, and do so in good faith”*. Regarding assurances provided by the recipient, the ICRC indicated that these *“should be viewed against its policies and practices and in any case do not replace the exporting State’s obligation under Article 7 to carry out a thorough assessment of the proposed export of arms or related items”*.²⁹

The EU’s User’s Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, mentions that *“mitigating factors such as improved openness and an on-going process of dialogue to address human rights concerns in the recipient state may lead to the possibility of a more positive assessment”*, adding that *“it is important to recognise that a lengthy passage of time since any highly publicised instances of repression in a recipient state is not on its own a reliable measure of the absence of clear risk”*; *“there is no substitute for up-to-date information from reliable data sources if a proper case-by-case assessment is to be made”*.³⁰

45. During the discussions in the Sub-Working Group, States Parties and other stakeholders shared national practices.

²⁸ Geneva Centre for Security Policy (GCSP), “Prohibitions and Export Assessment: Tracking Implementation of the Arms Trade Treaty”, Geneva Paper 23/19, March 2019, 14, available at <https://www.gcsp.ch/publications/prohibitions-and-export-assessment-tracking-implementation-arms-trade-treaty>.

²⁹ ICRC, “Understanding the ATT from a humanitarian perspective”, 2016, 38, available at <https://www.icrc.org/en/publication/4252-understanding-arms-trade-treaty-humanitarian-perspective>. The concerns expressed by the ICRC and GCSP are also addressed in Casey-Maslen, Clapham, Giacca, Parker, “The Arms Trade Treaty: A Commentary”, Art.7 Export and Export Assessment, 2016, 274, 7.88 et seq, available at <https://opil.ouplaw.com/display/10.1093/law/9780198723523.001.0001/law-9780198723523>.

³⁰ User’s Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, 2019, 49, available at <https://www.consilium.europa.eu/media/40659/st12189-en19.pdf>.

46. As indicated above, some States Parties referred to aspects of their export assessment process as risk mitigating measures. Examples include: i) not approving any export without the consent of all relevant authorities; ii) including diplomatic missions and intelligence services in the assessment process; iii) requiring a description of the specific intended end use of the arms in the end-user certificate, as well as a non re-transfer clause.

47. States Parties and other stakeholders focusing on the conduct of the importing State gave some examples of the of mitigating policies or processes they consider in their export assessment. These include legislation and procedures to prevent and address the acts included in Article 7 (1) and (4), including effective disciplinary and judicial bodies, as well as national action plans to prevent and address such acts in broader society. Mention was also be made of commitments to international instruments relevant to the use of arms, such as disarmament or export control agreements, but also of broader formal commitments, for example to respect IHL in the case of armed conflict. Such commitments should nevertheless be confirmed by actual State practice in order for the exporting State Party to consider such commitments as risk mitigation. In addition they should also be appraised by the exporting State in light of the importing State's compliance with its international commitments more generally. In this context some delegations also mentioned the distinct responsibility of the importing State to adopt risk mitigating measures, in particular measures to ensure safe and legal use of imported arms.

48. The States Parties that put forward mandatory due diligence by exporters as a form of risk mitigation referred to the requirement of an internal compliance programme (ICP) as a practical measure. For that purpose, the ICP should then include internal policies regarding human rights, IHL and GBV. Some States Parties subject exporters to a general registration or authorisation requirement, to allow control over the exporter's internal compliance and due diligence.

49. In terms of specific measures to mitigate the risk of use in violation of IHL, delegations mostly elaborated on those mentioned in the Facilitator's background paper regarding capacity-building and training. Concerning capacity-building, reference was made to proper weapons and ammunition management and security sector reform (SSR) programs, but also to a broader spectre, ensuring that government policies, regulations, process, recruitment and culture are aimed at respecting international law. Concerning training, it was indicated that its feasibility and potential impact depend on the concrete circumstances in the recipient country, and that training programs always needs to be tailored to the needs of the recipient, systematically reviewed and adapted, if necessary. Training to support the proper and legal use of weapons is of particular importance; users need to have a good knowledge of the effects of their weapons in order to be able to assess when their use is feasible in view of the rules of IHL concerning the conduct of hostilities, especially when targeting populated areas.³¹

³¹ See in that regard also ICRC, "Allies, Partners and Proxies: Managing Support Relationships in Armed Conflict to Reduce the Human Cost of War", 2021, 49-50, available at <https://www.icrc.org/en/publication/4498-allies-partners-and-proxies-managing-support-relationships-armed-conflict-reduce>, as well as "Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria – a Practical Guide", 2016, 12, available at <https://www.icrc.org/en/publication/0916-arms-transfer-decisions-applying-international-humanitarian-law-criteria>, and ICRC, "Understanding the Arms Trade Treaty from a humanitarian perspective", 2016

50. Some delegations also addressed the role of international cooperation to mitigate risks, with the importing State, but also others. That could extend to measures such as joint investigations in case of suspected proliferation and proactive information-sharing on arms proliferation as well as general risk assessments. In this context, delegations also mentioned more diversion-related measures, such as capacity-building concerning weapons and ammunition management record-keeping, marking and tracing).

How to reconcile the long-term nature of risk mitigation and the instant nature of arms export decisions?

51. An inherent and crucial issue that was raised in both the general discussion and the GBV-specific discussion (see below) was that many mitigating measures require long term commitment and monitoring, while States Parties' decisions about arms exports are ad hoc, taken at a specific moment in time.

52. In that regard, a key message shared was that States Parties which apply mitigation measures or identify mitigating processes in the recipient State should monitor the impact of the measures and processes in question and look at tangible outcomes. In that context, States Parties also referred to the flexibility in their systems to react to changes in circumstances after the export. In that respect, reference can be made to Article 7 (7) of the Treaty, which reads as follows:

Box 6. Article 7 (7) of the Treaty

"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."

53. Next to these reactive options, States Parties also have to conduct a proactive assessment of the feasible impact of the proposed or identified mitigating measures and processes. In that respect, during the discussions, reference was made to the following point made by the ICRC which was included in the Facilitator's background paper: "mitigation measures *"must be assessed cautiously in terms of what is realistically achievable in the circumstances to offset the risk of violations"*; they can be a positive tool as long as they are timely, robust and reliable, and as long as the exporter and importer have the capacity to effectively implement them, and do so in good faith".

Measures to mitigate the risk of gender-based violence and violence against women and children

54. As indicated above, during its session on mitigating measures, the Sub-working Group devoted particular attention to mitigating the risk of GBV and violence against women and children. The Small Arms Survey kicked-off the discussion on this topic with an expert presentation that focused on the two main aspects: the particularities of GBV and violence against women and children compared to (other) IHL and human rights violations and the information that is necessary to assess possible mitigation of GBV-related risks.³² In doing so, the presentation did not only address GBV and violence against women and children

³² The presentation of the Small Arms Survey is available on the ATT website at: [https://www.thearmstradetreaty.org/hyper-images/file/Watson%20\(SAS\)%20Presentation%20GBV%20ATT%20Art.%207%20\(09%20May%202023\)_AT](https://www.thearmstradetreaty.org/hyper-images/file/Watson%20(SAS)%20Presentation%20GBV%20ATT%20Art.%207%20(09%20May%202023)_AT)

in the context of armed conflict (and law enforcement), but also in private relations (intimate partner relations in particular).

55. Concerning the particularities of GBV and violence against women and children, notably the following might be relevant to take into account in the assessment of proposed arms exports and the consideration of mitigating measures. One particular aspect is that the mere presence of an arm can often be considered as form of facilitating GBV. Another aspect is that GBV can be systemic, socially normalized or tolerated behaviour, which makes looking at government policies addressing this very important.

56. Concerning information to consider, in line with its overall theme, the presentation focused on processes, policies and data-gathering that recipient State itself is taking to prevent and address GBV and violence against women and children. The presentation included a list of relevant questions for exporting States to consider when examining the risk of arms to be exported contributing to GBV and violence against women and children.

57. On this topic, the presentation also reflected the general discussions and presentations about GBV in the CSP4 and CSP5 cycles, which makes the elements included in paragraphs 29-30 and box 3 also relevant in this context. This focus was also reflected in the Facilitators' background paper on mitigating measures and its non-exhaustive overview of good practices taken from documents of ATT stakeholders. In that overview, the background paper mentioned the GBV-specific practices of risk mitigation in the box below mentioned.

Box 7. Non-exhaustive overview of ATT stakeholders' examples of mitigating measures in regard to gender-based violence (GBV)

Specifically concerning GBV, Control Arms gives as an example of a possible mitigation measure “*an importing state's agreement to provide gender sensitivity training to its family court judges, [...] in a state where prosecution of domestic abusers is notoriously low*”, albeit pointing out that “*this measure alone would not in itself sufficiently mitigate the risk of GBV as a serious human rights violation*”.³³ Control Arms also mentions as a method to identify possible mitigation measures for GBV-related risks examining the recipient State's obligations under relevant instruments and look at causes and remedies for types of arms-related GBV that might be indicated in shadow reports and recommendations, given the concrete example of the reporting procedures under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).³⁴ Small Arms Survey similarly advises States Parties to look at measures that the recipient State is taking itself to prevent and respond to patterns of serious acts of GBV, such as: i)

[T_CSP9_2InfPrep%20Meet/Watson%20\(SAS\)%20Presentation%20GBV%20ATT%20Art.%207%20\(09%20May%202023\)_ATT_CSP9_2InfPrep%20Meet.pdf](https://www.smallarmssurvey.org/resource/whose-risk-understanding-states-parties-implementation-arms-trade-treaty-gender-based). The related briefing paper “*At Whose Risk? Understanding States Parties' Implementation of Arms Trade Treaty Gender-based Violence Provisions*” is available on the website of the Small Arms Survey: <https://www.smallarmssurvey.org/resource/whose-risk-understanding-states-parties-implementation-arms-trade-treaty-gender-based>.

³³ Control Arms, “*Interpreting the Arms Trade Treaty: International Human Rights Law and Gender-Based Violence in Article 7 Risk Assessments*”, 2019, 10, available at <https://controlarms.org/wp-content/uploads/2019/04/Interpreting-the-Arms-Trade-Treaty-ver-1.pdf>.

³⁴ Control Arms, “*How to use the Arms Trade Treaty to address Gender-Based Violence: A Practical Guide for Risk Assessment*”, 2018, 17, available at https://controlarms.org/wp-content/uploads/2018/08/GBV-practical-guide_ONLINE.pdf.

*changing national legislation to include GBV offences and provide for appropriate sanctions; ii) designing and implementing strategies to address GBV committed by police, armed forces, and security forces members; iii) training military and criminal justice stakeholders to deal with incidents of GBV; iv) creating a government agency, institution, or ombudsperson to combat and prosecute GBV; and v) developing information management systems or databases that, among other things, include GBV-related information.*³⁵ Small Arms Survey does note reports that question the effective implementation and enforcement of such measures, as well as the need to monitor and evaluate their impact, and mentions that interviewed officials were sceptical about the use of mitigation measures in general and consider the abovementioned measures more as relevant information than as mitigating measures.

58. The focus on mitigating processes in the recipient State entails that the exporting State needs to monitor the impact of the measures and processes in question and look at tangible results in order to effectively accept ongoing processes as risk mitigation. This is often a challenge, as such processes require a sustained effort by the importing State. In that respect, exporting States could look at the information that the recipient State provides in the framework of relevant international commitments.

59. In the discussion following the expert presentation, many aspects were raised that have been included in the general part of this section about mitigating measures (as they were not specific to mitigating GBV-risks). These include the issue of reconciling the long-term nature of risk mitigation and the instant nature of arms export decisions, as well as concrete examples of mitigating measures. Concerning relevant formal commitments and information shared in that context, also reference was made again to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the reports that States submit to the related Committee.³⁶ Delegations also highlighted the importance of information-sharing, in particular on the regional level, about policies and concrete data regarding GBV and violence against women and children, as well as their use in the context of arms transfer decisions.

60. The Argentina working paper, finally, is mentioned in this Chapter following its presentation in the session about mitigating measures, even though it does not contain national practices regarding mitigating measures itself.³⁷ The working paper proposes a good practice guide that would provide States Parties with the necessary tools to carry out effective risk assessments of exports of small and light weapons ammunition and parts and components. Like the Small Arms Survey presentation, the proposal focuses on processes, policies and data-gathering in the recipient State and therefore includes a questionnaire about States Parties' practices in that domain. In response to the proposal, reference was made to existing

³⁵ Small Arms Survey, "At Whose Risk? Understanding States Parties' Implementation of Arms Trade Treaty Gender-based Violence Provisions", 2022, 7, available at <https://www.smallarmssurvey.org/resource/whose-risk-understanding-states-parties-implementation-arms-trade-treaty-gender-based>.

³⁶ See <https://www.ohchr.org/en/treaty-bodies/cedaw>. For other instruments, see Control Arms, "How to use the Arms Trade Treaty to address Gender-Based Violence: A Practical Guide for Risk Assessment", 2018, 17, available at https://controlarms.org/wp-content/uploads/2018/08/GBV-practical-guide_ONLINE.pdf.

³⁷ The working paper of Argentina is available on the ATT website at: https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP9_Argentina%20Working%20Paper%20on%20GBV_EN/ATT_CSP9_Argentina%20Working%20Paper%20on%20GBV_EN.pdf.

guidance of ATT stakeholders that could be taken into account in this process.³⁸ As reflected in this reference, it needs to be noted that the proposal for further discussion and developing additional guidance does not actually focus on the topic mitigating measures, but rather the implementation of Article 7 (4) in general and particular aspects of the risk assessment States Parties need to conduct under that provision. Any consideration of the Argentinian proposal should therefore be linked with the consideration of further work on the topic of GBV and violence against women and children in general and the proposals that were made in that context, as included in paragraph 33.

Concluding remarks

61. As indicated above, these draft elements were drafted to reflect and build on the presentations and interventions of delegations during the relevant sessions of the Sub-working Group, as well as the documents that were presented and/or noted in that context. They also take into account the elements included in draft chapters 1 and 2, as well as previous work of the WGETI.

62. In line with the intention of the Voluntary Guide, no definitive recommendations or conclusions on the application of the obligations in Article 7 are included. This is not a norm setting exercise on how to apply the Treaty's obligations, neither does it intend to reinterpret established definitions in international law.

63. This Chapter does not cover all the aspects of Article 7, nor do the other Chapters of the Voluntary Guide. At the same time, some of the aspects that *are* covered in the Voluntary Guide might benefit from further (practical) exchanges. It is therefore important that the WGETI keeps on discussing the continuous duty of States Parties to assess exports in accordance with Article 7. As the focus of the work going forward is on practical implementation and States presentations about their national experiences, the anticipated structured discussions will seek to zoom in on States Parties substantive approach to the risk assessment under Article 7, building further on the basic elements included in this Chapter, in particular paragraphs 24-28, and those in Chapters 1 and 2. For that purpose, the multi-year workplan that is to be developed will need to reflect this focus and pose relevant questions such as which specific factors States Parties look at for each element in Article 7 (1) when they are assessing an export in practice, how they weigh the findings of different information sources, and how they balance the potentially positive consequences of an arms export and the possible negative consequences .

64. In line with the decision of CSP9, the continuing discussions on Article 7 should also include further discussion and exchange of information and good practices on the topic of GBV and violence against women, as well as the role of industry. In considering further work on the topic of GBV beyond the basic

³⁸ Concretely mention was made of: Control Arms, "How to use the Arms Trade Treaty to address Gender-Based Violence: A Practical Guide for Risk Assessment", reference in footnote 34); Control Arms, "ATT Gender Action Plan: Operationalizing CSP5 Decisions on Gender and Gender-based Violence", 2022, available at <https://controlarms.org/wp-content/uploads/2022/08/Control-Arms-Gender-and-GBV-Methodology.pdf> ; and Women's International League for Peace and Freedom (WILPF), "Preventing gender-based violence through arms control: tools and guidelines to implement the Arms Trade Treaty and UN Programme of Action", 2016, available at <http://reachingcriticalwill.org/images/documents/Publications/preventing-gbv.pdf> and "Preventing Gender-Based Violence through Effective Arms Trade Treaty Implementation", 2017, available at <http://reachingcriticalwill.org/images/documents/Publications/preventing-gbv-summary.pdf>.

elements in this Chapter, however, the considerations in paragraphs 33 and 60 need to be taken into account.

65. More generally it is highlighted again that this draft Chapter and the draft Voluntary Guide as a whole are intended as a living document of a voluntary nature, to be reviewed and updated by the WGETI, as appropriate. This entails that in case delegations would identify issues during the continuing discussions on Article 7 which would benefit from further guidance (or would want to expand the current guidance) the draft Chapter can be amended.

SUB-WORKING GROUP ON EXCHANGE OF NATIONAL IMPLEMENTATION PRACTICES

This section contains the following documents:

- Annex B-1: [Draft agenda for the meeting of the Sub-Working group on Exchange of National Implementation Practices](#)
- Annex B-2: [Working document on initiating structured discussions and developing a multi-year workplan](#)
 - Attachment A: [Draft multi-year workplan](#)

ANNEX B-1

**DRAFT AGENDA FOR THE MEETING OF
THE SUB-WORKING GROUP ON EXCHANGE OF NATIONAL IMPLEMENTATION PRACTICES**

Tuesday, 20 February 2024, 15:00-18:00
Wednesday, 21 February 2024, 10:00-13:00

1. Introduction of the new Sub-working Group on Exchange of National Implementation Practices

The Facilitator will briefly present the background of the newly created Sub-working Group on Exchange of National Implementation Practices.

2. Working document on initiating structured discussions and developing a multi-year workplan

The Facilitator will present the working document on initiating structured discussions and developing a multi-year workplan and the draft multi-year workplan for the Sub-working Group, which is attached to the working document. The draft multi-year workplan is a deliverable which CSP9 mandated the WGETI to develop and submit to CSP10 for a decision. Delegations will be invited to share their views on the draft multi-year workplan and its Annex with practical implementation questions that are to guide delegations' contributions/presentations on the topics to be discussed in the Sub-working Group. Delegations are encouraged to use the opportunity to take ownership of the process and propose amendments and additional questions which they deem important to be addressed.

3. National control systems and inter-agency cooperation

The Facilitator will introduce the first topic for discussion in the Sub-working Group. Taking into account the priority theme of the CSP10 President, the Sub-working Group will address "national control system" and "inter-agency cooperation" in general. A number States Parties and other stakeholders will provide presentations and contributions on this topic. Romania, as the presiding State Party, will also give a presentation about its national practice on inter-agency coordination as well as outline its approach to its chosen priority theme of inter-agency cooperation.

ANNEX B-2

**ATT WORKING GROUP ON EFFECTIVE TREATY IMPLEMENTATION (WGETI)
SUB-WORKING GROUP ON EXCHANGE OF NATIONAL IMPLEMENTATION PRACTICES**

WORKING DOCUMENT ON INITIATING STRUCTURED DISCUSSIONS AND DEVELOPING A MULTI-YEAR WORKPLAN

INTRODUCTION

1. This working document is presented by the Facilitator of the WGETI Sub-working Group on Exchange of National Implementation Practices, which was created at the beginning of this CSP10 cycle to implement the decision of CSP9 to adopt the proposal on the WGETI configuration and substance to mandate the WGETI to develop a multi-year workplan for its structured discussions, based on priority phases/stages of implementation, and initiate its discussions on practical Treaty implementation.

2. As background, the working document first recalls the approach to structured discussions that was introduced in the CSP9 adopted proposal on the WGETI configuration and substance, as well as the specific working arrangements for these discussions. In that context, the working document also refers to relevant elements in the broader proposal on the review of the ATT programme of work, which was also adopted at CSP9, on trial basis for one year. Subsequently, the document sets out the priority phases/stages of Treaty implementation the Facilitator proposes to be addressed in the initial phase, as well as corresponding possible topics to be discussed. The next part of the working document addresses the multi-year workplan for the Sub-working Group and elaborates on the proposed sequencing of topics, the practical implementation questions per each topic and the interface arrangements between the WGETI and the Working Group on Treaty Universalization (WGTU) and the Working Group on Transparency and Reporting (WGTR). The last parts address the practical approach to ensuring that each session of the Sub-working Group receives relevant contributions and presentations, and explain the intention of the CSP10 meeting of the Sub-working Group.

3. Two documents are attached to this working document:

- 1) [Attachment A: Draft Multi-Year Workplan for the WGETI Sub-working Group on Exchange of National Implementation Practices](#); and
- 2) [Annex to the Draft Multi-Year Workplan: List of practical implementation questions per topic to be discussed](#).

BACKGROUND

4. The basis of this Sub-working Group on Exchange of National Implementation Practices lies in the consensus among States Parties and other ATT stakeholders during the CSP9 cycle that the focus of the WGETI should shift from theoretical discussions to practical Treaty implementation issues and to progressive discussions on national implementation measures and exchanges on national implementation experiences. In order to achieve this shift, the proposal on the WGETI configuration and substance introduced a new approach to WGETI discussions and specific working arrangements. The relevant parts of the proposal about this approach and the working arrangements are reproduced below:

PROPOSED APPROACH TO WGETI'S DISCUSSIONS

To allow for practical Treaty implementation to take a centre in WGETI discussions, it is proposed that Treaty implementation discussions should be considered as a continuum rather than distinct topics and articles. Accordingly, it is proposed that WGETI discussions should be arranged along the lines of general phases/stages of practical Treaty implementation. This arrangement will help highlight the interconnectedness of articles of the Treaty and that these are actually dealt with simultaneously in practice. Below are the suggested general phases/stages of Treaty implementation at a practical level:

- a. ATT ratification or accession. [To be discussed under the Working Group on Treaty Universalization with a feedback loop to WGETI.]*
- b. ATT domestication. [To be discussed under the Working Group on Treaty Universalization with a feedback loop to WGETI.]*
- c. Establishment and maintenance of a national control system.*
- d. General regulation of role players in arms transfer.*
- e. Application and authorisation of arms transfers.*
- f. Management of arms transfer information.*
- g. Accounting and reporting on arms transfers. [To be discussed under the Working Group on Transparency and Reporting with a feedback loop to WGETI.]*
- h. Establishment and operationalisation of enforcement measures.*
- i. Post delivery measures.*

Attached to this document is a graphic representation of the proposed configuration of the foreseen practical Treaty implementation discussions. Each of the above general phases/stages should be seen as interconnected and part of a Treaty implementation mosaic. The general phases/stages of Treaty implementation reflected above are embedded on a cross cutting support functions of international cooperation and assistance. In practice, this will mean that during discussions of Treaty implementation, attention will also be given to available opportunities of international cooperation (cooperation amongst states) and assistance (mechanisms established to support Treaty implementation, for example, the ATT Voluntary Trust Fund). In that respect, the discussions will highlight that national capacity constraints could be addressed through mechanisms established

within the ATT framework.

WORKING ARRANGEMENTS

WGETI shall operate on the basis of its Terms of Reference adopted by CSP3. However, to expedite movement towards the desired practical Treaty implementation discussions and without prejudice to the WGETI Terms of Reference, the following working arrangements are proposed for the reconfigured WGETI:

- a. For each general phase/stage of implementation, this working group will receive no less than two presentations from States Parties (including VTF beneficiary States) focusing on practical measures that those states are taking to address implementation issues of that general phase/stage. Where appropriate, the working group will also receive contributions from other stakeholders that are involved in the topic under discussion, such as relevant international, regional and civil society organisations. This will contribute to identifying synergies between the ATT and other international instruments, and their symbiotic implementation at the national level. A pertinent example could be the United Nations Office on Drugs and Crime and the UN Firearms Protocol.*
- b. Each presentation will be followed by Q&A sessions and information exchanges between States Parties and other stakeholders. These exchanges will include: noting implementation challenges or constraints that would have been made visible, sharing information on possibilities for international cooperation and assistance in response to these implementation challenges or constraints, as well as identifying issues that might benefit from further clarification within the ATT framework.*
- c. Presentations to the working group should be diverse in terms of geography and export/import profile of States Parties.*
- d. Unless determined otherwise, presentations by States Parties and other stakeholders shall be made freely available.*

5. It is also recalled that this Sub-working Group will not operate in a vacuum. As part of the working arrangements of the reconfigured WGETI, it is foreseen that when deemed necessary on the basis of exchanges in the Sub-working Group, the WGETI will discuss identified issues more in-depth and/or elaborate voluntary guidance documents or other tools to assist national implementation efforts by States Parties. At the beginning of each CSP cycle and ahead of the in-person WGETI meeting, States Parties and other ATT stakeholders will also be able to raise any current implementation issue on which they seek an *ad hoc* discussion in the WGETI. These discussions will then be held in the other dedicated WGETI Sub-working Groups.

PRIORITY PHASES/STAGES OF TREATY IMPLEMENTATION AND POSSIBLE TOPICS TO BE DISCUSSED

CSP9 discussions, earlier work and general considerations

6. In terms of priority phases/stages of Treaty implementation and possible topics to be discussed, it is recalled that during the discussions on the draft proposal on the WGETI configuration and substance during the CSP9 cycle, States Parties and other ATT stakeholders already indicated a number of topics that should be given priority or become a standing agenda item. In that respect, the

WGETI Chair's Report to CSP9 listed the following topics that were identified as such: national control systems, scope (national control lists), risk assessments, international cooperation, information management and transparency. The first three topics concern the implementation phases of "*establishment and maintenance of a national control system*" and "*application and authorisation of arms transfers*", while international cooperation is a cross-cutting function that applies to all implementation phases/stages.

7. Concerning the specific topics that could be discussed about "*establishment and maintenance of a national control system*", the graphic representation of implementation phases/stages included the following: infrastructure, national control list, competent authority, national point of contact, legislation and interagency co-ordination. Concerning "*application and authorisation of arms transfers*", these were the following: prohibitions, risk assessment, mitigations, decision-making, review of decisions, verification of documentation, and undertakings and cooperation of role players.

8. It is noted that various topics in the graphic representation reflect elements and related aspects that were identified in the Voluntary Basic Guide to Establishing a National Control System, which was welcomed at CSP5 as "*as a living document of a voluntary nature to be reviewed and updated regularly by the WGETI, as appropriate*".¹ Some of the relevant elements and related aspects were comprehensively developed in the Voluntary Basic Guide, on the basis of "*the decisions and recommendation of CSP4 as well as on information and experiences shared by States Parties during discussions and exchanges between States Parties that took place during meetings of the Sub-working Group on Article 5 in 2018 and 2019*".² Other elements and related aspects were not explored in the WGETI yet. This is relevant in selecting the concrete topics to focus on in the structured discussions. At the same time, the structured discussions could also form a basis for the further development of the Voluntary Basic Guide (as it was intended in the Voluntary Basic Guide itself).

9. Also draft Chapter 3 of the proposed Voluntary Guide to implementing Articles 6 & 7 that is under consideration in the dedicated Sub-working Group is relevant in selecting concrete topics for the structured discussions. This is particularly so, because this draft Chapter is based on discussions that were exclusively dedicated to export controls. In that respect, it is of crucial importance that structured discussions in this Sub-working Group do not only focus on export. This would go against the rationale of the new approach. This is taken into account in the draft multi-year workplan; the topics to be discussed and the practical implementation questions to be addressed deal with all types of transfers, but focus on import and brokering where appropriate, as they have received relatively little attention in previous WGETI discussions.

¹ The Voluntary Basic Guide to Establishing a National Control System is available on the Tools and Guidelines page of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>. For the CSP5 decision, see paragraph 26 (a) of the CSP5 Final Report ([ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1](#)).

² The Voluntary Basic Guide identified as elements of a national control system: a) legal and regulatory framework; b) institutions; c) procedures; d) documentation; e) training and capacity-building; and f) enforcement. Except for "training and capacity-building", these elements were further broken down in sub-elements. For "legal and regulatory framework" these were: i) laws; ii) regulations and administrative procedures; and iii) national control list. For "institutions" these were: i) competent national authorities"; and ii) national points of contact. For "documentation" these were: i) types of licences/permits; ii) end-user documentation; and iii) record-keeping. For "procedures" these were: i) authorization process; ii) risk assessment; iii) mitigating measures; and iv) decision-making. For "enforcement", these were: i) laws, regulations and administrative procedures; ii) institutions; iii) procedures; and iv) international assistance. The elements which were comprehensively developed in Voluntary Basic Guide concern "legal and regulatory framework" (including "national control list"), "institutions" and the sub-element "record-keeping" in the section on "documentation".

Concrete topics and elements

10. Taking into account the listed documents and the considerations above, the Sub-Working Group on Exchange of National Implementation Practices will address the different phases/stages of implementation on the basis of the following concrete topics and elements.

11. Under the topic of “**national control system**”, the Sub-working Group will address States Parties’ measures undertaken to regulate arms transfers, focusing on their substance. The Sub-working Group will also look at their elaboration into legislation, administrative regulations and administrative measures and procedures (including the integration of the prohibitions and possible risk assessment criteria in those), as well as the competent authorities and inter-agency cooperation arrangements that States Parties have put in place. In line with the considerations above, States will be requested to address these elements regarding their import and brokering controls. Concerning import controls, the Sub-working Group will thereby focus on Article 8 (2) and the obligation for States Parties to take measures allowing them to regulate imports under their jurisdiction, where necessary. Export, transit and trans-shipment measures can be revisited under this topic after import and brokering measures have been sufficiently explored.

12. In line with the above, the topic of “**scope**” or “**national control list**” will be dealt with separately. Under this topic, the Sub-working Group will address States Parties’ procedures to establish and maintain a national control list, the legal status of their national control list, its application to the different types of transfers, as well as its range in terms of conventional arms (including ammunition/munitions and parts and components).

13. Under the topic of “**risk assessment**”, the Sub-working Group will take into account the draft elements for Chapter 3 of the proposed Voluntary Guide to Implementing Articles 6 & 7 and focus predominantly on States Parties’ substantive approach to the risk assessment under Article 7 and pose relevant questions such as which specific factors States Parties look at for each element in Article 7 (1) when they are assessing an export in practice, how they weigh the findings of different information sources, and how they balance the potentially positive consequences of an arms export and the possible negative consequences. The Sub-Working Group will also seek to establish national practices about: i) how States Parties apply the combination of prohibitions and export assessment criteria in Articles 6 & 7 in practice;³ ii) how States Parties monitor authorized exports and practically reassess authorizations in case of new relevant information; and iii) to what extent States Parties apply similar risk assessments to brokering and transit and trans-shipment as those applied to exports.

14. The last topic that was prioritized during the CSP9 discussions concerned the phase/stage of “**information management**”. Under this topic, the Sub-working Group will address record-keeping by State entities and non-State actors, including legislation, administrative procedures, competent authorities and inter-agency cooperation. The Sub-Group will also address information exchange between different State entities for reporting, assessment and enforcement purposes, as well as information sharing with other States.

15. The remaining phases/stages for discussion in the WGETI itself are then “general regulation of role players” “enforcement arrangements”.

³ This will build further on the guidance about the relationship between both articles in Draft Chapter 2 of the Voluntary Guide to implement Articles 6 and 7. Also note that for the other types of transfers, in particular import and brokering, it is the intention to discuss the prohibitions in Article 6 as part of the practical measures which States Parties put in place to regulate these transfers in a manner that allows them to prevent such transfers in violation of Article 6).

16. “**General regulation of role players**” links up with the CSP9 focus on the role of industry, and the specific recommendation of the CSP9 to share experiences and practices of existing processes, guidance and related materials, and written guidance materials relating to national efforts to ensure industry awareness and compliance with national transfer control systems. The Sub-working Group will address the “general regulation of role players” in at least two perspectives. The Sub-working Group will thereby first focus on identifying all the non-State actors which States Parties subject to national regulations concerning arms transfers and the general requirements they have to fulfill, including general registration or authorization procedures and the establishment of internal programs to comply with the State’s controls on concrete arms transfers.

17. The Sub-working Group will also address efforts of States Parties to raise awareness among relevant non-State actors about their arms transfer controls and to facilitate compliance. For these discussions States Parties will be encouraged to consider all types of transfers. In that respect, States Parties are also reminded of the Voluntary Guide to Implementing Article 9 (transit and trans-shipment), endorsed at CSP9, and its section about the role of the private sector in the transit and trans-shipment of arms, which highlighted the role of transport service providers (carriers), customs service providers (customs brokers, customs agents, or clearing agents), freight forwarders and shipping agents.⁴ In addition, States Parties will be encouraged to also consider actors that are indirectly involved in arms transfers, such as financial service providers and insurance providers (which were also explicitly mentioned in the CSP9 President’s working paper about the role of industry in responsible international arms transfers).⁵ It is noted, finally, that this general exchange of national practices on role players will complement the in-depth discussions on specific issues concerning the role of industry, which are scheduled to take place in the Sub-working Group on Current and Emerging Issues.

18. The Sub-working Group will also dedicate attention to discussing national approaches to “**enforcement arrangements**”. Enforcement will be addressed in the broadest sense. The Sub-working Group will look at: i) States’ legal framework and the various sanctions which they provide for violations of national arms transfer laws and regulations; ii) the entities that are in charge of enforcement and their tools and capacity to prevent and address violations; iii) inter-agency cooperation arrangements, risk management procedures, domestic information exchange and international cooperation arrangements that have been put in place; and iv) training of officials. Whilst international cooperation will be addressed in relation to every topic under discussion in the Sub-working Group, the Group will address this in particular regarding enforcement, as both Article 11 on diversion and Article 15 on international cooperation include explicit requirements about international cooperation concerning enforcement. It is noted that this general exchange of national practices on enforcement arrangements will complement the work of the Diversion Information Exchange Forum (DIEF), which deals with enforcement-related matters on the operational level.

19. Concerning the last remaining phase/stage of “**post-delivery measures**”, it is recalled that certain elements in the graphic representation of implementation phases/stages concern the priority

⁴ The Voluntary Guide also emphasized the importance to involve such private actors, as well as international organisations or bodies dealing with similar or related issues, in discussions about cross-cutting issues with relevance for transit and trans-shipment controls, such as the World Customs Organisation, Interpol, the UN Office on Drugs and Crime, the World Shipping Council and the International Air Transport Association.

⁵ Working Paper submitted by the CSP9 President “The Role of Industry in Responsible International Transfers of Conventional Arms” ([ATT/CSP9/2023/PRES/766/Conf.WP.Ind](#)). Final Report of the Ninth Conference of States Parties ([ATT/CSP9/2023/SEC/773/Conf.FinRep.Rev2](#)), paragraph 22. The Conference also took note with appreciation of the joint working paper submitted by Austria, Ireland and Mexico “Responsible Business Conduct and the Arms Trade Treaty” ([ATT/CSP9/2023/AUT-IRL-MEX/774/Conf.WP](#)).

themes of recent CSP Presidents: the CSP7 focused on stockpile management (of small arms and light weapons) and the CSP8 President focused on post-shipment controls and coordination, which was further discussed during the CSP9 cycle.⁶ It is further noted that some elements will also come up in discussions on other phases/stages, for example, transfer undertakings. It is therefore suggested to park this phase/stage at the end of the multi-year workplan and come back to it after the topics of “national control system” and “risk assessment” have been sufficiently explored.

20. Concerning the cross-cutting functions of “**international cooperation**” and “**international assistance**”, the Sub-working Group will address these functions in relation to each topic above highlighting available opportunities to address national capacity constraints. More specifically, for each topic the Sub-working Group will look at specific contributions that international cooperation between States (Parties) could make, and how States could leverage international assistance (including ATT internal support mechanisms like the Voluntary Trust Fund: <https://www.thearmstradetreaty.org/voluntary.html>) to support their national implementation efforts. This will also include awareness-raising about the ATT Needs and Resources Matching Database (<https://database.thearmstradetreaty.org/>).

MULTI-YEAR WORKPLAN FOR THE SUB-WORKING GROUP

21. The draft multi-year workplan for the structured discussions in the Sub-Working Group on Exchange of National Implementation Practices is included as attachment A to this working document. The Annex of the workplan includes a list of the practical implementation questions per topic. During the discussions on this draft, delegations are requested to take into account the considerations below. Delegations are also reminded that this draft multi-year workplan is intended to be a living document which can be reviewed and updated regularly by the WGETI, as appropriate.

Sequencing of topics

22. The draft multi-year workplan arranges the concrete topics that have been identified in paragraphs 11-19 in the order that they will be discussed in the Sub-working Group. The topics are divided over three-hour *sessions* of the Sub-working Group, noting that, in principle, every meeting of the Sub-working Group will consist of two three-hours sessions. The workplan allocates one topic per session, as a balance between allowing enough time to explore each topic and making sure that each topic can be addressed within a three-to-four-year period. This will also depend on the evolution of the ATT Programme of Work. In that respect, delegations are reminded that in line with the CSP9 decision on the review of the ATT Programme of Work, the WGETI only meets once a year, on one a year trial.

23. The workplan is of a rolling nature, in the sense that no specific time is set for the different meetings and sessions of the Sub-working Group, as this depends on the ATT Programme of Work, as well as the organization of work in the WGETI and the ATT process in general. The workplan is also flexible. It can be adjusted in light of progress made in each session, and topics that have been

⁶ See the Working Paper of the CSP7 President “*Strengthening efforts to eradicate the illicit trade in small arms and light weapons and ensure efficient stockpile management*” (<ATT/CSP7/2021/PRES/659/Conf.SALWPSSM.Rev3>) and the Working Paper of the CSP8 President “*Post-Shipment Controls and Coordination*” (<ATT/CSP8/2022/PRES/732/Conf.PostShip>), as well the document with operational steps for the introduction and implementation of post-shipment control, which was endorsed by CSP9 as an Annex to the document with Possible Measures to Prevent and Address Diversion that is available on the Tools and Guidelines page of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>.

discussed can be taken up in an additional session if delegations feel it would be beneficial to allow for more presentations of different States Parties and other stakeholders on the topic in question. This applies in particular to those topics which States Parties have identified as priority topics. It should be noted, nonetheless, that the intention of this Sub-Working Group is not to discuss the Treaty obligations involved in these topics in-depth, but rather to focus on exchanges regarding national practices. If delegations feel that certain issues should be explored in-depth, this could be picked up in the Sub-working Group on Current and Emerging Issues.

24. Delegations are reminded that each session will be held in line with the working arrangements to which reference is made in paragraph 4. Concretely, in each session, the Facilitator will start the discussion with a short introduction about the topic in question. After this, the States Parties that agreed to do so will give their presentations about their practical implementation and national practices concerning the topic. In their presentations, States Parties will be guided by the practical implementation questions that have been prepared for each topic (see the following paragraph). If applicable for the particular session, the stakeholders invited to contribute to the session will then provide their contribution, also taking into account the practical implementation questions. This will then be followed by the Q&A session and information exchanges as set out in paragraph 4.

Practical implementation questions

25. The Annex of the draft multi-year workplan includes a list of practical implementation questions for each different topic which States are to take into account in their contributions/presentations. These practical implementation questions aim to guide States Parties to address their concrete practices, real-life proceedings, and not limit their presentations to an overview of their relevant national laws and regulations. The Sub-working Group aims for exchanges on how these national laws and regulations are applied in practice and on who and what is involved. As the multi-year workplan itself, the list of practical implementation questions is intended to be a living document, open for review update. Nevertheless, for the initial discussion on the draft list during the CSP10 meeting of the Sub-working Group, States Parties and other stakeholders are encouraged to use the opportunity now to take ownership of the process and propose amendments and additional questions which they deem important to be addressed. For that purpose, the WGETI Chair will call on States Parties and stakeholders to engage in this process.

Interface arrangements between the WGETI and the WGTU and WGTR

26. In terms of the interface arrangements between the WGETI and the WGTU and WGTR, it is recalled that the adopted proposal on the WGETI configuration and substance provides that these working groups *“can deal with topics relevant to the phases/stages related to universalization and reporting, in line with their respective mandates”*. This concerns respectively the phase/stage of *“ATT Domestication”* and the phase/stage of *“Accounting and reporting”*.

27. Concerning the WGTU, it is noted that at CSP9, States Parties adopted a proposal on *“Enhancing the Work of the WGTU”*, which includes a new approach with details to be further elaborated in this CSP10 cycle. States Parties also encouraged *“the continuation of regular exchanges of views between the CSP President, WGTU Co-Chairs, Chairs and Facilitators of ATT subsidiary bodies, states and civil society on the promotion of ATT universalization”*. In that regard, it is suggested that as part of its discussions on the new approach, the WGTU will also consider to include presentations on the topics of the phase/stage of *“ATT Domestication”* in its agenda for the next CSP cycles.

28. Concerning the WGTR, it is noted that the mandate of this Working Group for the CSP10 cycle already includes the task for the WGTR to *“explore possibilities of aligning its work with the mainstream work of WGETI”* when it considers its mandate for the CSP11 cycle. It is therefore suggested that as

from the CSP11 cycle the WGTR will start considering topics of the phase/stage of “*Accounting and reporting*”, applying the same working arrangements contained in the adopted proposal on the WGETI configuration and substance. At the same time, it is suggested that the WGTR already in the CSP10 cycle applies the working arrangement of receiving States Parties presentations, followed by a Q&A, when it considers challenges to submitting timely and accurate initial and annual reports, as well as good practices in that regard (which was also done in previous CSP cycles). This is further elaborated in the documentation for the WGTR meeting.

29. Subject to approval of the WGTU and WGTR, it is suggested that the WGTU and the WGTR address these topics in more than one session of their respective Working Groups to allow different States Parties and other stakeholders to present and contribute on these topics. Every time the WGTU and the WGTR conclude discussions on the topics in question during their annual session, the Co-chairs of these Working Groups will coordinate with the WGETI Chair whether and how the work done should feed into the work of the WGETI.

PRESENTATIONS BY STATES PARTIES AND CONTRIBUTIONS FROM OTHER RELEVANT STAKEHOLDERS

30. The success of the structured discussions in the Sub-working Group will depend exclusively on States Parties willing to explain the practical measures and policies they have developed concerning the topic of Treaty implementation that is under discussion, as well on other stakeholders that are involved in the topic willing to contribute. As the working arrangements for the structured discussions provide that for each topic, the Sub-working group will receive no less than two presentations from States Parties (including beneficiary States of the Voluntary Trust Fund, VTF), and these presentations should be diverse in terms of geography and export/import profile of States Parties, consideration needs to be given to how this will be handled in practice. The same applies to the involvement of other relevant stakeholders, i.e. relevant international, regional and civil society organisations (as indicated in the working arrangements for the structured discussions).

31. To ensure that each session of the Sub-working Group will receive relevant presentations, at the beginning of each CSP cycle and ahead of the in-person WGETI meeting, the WGETI Chair will invite States Parties to propose giving a presentation about any of the topics that will be addressed in the upcoming session of the Sub-working Group.⁷ At the same time, in consultation with the ATT Secretariat and the WGETI Chair, the Facilitator will actively reach out to States Parties to seek presentations, as well as to other stakeholders that are involved in the topics in question. In doing so, in addition to the parameters above, the WGETI Chair and the ATT Secretariat will take into account the VTF projects that have been implemented on the topics in question, the suggestions that are included in existing ATT documentation and the experience of stakeholders in supporting practical implementation of the topics in question.

CSP10 MEETING OF THE SUB-WORKING GROUP

32. As indicated in the WGETI Chair’s letter for this meeting, the Sub-working Group will deal with the elaboration of the multi-year workplan, as well a first topic for discussion. Taking into account the

⁷ This invitation will be combined with the invitation which the WGETI Chair will extend to States Parties and other stakeholders at the beginning of each CSP cycle and ahead of the in-person WGETI meeting to raise any current implementation issue on which they seek an ad hoc discussion in the WGETI Sub-working Group on current and emerging implementation issues (cf. paragraph 11 (g) of the proposal on WGETI Configuration and Substance).

priority theme of the CSP10 President, the Sub-working Group will address “national control system” and “inter-agency cooperation” in general.

33. For the purpose of these discussions, taking into account the considerations above, the WGETI Chair, in consultation with the ATT Secretariat, has reached out to a number States Parties and other stakeholders to provide presentations and contributions on the topic at hand. Romania, as the presiding State Party, will also give a presentation about its national practice on inter-agency coordination as well as outline its approach to its chosen priority theme of inter-agency cooperation.

ATTACHMENT A

DRAFT MULTI-YEAR WORK PLAN FOR THE WGETI SUB-WORKING GROUP ON EXCHANGE OF NATIONAL IMPLEMENTATION PRACTICES

This multi-year workplan deals with the structured discussions on practical Treaty implementation in the Sub-Working Group on Exchange of National Implementation Practices of the Working Group on Effective Treaty Implementation (WGETI). It is an attachment of the working document on initiating structured discussions and developing a multi-year workplan, discussed during the CSP10 inaugural meeting of the Sub-Working Group, and gives effect to the proposal on the WGETI configuration and substance that was adopted at CSP9.¹ The workplan arranges the concrete topics that have been identified for the structured discussions in the order that they will be discussed in the different three-hour sessions of the Sub-working Group, noting that, in principle, every meeting of the Sub-working Group will consist of two three-hours sessions.

In each session, the Facilitator will start the discussion with a short introduction about the topic in question. After this, the States Parties that agreed to do so will give their presentations about their practical implementation and national practices concerning the topic. In their presentations, States Parties will be guided by the practical implementation questions that have been prepared for each topic and that are included in the Annex of this multi-year workplan. If applicable for the particular session, the stakeholders invited to contribute to the session will then provide their contribution, also taking into account the practical implementation questions. This will then be followed by the Q&A session and information exchanges as set out in the abovementioned documents.

| WGETI of the Sub-Working Group on Exchange of National Implementation Practices: Structured discussions | |
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| Session 1 (3 hours) | <p>Topic 1: National control system — Import</p> <p><i>Under this topic, the Sub-working Group will address States Parties' measures undertaken to regulate arms transfers, focusing on their substance. The Sub-working Group will also look at their elaboration into legislation, administrative regulations and administrative measures and procedures (including the integration of the prohibitions and possible risk assessment criteria in those), as well as the competent authorities and inter-agency cooperation arrangements that States Parties have put in place. In this session, States will be requested to address these elements regarding their import controls. The Sub-working Group will thereby focus on Article 8 (2) and the obligation for States Parties to take measures allowing them to regulate imports under their jurisdiction, where necessary.</i></p> |

¹ See Annex D of the WGETI Chair's Draft Report to CSP9 ([ATT/CSP9.WGETI/2023/CHAIR/767/Conf.Rep](#)) and paragraph 24 (f) of the Final Report of CSP9 ([ATT/CSP9/2023/SEC/773/Conf.FinRep.Rev2](#)).

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| | <p>The practical implementation questions which delegations are to take into account in their contributions/presentations on this topic are set out on pages [48-49] of the Annex to this multi-year workplan.</p> |
| <p>Session 2 (3 hours)</p> | <p>Topic 2: Scope / National control list</p> <p><i>Under this topic, the Sub-working Group will address States Parties' procedures to establish and maintain a national control list, the legal status of their national control list, its application to the different types of transfers, as well as its range in terms of conventional arms (including ammunition/munitions and parts and components).</i></p> <p>The practical implementation questions which delegations are to take into account in their contributions/presentations on this topic are set out on pages [49-50] of the Annex to this multi-year workplan.</p> |
| <p>Session 3 (3 hours)</p> | <p>Topic 3: National control system — Brokering</p> <p><i>Under this topic, the Sub-working Group will address States Parties' measures undertaken to regulate arms transfers, focusing on their substance. The Sub-working Group will also look at their elaboration into legislation, administrative regulations and administrative measures and procedures (including the integration of the prohibitions and possible risk assessment criteria in those), as well as the competent authorities and inter-agency cooperation arrangements that States Parties have put in place. In this session States will be requested to address these elements regarding their brokering controls.</i></p> <p>The practical implementation questions which delegations are to take into account in their contributions/presentations on this topic are set out on pages [50-52] of the Annex to this multi-year workplan.</p> |
| <p>Session 4 (3 hours)</p> | <p>Topic 4: Risk assessment (covering Articles 6&7)</p> <p><i>Under this topic, the Sub-working Group will take into account the draft elements for Chapter 3 of the proposed Voluntary Guide to Implementing Articles 6 & 7 and focus predominantly on States Parties' substantive approach to the risk assessment under Article 7 and pose relevant questions such as which specific factors States Parties look at for each element in Article 7 (1) when they are assessing an export in practice, how they weigh the findings of different information sources, and how they balance the potentially positive consequences of an arms export and the possible negative consequences. The Sub-Working Group will also seek to establish national</i></p> |

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| | <p><i>practices about: i) how States Parties apply the combination of prohibitions and export assessment criteria in Articles 6 & 7 in practice;² ii) how States Parties monitor authorized exports and practically reassess authorizations in case of new relevant information; and iii) to what extent States Parties apply similar risk assessments to brokering and transit and trans-shipment as those applied to exports.</i></p> <p><i>The practical implementation questions which delegations are to take into account in their contributions/presentations on this topic are set out on pages [52-54] of the Annex to this multi-year workplan.</i></p> |
| <p>Session 5 (3 hours)</p> | <p>Topic 5: Information management</p> <p><i>Under this topic, the Sub-working Group will address record-keeping by State entities and non-State actors, including legislation, administrative procedures, competent authorities and inter-agency cooperation. The Sub-Group will also address information exchange between different State entities for reporting, assessment and enforcement purposes, as well as information sharing with other States.</i></p> <p><i>The practical implementation questions which delegations are to take into account in their contributions/presentations on this topic are set out on pages [54-55] of the Annex to this multi-year workplan.</i></p> |
| <p>Session 6 (3 hours)</p> | <p>Topic 6: General regulation of role players</p> <p><i>This topic links up with the CSP9 focus on the role of industry, and the specific recommendation of the CSP9 to share experiences and practices of existing processes, guidance and related materials, and written guidance materials relating to national efforts to ensure industry awareness and compliance with national transfer control systems. The Sub-working Group will address the “general regulation of role players” in at least two perspectives. The Sub-working Group will thereby first focus on identifying all the non-State actors which States Parties subject to national regulations concerning arms transfers and the general requirements they have to fulfill, including general registration or authorization procedures and the establishment of internal programs to comply with the State’s controls on concrete arms transfers. The Sub-working Group will also address efforts of States Parties to raise awareness among relevant non-State actors about their arms transfer controls and to facilitate compliance. For these discussions States Parties will be encouraged to consider all types of transfers. In that respect, States Parties are also reminded of the Voluntary Guide to Implementing Article 9 (transit and trans-shipment), endorsed at CSP9, and its section about the role of the private sector in the transit and trans-shipment of arms, which highlighted the role of transport service providers (carriers), customs service providers (customs brokers, customs agents, or clearing agents), freight</i></p> |

² This will build further on the guidance about the relationship between both articles in Draft Chapter 2 of the Voluntary Guide to implement Articles 6 and 7. Also note that for the other types of transfers, in particular import and brokering, it is the intention to discuss the prohibitions in Article 6 as part of the practical measures which States Parties put in place to regulate these transfers in a manner that allows them to prevent such transfers in violation of Article 6).

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| | <p><i>forwarders and shipping agents.³ In addition, States Parties will be encouraged to also consider actors that are indirectly involved in arms transfers, such as financial service providers and insurance providers (which were also mentioned in the CSP9 President’s working paper about the role of industry in responsible international arms transfers).⁴ It is noted, finally, that this general exchange of national practices on role players will complement the in-depth discussions on specific issues concerning the role of industry, which are scheduled to take place in the Sub-working Group on Current and Emerging Issues.</i></p> <p>The practical implementation questions which delegations are to take into account in their contributions/presentations on this topic are set out on pages [56-57] of the Annex to this multi-year workplan.</p> |
| <p>Session 7 (3 hours)</p> | <p>Topic 7: Enforcement arrangements</p> <p><i>This topic will be addressed in the broadest sense. The Sub-working Group will look at: i) States’ legal framework and the various sanctions which they provide for violations of national arms transfer laws and regulations; ii) the entities that are in charge of enforcement and their tools and capacity to prevent and address violations; iii) inter-agency cooperation arrangements, risk management procedures, domestic information exchange and international cooperation arrangements that have been put in place; and iv) training of officials. Whilst international cooperation will be addressed in relation to every topic under discussion in the Sub-working Group, the Group will address this in particular regarding enforcement, as both Article 11 on diversion and Article 15 on international cooperation include explicit requirements about international cooperation concerning enforcement. It is noted that this general exchange of national practices on enforcement arrangements will complement the work of the Diversion Information Exchange Forum (DIEF), which deals with enforcement-related matters on the operational level.</i></p> <p>The practical implementation questions which delegations are to take into account in their contributions/presentations on this topic are set out on page [57] of the Annex to this multi-year workplan.</p> |

³ The Voluntary Guide also emphasized the importance to involve such private actors, as well as international organisations or bodies dealing with similar or related issues, in discussions about cross-cutting issues with relevance for transit and trans-shipment controls, such as the World Customs Organisation, Interpol, the UN Office on Drugs and Crime, the World Shipping Council and the International Air Transport Association.

⁴ Working Paper submitted by the CSP9 President “The Role of Industry in Responsible International Transfers of Conventional Arms” ([ATT/CSP9/2023/PRES/766/Conf.WP.Ind](#)). Final Report of the Ninth Conference of States Parties ([ATT/CSP9/2023/SEC/773/Conf.FinRep.Rev2](#)), paragraph 22. The Conference also took note with appreciation of the joint working paper submitted by Austria, Ireland and Mexico “Responsible Business Conduct and the Arms Trade Treaty” ([ATT/CSP9/2023/AUT-IRL-MEX/774/Conf.WP](#)).

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| Session 8 (3 hours) | Topic 8: Post-delivery measures <i>[This topic is parked and will be dealt with after the topics of “national control system” and “risk assessment” have been sufficiently explored.]</i> |
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ANNEX

**(MULTI-YEAR WORK PLAN FOR THE WGETI SUB-WORKING GROUP ON EXCHANGE OF
NATIONAL IMPLEMENTATION PRACTICES)**

LIST OF PRACTICAL IMPLEMENTATION QUESTIONS PER TOPIC TO BE DISCUSSED

Draft

Initial remark

1. As indicated in paragraphs 24 and 25 of the working document on initiating structured discussions and developing a multi-year workplan and in the multi-year workplan itself, the practical implementation questions are provided to guide delegations' contributions/presentations on the topic to be discussed.

Topic 1: National control system — Import

Introduction

1. Which measures has your State taken to allow regulation of arms transfers in your State in general?

Substantive elements

2. Which measures has your State taken to allow regulation of imports which take place under your State's jurisdiction? Are these measures all laid down in your State's laws and/or regulations?

Article 8 (2) provides that such measures may include import systems.

3. In case the State operates an import licensing system, what kind of assessment of proposed imports is conducted?
4. How does your State ensure that no imports in violation of the Article 6 prohibitions take place?
5. Do your State's measures apply to all categories of conventional arms in the same way?
6. Are the measures the same for State actors and non-State actors? For example, do import measures also cover security actors (armed forces, police, etc.)?

Procedural and institutional elements

7. Which ministry, department or agency is the competent national authority for import controls? Which ministries, departments or agencies are or may be involved in the assessment and decision-making process?

8. How do the procedures for import authorization, notification or any other type of control measure operate? What kind of documents are issued?
9. What Information and documentation needs to be provided in the context of these procedures?

International cooperation and international assistance

10. Are there specific contributions that international cooperation between States (Parties) and/or further discussions within the ATT process could make to facilitate or support import controls by States Parties?

Is your State in a position to provide assistance to other States Parties on import controls? Does your State need assistance on import controls or has your State already received assistance on this in the past, via the VTF or another international assistance provider? In case of the latter, could you elaborate on this?

Topic 2: Scope / National control list

Introduction

1. Which measures has your State taken to allow regulation of arms transfers in your State in general?

Procedural and institutional elements

2. How was your State's national control list established? Which ministries, departments and/or agencies are involved in the process of establishing and maintaining a national control list?
3. Is your State's national control list the product of national process or is it based on existing multilateral lists (e.g. UNROCA, Wassenaar Arrangement Munitions List, Common EU Military List, etc.) or both?
4. What is the legal status of your State's national control list? Is it enshrined in national law or administrative regulations?
5. Is your State's national control list subject to regular review? Can it be updated in a flexible manner?

Substantive elements

6. Does your State's national control list apply to all types of transfers? Does the same control list apply to all these types of transfers (or do you maintain different lists for different types of transfers)?

7. Which definitions does your State use for the conventional arms covered under Article 2 (1)?

Note: Article 5 (3) of the Treaty provides that national definitions of the arms covered under Article 2 (1) (a) a)—(g) shall not cover less than the descriptions used in the UN Register of Conventional Arms at the time of entry into force of the Treaty (24 December 2014) and for the arms covered under Article 2 (1) (h) not less than the descriptions used in relevant UN instruments at the time of entry into force of the Treaty (notably the UNROCA and the International Tracing Instrument, as identified in Annex 3 of the FAQ-document on the annual reporting obligation).

8. Are ammunition/munitions and parts and components included in your State's national control list(s) for all types of transfers?
9. The Treaty covers ammunition/munitions "fired, launched or delivered by the conventional arms covered under Article 2 (1)". Does your State's national control list include the same qualification?
10. The Treaty covers parts and components "where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2 (1)". Does your State's national control list include the same qualification?
11. Article 5 (3) of the Treaty encourages each State Party to apply the provisions of the Treaty to the broadest range of conventional arms. Does your State's national control list include additional national categories of conventional arms? If so, does this apply to all types of transfers?

International cooperation and international assistance

12. Are there specific contributions that international cooperation between States (Parties) and/or further discussions within the ATT process could make to facilitate or support establishing and maintaining a national control list?
13. Is your State in a position to provide assistance to other States Parties on establishing and maintaining a national control list? Does your State need assistance on establishing and maintaining a national control list, or has your State already received assistance on this in the past, via the VTF or another international assistance provider? In case of the latter, could you elaborate on this?

Topic 3: National control system — Brokering

Introduction

1. Which measures has your State taken to allow regulation of arms transfers in your State in general?

Substantive elements

2. Which activities does your State consider to constitute “brokering” within the scope of the Treaty? Is this defined in national law? Which types of actors carry out such activities in practice?
3. Which measures has your State taken to regulate brokering that takes place under your State’s jurisdiction? Are these measures all laid down in your State’s laws and/or regulations?
4. The Treaty mentions as possible measures requiring brokers to register or obtain written authorization before engaging in brokering. Does your State also apply measures to control brokering transactions case-by-case.
5. How does your State ensure that no brokering transactions in violation of the Article 6 prohibitions take place?
6. In case the State operates an authorization system for specific brokering transactions, what kind of assessment is conducted? Is this similar to an export assessment?
7. Do your State’s measures cover brokering activities that take place *outside of* the territory of your State, for example if carried out by a person that is national or resident of your State or a company that is registered in your State?
8. Do your State’s measures cover brokering activities that take place *inside* the territory of your State if they relate to a transaction that concerns an export from or an import to your State?

Procedural and institutional elements

9. Which ministry, department or agency is the competent national authority for brokering controls? Which ministries, departments or agencies are or may be involved in the assessment and decision-making process?
10. How do the procedures for brokering authorization, registration or any other type of control measure operate? What kind of documents are issued?
11. What Information and documentation needs to be provided in the context of these procedures?

International cooperation and international assistance

11. Are there specific contributions that international cooperation between States (Parties) and/or further discussions within the ATT process could make to facilitate or support brokering controls by States Parties?
12. Is your State in a position to provide assistance to other States Parties on brokering controls? Does your State need assistance on brokering controls or has your State already received

assistance on this in the past, via the VTF or another international assistance provider? In case of the latter, could you elaborate on this?

Topic 4: Risk assessment (covering Articles 6&7)

Introduction

1. Which measures has your State taken to allow regulation of arms transfers in your State in general?

Substantive elements

2. How are the prohibitions in Article 6 and the export assessment in Article 7 implemented in your State's laws and regulations? How does your State apply the combination of prohibitions and export assessment criteria in Articles 6 and 7 in practice?
3. How does your State assess each of the elements in Article 7 (1)(a) and (b) and Article 7 (4)? Does your State conduct an overall assessment of the proposed recipient/end-user country's attitude towards peace and security, IHL, international human rights law, terrorism, transnational organized crime and gender-based violence and violence against women and children? Does your State conduct a targeted analysis that takes into account the specific type of equipment that is exported, the specific consignee and end-user and the anticipated use of the equipment?
4. What factors and questions does your State consider in order to determine the past and present record of the recipient/end-user regarding peace and security, IHL, international human rights law, terrorism, transnational organized crime and gender-based violence and violence against women and children?
5. Does your State consider formal commitments of the proposed recipient/end-user country's regarding relevant norms and the capacity to of the proposed recipient/end-user country to comply with these norms?
6. At what point do findings of violations of relevant norms lead to a conclusion that there is a potential that the conventional arms or items could be used to commit or facilitate a serious violation of these norms. To come to such conclusion, does your State require a determination that these violations are part of a pattern of violations or that there is an absence of any State action in the proposed recipient/end-user country to prevent and address such violations? Does there need to be similarity in the type of equipment that was used for the violations in question and the equipment that is to be exported?
7. How does your State determine whether violations that were identified constitute isolated acts or form part of a pattern of violations?
8. How does your State balance the potentially positive and negative consequences of an arms export?

9. Does your assessment focus on the specific anticipated end-user or the relevant security actors more generally? Does your State also consider the other actors involved in the transfer chain, such as brokers, carriers, transport service provider?
10. In case your State operates an authorization (licensing) system for transit and trans-shipment, does your State conduct a substantively similar risk assessment as for exports?
11. In case your State operates an authorization (licensing) system for brokering, does your State conduct a substantively similar risk assessment as for exports?

Procedural and institutional elements

12. How does your risk assessment process operate? Which ministries, departments and/or agencies are involved in the assessment? Who takes the final decision?
13. Which information sources does your State use and how are the findings of different information sources weighed against each other?
14. What information and documentation does an exporter need to be provided in order to obtain an export authorization?
15. Beyond standard end use or end user documentation, what kind of other information is gathered from the importing State in order to conduct the risk assessment?
16. Does your State also obtain information from other States than the importing State, through international cooperation? If so, in which cases and what kind?
17. How is the reliability of the abovementioned types of information, including end use or end user documentation, reviewed?
18. How is consistency in assessment and decision-making ensured, including concerning the national interpretation and application of each element in Articles 6 and 7 and their related concepts? Does your State have a manual for officials on how to conduct risk assessments?
19. Does your State monitor authorized exports and reassess authorizations in case of new relevant information?
20. Can arms transfer decisions be challenged in your State? If so, are the options administrative or judicial in nature? Which persons have standing to introduce such challenges? What are the possible outcomes of challenges.
21. In case exports are authorized under certain conditions or assurances by the proposed recipient / end-user, how is compliance with these conditions or assurances followed up?

22. Substantial guidance on the practical implementation and application of Articles 6 and 7 was developed within the ATT process, notably in the WGETI. Has your State used this guidance when conducting risk assessments in practice?

International cooperation and international assistance

23. Are there specific contributions that international cooperation between States (Parties) and/or further discussions within the ATT process could make to facilitate or support risk assessments by States Parties? How can States help each other to get access to relevant information?
24. Is your State in a position to provide assistance to other States Parties on establishing a process for conducting risk assessments? Does your State need assistance on establishing a process for conducting risk assessments or has your State already received assistance on this in the past, via the VTF or another international assistance provider? In case of the latter, could you elaborate on this?

Topic 5: Information management

Introduction

1. Which measures has your State taken to allow regulation of arms transfers in your State in general?

Substantive elements

2. Does your State have specific laws and regulations that regulate record-keeping on arms transfers for the ministries, departments and/or agencies involved in arms transfer controls?
3. Does your State keep records on all types of transfers (export, import, transit, trans-shipment and brokering) and all categories of conventional arms?
4. Which ministries, departments and/or agencies are responsible for record-keeping for each type of transfer? In case information is collected by different ministries, departments and/or agencies, are there inter-agency cooperation arrangements in place to consolidate the information?
5. Which information is recorded for each type of transfer? Which sources are used?
6. How is this information stored? Does your State operate a central database to store this information? How long is information kept?
7. Does your State collect certain information for the purpose of complying with your State's international reporting requirements, such as the initial and annual reporting requirements in Article 13 of the Treaty?

8. Do certain ministries, departments and/or agencies in your State exchange information with one another to facilitate the assessment of proposed arms transfers and/or the enforcement of your State's arms transfer laws and regulations?
9. The Treaty includes several requirements and encouragements for States Parties to share information, notably in the context of export and export assessment, import and transit and trans-shipment controls, preventing and addressing diversion and enforcement? Does your State have specific laws and regulations that regulate such information sharing? Does your State have a specific ministry, department or agency that is responsible for dealing with this?
10. Has your State established formal processes and/or adopted guidelines for all ministries, departments and/or agencies involved in the record-keeping and information exchange mentioned above? Does your State organize trainings for the officials that are involved?
11. Does your State have specific laws and regulations that regulate record-keeping on arms transfers for the non-State actors involved in arms transfers?
12. Do your State's requirements on record-keeping for non-State actors apply to all types of transfers (export, import, transit, trans-shipment and brokering) and all categories of conventional arms?
13. Which information do non-State actors need to record for each type of transfer?
14. How long do non-State actors need to keep their records?
15. Do non-State actors need to transmit any of the information they are required to record to any of your State's ministries, departments and/or agencies?
16. Does your State provide sanctions for non-State actors which do not comply with your State's record-keeping requirements?
17. What kind of awareness-raising and support (outreach) does your State provide to the non-State actors about their record-keeping requirements?
18. Does your State have a process for non-State actors to request access to the records that are kept about the arms transfers they were involved in?

International cooperation and international assistance

19. Are there specific contributions that international cooperation between States (Parties) and/or further discussions within the ATT process could make to facilitate record-keeping and information-exchange by States Parties?
20. Is your State in a position to provide assistance to other States Parties on record-keeping and information-exchange? Does your State need assistance on record-keeping and information-exchange or has your State already received assistance on this in the past, via the VTF or another international assistance provider? In case of the latter, could you elaborate on this?

Topic 6: General regulation of role players

1. Which of the following actors are or can be subject to some form of arms transfer control in your State (i.e. any requirement that involves registration, notification or authorization to be able to conduct an activity related to arms transfers):
 - a. Exporters;
 - b. Importers;
 - c. Transit and trans-shipment service providers;
 - d. Brokers;
 - e. Transport service providers (carriers);
 - f. Freight forwarders;
 - g. Shipping agents;
 - h. Customs service providers (customs brokers, customs agents, clearing agents);
 - i. Financial service providers;
 - j. Insurance providers;
 - k. Others?
2. What kind of measures does your State apply to each of these actors and which conditions are attached to those measures?
3. Does your State oblige any of these actors to adopt internal compliance programs (ICP)? If so, a) does your State require certain elements to be covered in an ICP? and b) What is the legal status of the ICP implemented by your State? Does your State monitor the ICP of involved actors?
4. What kind of awareness-raising and support (outreach) does your State provide to the actors that are involved in the transfer chain in order to ensure compliance with your State's national arms transfer laws and regulations? Does your State provide support to adopt international compliance programs, such as guidelines or a manual?
5. Which ministries, departments or agencies are involved in such awareness-raising and support (outreach)? Does your State cooperate with the industry for this purpose, for example with the representative organisations of the mentioned actors?
6. Does your State operate a system to detect and identify actors which might be involved arms transfer activities which are or can be subject to some form of arms transfer control?

International cooperation and international assistance

7. Are there specific contributions that international cooperation between States (Parties) and/or further discussions within the ATT process could make to facilitate or support regulating or providing outreach to the mentioned actors?
8. Is your State in a position to provide assistance to other States Parties on regulating or providing outreach to the mentioned actors? Does your State need assistance on regulating or providing outreach to the mentioned actors or has your State already received assistance on

this in the past, via the VTF or another international assistance provider? In case of the latter, could you elaborate on this?

Topic 7: Enforcement arrangements

1. Which measures has your State put in place to enforce your State's national arms transfer laws and regulations?
2. Does your State provide criminal, civil or administrative sanctions? Does your State apply targeted sanctions, such as ban to carry out any arms transfer activity?
3. Can legal persons incur criminal liability for violations of your national arms transfer laws and regulations?
4. Which entities are charged with the enforcement of your State's arms transfer laws and regulations (e.g. customs authorities, border police, stand-alone inspection body)?
5. Do these entities have legal tools and capacity to be able to suspend transfers and, if necessary and permissible, inspect and (temporarily) seize shipments?
6. In case of pending investigations or ongoing sanctions, do these entities or other competent authorities have the legal authority to take precautionary measures to prevent further violations, such as a suspension of licences or a temporary ban to carry out arms transfer activities?
7. Does your State have inter-agency cooperation arrangements in place to facilitate cooperation and information exchange between all the authorities that have a (potential) role in the arms transfer control system such as the enforcement entities, licensing authorities and intelligence services? If so, which information is shared between these bodies?
8. Do your State's enforcement entities conduct risk management procedures, to ensure that its inspection resources are effectively targeting possibly illicit transfers of conventional arms without unnecessarily obstructing the free flow of goods?

International cooperation and international assistance

9. Is your State involved in international cooperation agreements in order to receive or provide assistance in investigations, prosecutions and judicial proceedings in relation to violations of your State's arms transfer laws and regulations or those of an affected State?
10. Does your State provide specific training to enforcement officials about arms transfer control, including on practical matters such as acceptable documentation?

Topic 8: Post-delivery measures

[This topic is parked and will be dealt with after the topics of "national control system" and "risk assessment" have been sufficiently explored.]

SUB-WORKING GROUP ON CURRENT AND EMERGING IMPLEMENTATION ISSUES

This section contains the following documents:

- Annex C-1: [Draft agenda for the meeting of the Sub-Working group on Current and Emerging Implementation Issues](#)
- Annex C-2: [Working document on current and emerging implementation issues](#)

ANNEX C-1**DRAFT AGENDA FOR THE MEETING OF
THE SUB-WORKING GROUP ON CURRENT AND EMERGING IMPLEMENTATION ISSUES**

Wednesday, 21 February 2024, 15:00-18:00

1. Introduction of the new Sub-working Group on Current and Emerging Implementation Issues

The Facilitator will briefly present the background of the newly created Sub-working Group on Current and Emerging Implementation Issues.

2. The role of industry in responsible international arms transfers

The Facilitator will recall the CSP9 decisions on further discussions regarding the role of industry in responsible international arms transfers and provide a brief overview of the existing body of work on this topic. The Facilitator will then introduce the proposed concrete issues to be discussed in-depth in the Sub-working Group and invite delegations' views on this.

Regarding the application of the UN Guiding Principles on Business and Human Rights (UNGP) and human rights and IHL due diligence in general in the context of ATT implementation and States' national arms transfer control systems, a number of States Parties and other stakeholders will provide interventions and/or presentations to initiate the discussion. The subsequent discussion will aim to increase the understanding of what the UNGP and human rights and IHL due diligence require, what this entails for States Parties in their practical implementation of the Treaty and how their arms transfer controls can contribute to ensuring industry compliance with their human rights and IHL due diligence responsibilities. In addition, the discussion will aim to help States Parties to assess whether it could be appropriate and feasible to use the ATT process to, in the medium term, develop any voluntary guidance for States Parties and/or industry actors.

3. The risk of conventional arms being used for GBV or violence against women and children

The Facilitator will recall the CSP9 decision on further discussions regarding the risk of conventional arms being used for gender-based violence or violence against women and children and provide a brief overview of the existing body of work on this topic. As a starting point for the continued discussions, the Sub-working Group will further consider the working papers that were presented by Argentina and by Mexico, Spain and Small Arms Survey in the CSP9 cycle, both of which were explicitly taken note of by the CSP9. The Facilitator will give Argentina the opportunity to brief the Sub-Working Group on the results of the questionnaire that was circulated to States Parties and the feasibility of developing its proposed good practices guide. The Facilitator will subsequently invite the views of delegations on the proposed course of action. The Facilitator will also give Mexico, Spain and Small Arms Survey the opportunity to present how they see the policy recommendations contained in their working paper aligning with the course of action proposed by Argentina. Finally, the Facilitator will seek the views of delegations whether the Sub-working Group should still address other specific aspects of the risk of conventional arms being used for GBV or violence against women and children. The Facilitator will also provide the opportunity to delegations to share any information or good practices about this topic, which they want to share at this time.

4. Ad hoc discussions on current and emerging implementations issues

The Facilitator will communicate the issues which were proposed by delegations for an ad hoc discussion in the Sub-working Group. The Facilitator will then invite the delegations concerned to

introduce the issue in question and provide the Sub-working Group the opportunity to engage in discussion.

ANNEX C-2**ATT WORKING GROUP ON EFFECTIVE TREATY IMPLEMENTATION (WGETI)
SUB-WORKING GROUP ON CURRENT AND EMERGING IMPLEMENTATION ISSUES****WORKING DOCUMENT****INTRODUCTION**

1. This working document is presented by the Facilitator of the WGETI Sub-working Group on Current and Emerging Implementation Issues, which was created at the beginning of this CSP10 cycle to serve as a platform for dealing with the issues that States Parties and other stakeholders have identified as requiring more in-depth discussions in the context of the structured discussions of the Working Group, as well as any other issue raised upon invitation of the WGETI Chair or as part of Conference decisions and recommendations. As indicated by the WGETI Chair in his introductory letter, during the CSP10 cycle, this Sub-working Group will, amongst others, hold further discussions on the role of industry in responsible international arms transfers and the risk of conventional arms being used to commit or facilitate GBV or violence against women and children, as suggested by the Conference at CSP9. In that regard, this working document intends to facilitate a discussion on delineating which specific aspects of these broad topics the Sub-working Group should still address and whether any concrete outcomes should be proposed, taking into account the existing body of work on these topics to avoid repeating discussions, as well as the purpose and scope of the Treaty and the overall mandate of the WGETI included in its Terms of Reference. At the same time, the Sub-working Group will already address some aspects of these topics that were explicitly identified at CSP9.

2. As background, the working document first recalls the approach in the adopted proposal on the WGETI configuration and substance towards more in-depth discussions and *ad hoc* discussions. The next parts address the two current topics separately. Each part includes three sections. The first section unpacks the decisions and recommendations of CSP9 (and earlier CSP's) regarding further discussion on the topic. The second section gives an overview of the existing body of work on the topic within and outside the ATT process. The third section, in reference to the relevant CSP decisions and recommendations, as well as the existing body of work, proposes a number of concrete issues the Sub-working Group could still discuss in regard to the topic in question. This section also includes an open invitation to States Parties and other ATT stakeholders to identify other issues regarding the topic at hand which they still want to discuss further in the Sub-working Group, as well as possible outcomes they want to achieve for following CSP's. The last section addresses the current and emerging Treaty implementation issues that were proposed by States Parties and other stakeholders for discussion.

BACKGROUND

3. The basis of this Sub-working Group on Current and Emerging Implementation Issues lies in the revised configuration and substance of the WGETI adopted by CSP9. In that context, States Parties and other ATT stakeholders agreed that, as a complement to the proposed structured discussions on national implementation measures and exchanges on national implementation experiences regarding priority stages/phases of implementation, States Parties and other ATT stakeholders should have the possibility to: i) identify certain issues addressed in the structured discussions on which they deem more in-depth discussions necessary; ii) identify certain issues addressed in the structured discussions on which they deem elaboration of voluntary guidance documents or other tools to assist national implementation necessary; and iii) raise/propose any current or emerging Treaty implementation issue, and call for an *ad hoc* discussion on this.

4. Accordingly, this Sub-working Group will take charge of the more in-depth discussions on the issues that have been identified for that purpose during the structured discussions in the Sub-working Group on exchange of national implementation practices and the *ad hoc* discussions on current and emerging Treaty implementation issues that were proposed by States Parties and other stakeholders. With respect to the latter and in accordance with the WGETI Chair invitation, proposals of current and emerging issues for discussion were expected to be accompanied by an explanatory memorandum to enable preparation by delegations. A list of the issues that have been proposed for discussion is included below (cf. paragraph 38). The explanatory memoranda accompanying the proposals are attached to this working document.

THE ROLE OF INDUSTRY IN RESPONSIBLE INTERNATIONAL ARMS TRANSFERS

Decisions and recommendations of CSP9 (and earlier CSP's)

5. The role of industry in responsible international arms transfers was the priority theme of the CSP9 President. The discussions on the topic during the CSP9 cycle led to a working paper of the CSP9 President that was considered at CSP9.¹ The Conference also took note with appreciation of the joint working paper submitted by Austria, Ireland and Mexico.² In this regard, the Conference adopted the following decisions:³

- a. *Each CSP President, in cooperation with the ATT Secretariat, is encouraged to include industry in outreach activities.*
- b. *States Parties, the ATT Secretariat and other interested parties are encouraged to engage industry and share industry-relevant information on the ATT and developments, using the website and other appropriate measures.*
- c. *The Conference welcomes the UN Guiding Principles on Business and Human Rights (UNGP) and encourages States Parties and other stakeholders to continue discussions on how the UNGP, Human Rights and international humanitarian law instruments apply in the context of the Arms Trade Treaty, as appropriate.*
- d. *States Parties and all interested stakeholders are encouraged, where appropriate, to continue and deepen discussions on the role of industry in responsible international transfers of conventional arms and share their experiences and practices of effective measures including*

¹ Working Paper submitted by the CSP9 President "The Role of Industry in Responsible International Transfers of Conventional Arms" ([ATT/CSP9/2023/PRES/766/Conf.WP.Ind](#)).

² Joint working paper submitted by Austria, Ireland and Mexico "Responsible Business Conduct and the Arms Trade Treaty" ([ATT/CSP9/2023/AUT-IRL-MEX/774/Conf.WP](#)).

³ Final Report of the Ninth Conference of States Parties ([ATT/CSP9/2023/SEC/773/Conf.FinRep.Rev2](#)), paragraph 22.

existing processes, guidance and related materials, and written guidance materials relating to national efforts to ensure industry awareness and compliance with national transfer control systems.

- e. *States Parties are encouraged to take necessary steps to ensure that industry and private sector entities operating under their national jurisdiction conduct their business consistent with the object and purpose of the Treaty.*
- f. ***The Conference calls on working group chairs to allocate time in their meetings, as appropriate, to discuss the role of industry in responsible international transfers of conventional arms, and to report to the CSP, and for CSP Presidents to dedicate time at the CSP for discussion of the issue.***
- g. ***States Parties are encouraged to develop, as a living document to be reviewed and updated regularly, as appropriate, a list of possible reference documents pertaining to responsible business conduct with respect to international trade in conventional arms to be considered by States Parties, for ensuring industry compliance with national control systems to implement the ATT and conduct responsible international transfers of conventional arms. Such documents could also contain possible reference documents that provide guidance and support to industry efforts to conduct risk assessments taking into consideration ATT Articles 6, 7(1), 7(4), and 11(2).***
- h. ***States Parties, the ATT Secretariat and other interested parties are encouraged to invite representatives of industry and private sector entities engaged in the international arms trade to share information that may support effective treaty implementation as well as developments in the field of conventional arms and conventional arms trade during CSP working group sessions, preparatory meetings, and side events, as appropriate, including concrete steps and human rights due diligence (HRDD) processes implemented by industry that contribute to supporting ATT implementation.***

6. It is noted that a number of concrete issues were also addressed by a panel during the thematic discussion on the role of industry at CSP9.⁴ These included engaging industry at the national and the ATT level, national outreach tools to raise awareness and ensure compliance among industry actors, the benefits of involving industry actors in ATT meetings (about Treaty implementation) and facilitating their compliance with arms transfer regulations, and raising awareness and ensuring compliance with the UN Guiding Principles on Business and Human Rights (UNGP).

7. Some of the issues raised during the panel discussion for further attention were eventually included in the above mentioned CSP decision. This included exchanging of information and good practice with regard to risk assessment and human rights due diligence policies and processes to reflect ATT regulations in national guidelines for industry actors, as well as existing guidance, awareness-raising and training programs of industry trade organisations and international organisations.

8. Prior to CSP9, the Conference did not take any specific decision or provide any specific recommendation regarding the role of industry, but included industry among other non-state actors in some recommendations. At CSP5, for example, the Conference encouraged industry, next to States Parties and civil society organizations “to share with CSPs policies and practices they have adopted to

⁴ The Republic of Korea gave a presentation about “The ROK’s Approach on Engaging Industry in Arms Trade”. Romania gave a presentation about “Outreach to Industry: The Romanian experience”. A representative of Rolls-Royce gave a presentation about “The Arms Trade Treaty. An Industry View”. A representative of the Maritime Council gave a presentation about “Maritime Industry Support to ATT Implementation and Universalization”. A representative of the University of Washington gave a presentation about “Responsible Business Conduct in the Arms Sector. Ensuring Business Practice in Line with the UN Guiding Principles on Business and Human Rights”. These presentations are available on the ATT website at <https://www.thearmstradetreaty.org/presentations-csp9>.

achieving greater gender balance, when appropriate during formal sessions or side events”.⁵ At CSP7, regarding the functioning of the Diversion Information Exchange Forum (DIEF), the Conference named industry, next to civil society and academia, as non-state actors which States Parties are recommended to expand cooperation with in the context of investigating, establishing, identifying and/or addressing cases of diversion and presenting them in the DIEF.⁶

Overview of the existing body of work within and outside the ATT process

Within the ATT process

9. Within the ATT process, the role of industry has not been covered as a stand-alone topic until the CSP9 cycle, but it has been addressed in discussions about broader topics of Treaty implementation, most notably diversion, transit and trans-shipment and reporting.

10. Concerning diversion, the former Sub-working Group on Article 11 discussed the role of the private sector in preventing diversion in all stages of the transfer chain, focusing on its role in import documentation and in mitigating diversion risk before the transfer, during the transfer and at or after importation (post-delivery).⁷ These discussions are also reflected in the outcome documents of the Sub-working Group on Article 11, most notably the document “Possible measures to prevent and address diversion”, and its Annex with operational steps for the introduction and implementation of post-shipment control.⁸ Reference can further be made to the background paper on the role of transit and transshipment states in preventing diversion, which was presented in the Sub-working Group on Article 11 and which also includes possible measures towards the private sector.⁹ As an example, one of these measures concerned “*Awareness-raising and due diligence requirements towards freight forwarders, shipping agents, customs agents and carriers etc., to help them become partners in preventing or detecting diversion: E.g., a prior authorization requirement for service providers that want to handle transit operations involving the transport of arms*”.

11. Concerning transit and trans-shipment, the former Sub-working Group on Article 9 discussed the role of the private sector in the transit and trans-shipment of arms, focusing on: i) carriers and transport service providers; ii) customs brokers, customs agents, and clearing agents; iii) freight forwarders; and iv) shipping agents. The discussions about the topic are reflected in the Voluntary Guide to implementing Article 9, which includes a section dedicated to the role of the private sector.¹⁰ In its conclusion, the Voluntary Guide also emphasizes that when cross-cutting issues such as enforcement and international cooperation are further discussed in the ATT framework, not only transit and trans-shipment need to remain an important focus of attention, but also the relevant private sector actors need to be involved (referring to the abovementioned types and their representative organisations).

⁵ Final Report of the Fifth Conference of States Parties ([ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1](#)), paragraph 22 (a)(iii).

⁶ Final Report of the Seventh Conference of States Parties ([ATT/CSP7/2021/SEC/681/Conf.FinRep.Rev1](#)), paragraph 28 (g).

⁷ See in that regard the the multi-year work plan for the WGETI Sub-working Group on Article 11, available in the *Tools and Guidelines* section of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>.

⁸ This document is available in the *Tools and Guidelines* section of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>.

⁹ See Attachment 2 of Annex C to the WGETI Chair Letter and Sub-Working Group documents for the WGETI 15-16 February 2022 (CSP8) meeting ([ATT/CSP8.WGETI/2022/CHAIR/713/M1.LetterSubDocs](#)).

¹⁰ The Voluntary Guide to implementing Article 9 is available in the *Tools and Guidelines* section of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>.

12. Concerning reporting, during the CSP5 cycle, the Working Group on Transparency and Reporting briefly addressed the role of industry when that Working Group explored the contribution that arms exporters and importers could make to facilitate a State Party's annual reporting obligation (via record-keeping and reporting to the competent authority).¹¹

13. The aforementioned Working Paper of the CSP9 President on "The Role of Industry in Responsible International Transfers of Conventional Arms" itself also highlighted a number of documents that were developed within the ATT process in its list of possible documents to be considered by States Parties for ensuring industry compliance with national control systems to implement the ATT and conduct responsible international transfers of conventional arms.¹²

14. Beyond these earlier discussions and existing documents, some further work that is envisaged for the CSP10 and future CSP cycles also address the role of industry. Draft Chapter 3 of the proposed Voluntary Guide to implementing Articles 6 & 7 that is under consideration in the dedicated Sub-working Group addresses the role of industry incidentally in the section on the application of mitigating measures. More importantly, the abovementioned adopted proposal on the WGETI configuration and substance foresees "General Regulation of role players" as one of phases/stages of Treaty implementation on which the Sub-working Group on exchange of national implementation practices will conduct structured discussions on national implementation measures and exchanges on national implementation experiences. In that respect, that Sub-working Group will hold a general exchange of national practices on role players and link up with the specific recommendation of the CSP9 to share experiences and practices of existing processes, guidance and related materials, and written guidance materials relating to national efforts to ensure industry awareness and compliance with national transfer control systems. It is nevertheless noted that it is *not* the purpose of the foreseen exchanges to conduct in-depth discussions on specific issues in that context but rather to share national practices.

Outside the ATT process

15. For a non-exhaustive overview of the of the existing body of work *outside* the ATT process, the aforementioned list in the working paper of the CSP9 President on the role of industry is also a reference point. Next to potentially relevant documents developed within the ATT process, the list refers to documents of States Parties, the UN, regional organisations and other multilateral organisations/mechanisms and non-governmental organisations. Substantively these documents deal with: i) guidance on industry compliance with export control regulations and the establishment of Internal Compliance Programmes; and ii) human rights due diligence.

16. In respect of the latter, the list firstly refers to the UNGP themselves and related UN documents. This includes the Information Note that was prepared by the Human Rights Council's Working Group on Business and Human Rights "about *Responsible business conduct in the arms sector: Ensuring business practice in line with the UNGP*", which was also presented during the thematic

¹¹ See in the regard, inter alia, the presentation by Stimson Center about "The ATT, Industry, and Reporting", available at <https://www.thearmstradetreaty.org/hyper-images/file/STOHL%20Industry%20and%20ATT%20presentation%20to%20present%204%20April/STOHL%20Industry%20and%20ATT%20presentation%20to%20present%204%20April.pdf>.

¹² Next to the aforementioned document "Possible measures to prevent and address diversion", the annex refers to the "List Of Possible Reference Documents To Be Considered By States Parties In Conducting Risk Assessment Under Article 7", the "List Of Possible Reference Documents To Be Considered By States Parties To Prevent And Address Diversion" and "Possible Voluntary Guiding And Supporting Elements In Implementing Obligations Under Article 6 (1)". These documents are all available in the *Tools and Guidelines* section of the ATT website: <https://www.thearmstradetreaty.org/tools-and-guidelines.html>.

discussion on the role of industry at CSP9 (cf. paragraphs 5 and 6).¹³ The Information Note addresses the ATT as the main multilateral instrument in the arms sector regulatory framework and recommends all UN Member States to adhere to the Treaty. It also addresses challenges concerning the ATT from the human rights due diligence perspective in terms of political will and comprehensiveness of the regulatory framework. More generally, the Information Note includes an overview of the arms sector regulatory framework, current shortcomings of States and businesses and a list of recommendations to States, businesses and business associations, outlining “*best practices [...] to ensure that exports of arms sector products and services do not infringe upon human rights protections, by way of implementation of the Guiding Principles*”. Also most of the documents of non-governmental organisations in the list deal with human rights due diligence, unpacking relevant concepts and their implementation, giving an overview of industry compliance and providing guidance to the defence industry on how to apply human rights due diligence. It is noted that while the list and the documents included focus on human rights, in situations of armed conflict industry actors also need to respect the standards of international humanitarian law (as briefly acknowledged in the UNGP). In that respect, as a reference document, mention can be made of the ICRC brochure on “*Business and international humanitarian law*”.¹⁴

17. In this context, mention also needs to be made of the attention of the UN Human Rights Council to the impact of arms transfers on human rights and the related resolutions and reports from the Office of the UN High Commissioner for Human Rights (OHCHR). In its most recent resolution on the topic, the Human Rights Council “*requests the Office of the High Commissioner to organize a full-day intersessional workshop to hold stocktaking discussions on the role of States and the private sector in preventing, addressing and mitigating the negative human rights impact of arms transfers, including the diversion of arms and unregulated or illicit arms transfers, to be held before the fifty-seventh session of the Human Rights Council and open to the participation of States, relevant treaty bodies and mandate holders and members of academia, civil society and other relevant stakeholders, to inform the preparation of a report on gaps and future steps on the subject, to be presented to the Council at its fifty-eighth session*”.¹⁵

Proposed issues for further discussion

18. In line with the purpose of this Sub-working Group and taking into account the recommendations of the CSP9, as well as the anticipated general exchanges in the Sub-working Group on exchange of national implementation practices, it is proposed that this Sub-working Group takes up two concrete issues which flow from the CSP9 recommendations on the role of industry and the CSP9 discussions on the topic.

19. The first issue concerns the application of the UN Guiding Principles on Business and Human Rights (UNGPs) and human rights and IHL due diligence in general in the context of ATT implementation and States’ national arms transfer control systems. During the CSP9 cycle discussion on the role of industry and the UNGPs, it was clear that there are questions that still remain about the UNGPs, human rights and IHL due diligence, such as:

¹³ The Information Note is available at <https://www.ohchr.org/en/documents/tools-and-resources/responsible-business-conduct-arms-sector-ensuring-business-practice>.

¹⁴ ICRC, “Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises Under International Humanitarian Law”, 2006, available at https://www.icrc.org/en/doc/assets/files/other/icrc_002_0882.pdf.

¹⁵ Resolution A/HRC/53/L.22 of 10 July 2023, available at <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F53%2FL.22&Language=E&DeviceType=Desktop&LangRequested=False>.

- i) what is the scope and legal status of the UNGP;
- ii) how do the human rights and IHL due diligence responsibilities of industry actors relate to the requirements that States impose on industry actors in their arms transfer laws and regulations;
- iii) what are the distinct responsibilities of industry actors beyond their compliance with general arms transfer requirements;
- iv) what are the duties of States to ensure that industry actors respect human rights and IHL;
- v) what should States require from industry actors in addition to or as part of their arms transfer controls; and
- vi) how could States use the instruments they use to ensure industry compliance with arms transfer controls to also ensure industry compliance with their human rights and IHL due diligence responsibilities, both in terms of legal requirements as outreach tools?

20. To continue this discussion within the ATT process is also significant considering that several other international fora are working on human rights due diligence – including on initiatives – with some addressing arms transfers in that context, in particular the UN Human Rights Council and its Working Group and Forum on Business and Human Rights (cf. paragraph 16). In that respect, exploring this issue within the ATT process, among experts of States Parties and other stakeholders who are directly involved in arms transfer controls, is crucial to obtain an understanding of how the UNGP and human rights and IHL due diligence can be successfully integrated in States’ practical implementation of the Treaty and national arms transfer controls. Delegates in the ATT process should be able to identify how States’ arms transfer controls could contribute to ensuring industry’s compliance with their distinct responsibility to respect human rights and IHL.

21. To explore the issue in-depth, it is relevant for the Sub-working Group to hear from a variety of actors, in particular: i) States Parties that have actually integrated the UNGP or human rights and IHL due diligence more generally in their arms transfer controls; ii) industry actors who effectively apply the UNGP or human rights and IHL due diligence more generally in their arms transfer activities (or have taken any measures to prevent or mitigate the human rights impact of transferred arms); iii) representatives of industry organisations that have developed guidance on human rights and IHL due diligence; and iv) representatives from other international fora in which human rights and IHL due diligence and arms transfers has been discussed. To initiate this discussion, the Facilitator of the Sub-working Group, in consultation with the WGETI Chair and the ATT Secretariat, has reached out to a number of actors and requested them to provide interventions and/or presentations on this issue.

22. The aim of the discussion will be to answer the questions set out in paragraph 19, to increase the understanding of what the UNGP and human rights and IHL due diligence require, what this entails for States Parties in their practical implementation of the Treaty and how they their arms transfer controls can contribute to ensuring industry compliance with their human rights and IHL due diligence responsibilities. In addition, the discussion should also help States Parties to assess whether it could be appropriate and feasible to use the ATT process to, in the medium term, develop any voluntary guidance for States Parties and/or industry actors. In that regard, the discussion might also be able to address some of the recommendations in the Information Note of the UN Working Group on Business and Human Rights mentioned above.

23. The second concrete issue that could be discussed in this Sub-Working Group concerns the integration of compliance with arms transfers control regulations in existing guidance, awareness-raising and training programs/documentation for the different types of industry actors that are involved arms transfer activities, focusing on programs of industry trade organisations and international organisations for logistical actors such as carriers, freight forwarders, shipping agents and customs service providers. This issue concerns a specific aspect of ensuring industry actors compliance with arms transfer controls, which was suggested in the CSP9 cycle discussions and links up with the CSP9 recommendation to “*share experiences and practices of effective measures including existing processes, guidance and related materials, and written guidance materials relating to national efforts to ensure industry awareness and compliance with national transfer control systems*”, as it complements the proposed general exchange of national practices about the regulation and awareness-raising of role players in the Sub-working Group on exchange of national implementation practices. A discussion on this issue would also be in line with recommendations that were made in the former WGETI Sub-working Groups on Article 9 (transit and trans-shipment) and Article 11 (diversion) when discussing the role of the private sector, as described above in paragraphs 9 to 11.

24. Important to mention is that these recommendations were made in the first place to competent national authorities, to work on such instruments at the national level, in cooperation with industry actors and their representative organisations in their State. This is logical, as the implementation of the Treaty is first and foremost a matter for States and the Treaty allows substantial flexibility to States as to which specific control measures they provide to regulate the different types of transfers (as well as how to enforce those). Nevertheless, elements such as awareness-raising about the basic requirements of arms transfer controls in reference to the Treaty (e.g. possible authorization requirements and related documentation), general instructions to share key information about arms shipments to the competent national authorities to support the authorities detecting and intercepting unauthorized and illicit transfers, and red flags that point to potentially illicit transfers (e.g. embargoed destinations) in transnational programs/documentation remain relevant, regardless of the specific national arms transfer laws and regulations the industry actors in question are required to comply with.

25. To explore this issue in-depth, it would be relevant for the Sub-working Group to hear about programs/documentation of industry trade organisations and international organisations that already includes arms transfer-related awareness-raising, guidance and/or training as well as programs/documentation that do not, but where this could be appropriate and feasible. For this purpose, in terms of actors, it is reiterated that the abovementioned Voluntary Guide to implementing Article 9 already made mention of a number of relevant international and industry trade organisations and others were mentioned during the CSP9 discussions.¹⁶

26. The aim of the discussion would be to understand the nature and scope of existing programs/documentation, and whether and how compliance with arms transfer control regulations could be integrated or further elaborated in a manner that supports industry actors’ compliance with arms transfer controls and increases their accountability. In addition, the discussion could also help States Parties to assess whether it could be appropriate and feasible for the ATT process and the WGETI

¹⁶ Relevant examples given included [World Customs Organisation \(WCO\)](#), [Interpol](#), the [UN Office on Drugs and Crime \(UNODC\)](#), the [World Shipping Council](#) the [International Air Transport Association \(IATA\)](#), the [International Maritime Organization \(IMO\)](#) and the related [World Maritime University \(WMU\)](#) (the latter provided in the CSP9 presentation by the [Maritime Security Council](#)). Other possible examples of logistical industry trade organisations include the [Federation of National Associations of Ship Brokers and Agents \(FONASBA\)](#), the [Worldwide ship Agencies Association \(WWSA\)](#), the [International Federation of Freight Forwarders Associations \(FIATA\)](#), the [International Forwarding Association](#) and [Global Logistics Associates](#).

to have a role in developing, in the medium term, any voluntary guidance for States Parties and/or industry actors within the ATT process.

27. **For this second issue, the Facilitator has not yet reached out to any of the actors who the Sub-working Group could potentially involve if it effectively takes up this issue. The Facilitator will first seek the views of delegations if they consider it fitting and pertinent to explore this issue within the ATT process moving forward. At the same time, the Facilitator will also provide the opportunity to delegations to: i) raise any other issue regarding the role of industry on which they seek a discussion in this Sub-Working Group or achieve a possible outcome; and ii) share any information, good practices or developments regarding industry actors which may support effective Treaty implementation.**

THE RISK OF CONVENTIONAL ARMS BEING USED FOR GBV OR VIOLENCE AGAINST WOMEN AND CHILDREN

Decisions and recommendations of CSP9 (and earlier CSP's)

28. Several CSP's have taken decisions and provided recommendations concerning GBV and violence against women and children. Most recently, at CSP9, the Conference decided to:¹⁷

- *Encourage States Parties to keep the risk of conventional arms being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children as an important topic of attention and to initiate the discussion and exchange of information and good practices on this topic in the CSP10 cycle.*
- *Take note of working papers presented in this regard by Argentina and by Mexico, Spain and Small Arms Survey.*

29. Prior to CSP9, gender and gender-based violence was the priority theme of the CSP5 President. The discussions on the topic during the CSP5 cycle led to a working paper of the CSP5 President that was considered at CSP5 and to the following decisions:¹⁸

On Gender-based violence (GBV) risk assessment criteria, the Working Group on Effective Treaty Implementation should consider the following issues in conjunction with other relevant elements to enhance States Parties' ability to implement Articles 6 and 7:

- *Encourage discussion on States' practice in interpreting the language and standards entailed in Article 7(4), including "serious", "facilitate" and "overriding" risk, in order to assist States Parties in considering GBV issues in implementing the Treaty.*
- *Encourage States Parties to provide information on their national practices relating to "mitigating measures" in the context of Article. 7(4): what these can be and how they are implemented.*

¹⁷ Final Report of the Ninth Conference of States Parties ([ATT/CSP9/2023/SEC/773/Conf.FinRep.Rev2](#)), paragraph 24 (g).

¹⁸ Working Paper submitted by the CSP5 President "Gender and Gender Based Violence" ([ATT/CSP5/2019/PRES/528/Conf.GenderGBV](#)). Final Report of the Fifth Conference of States Parties ([ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1](#)), paragraph 22 (c). Concerning the broader theme of gender, the Conference also took decisions on issues related to representation and participation in future CSP meetings, and on increasing understanding of the gendered impact of armed violence in the context of the ATT. Under the latter heading, the Conference encouraged State Parties, *inter alia*, "to collect gender disaggregated data within their national crime and health statistics, including gender disaggregated data on victims of armed violence and conflict, and make this data publicly available".

- *Encourage States Parties to provide information on their national practices in GBV risk assessment in order to facilitate learning between States Parties.*
- *Elements for a voluntary training guide to assist States Parties on the issues of GBV, including best practices for risk assessment, should be developed with voluntary funding, and with the participation of all stakeholders.*

30. Next to CSP5 and CSP9, the Conference also addressed GBV at CSP7. In the context of the CSP7 President's priority theme "Small Arms and Light Weapons and Stockpile Management", the Conference encouraged States Parties "to provide information on their national practices relating to "mitigating measures" in the context of Article 7(4) on GBV prevention, including related to stockpile security: what these can be and how they are implemented."

Overview of the existing body of work within and outside the ATT process

Within the ATT process

31. GBV and violence against women and children has been widely discussed in the WGETI, not only in line with the aforementioned CSP decisions and recommendations on the topic, but also through several documents presented by States Parties and other ATT stakeholders. These include those explicitly mentioned in the CSP9 Final Report, as well as others presented in the WGETI as from the CSP3 cycle.

32. As the provision about GBV and violence against women and children is included in Article 7 of the Treaty, the topic had been discussed extensively in the Sub-working Group on Articles 6 & 7 since CSP4, partly on the basis of specific questions in the multi-year workplan of that Sub-working Group. In that regard, the proposed Voluntary Guide to implementing Articles 6 & 7 that is under consideration also addresses the Treaty provision regarding GBV and violence against women and children at length, especially in its draft chapter 1 and in the draft elements for Chapter 3 that will be discussed in the Sub-working Group on Articles 6 & 7. Any proposal for further ATT guidance on the implementation and application of Article 7 (4) will therefore need to take into account the proposed Voluntary Guide to implementing Articles 6 & 7, and must be substantively consistent with its content as well as avoid duplication (as is also emphasized in the draft elements for Chapter 3).

Outside the ATT process

33. In terms of the existing body of work outside the ATT process, an abundance of guidance documents about the interpretation and implementation of the Treaty's GBV provision is available, mostly of civil society organisations. In that regard, during the discussions about GBV and violence against women and children, as well as mitigating measures, in the Sub-working Group on Articles 6 & 7, Control Arms, the ICRC and Small Arms Survey provided expert presentations in reference to their guidance on the topic.¹⁹ In those discussions, reference was also made to several other guidance documents, as recorded in paragraph 60 (and footnote 38) of the abovementioned draft elements for

¹⁹ Control Arms, "How to use the Arms Trade Treaty to address Gender-Based Violence: A Practical Guide for Risk Assessment", 2018, 17, available at https://controlarms.org/wp-content/uploads/2018/08/GBV-practical-guide_ONLINE.pdf; ICRC, "International Law and Gender-Based Violence in the Context of the ATT", 2019, available at <https://www.thearmstradetreaty.org/hyper-images/file/CSP5%20-%20working%20paper%20-%20GBV%20and%20IHL/CSP5%20-%20working%20paper%20-%20GBV%20and%20IHL.pdf>; and Small Arms Survey, "At Whose Risk? Understanding States Parties' Implementation of Arms Trade Treaty Gender-based Violence Provisions", available at <https://www.smallarmssurvey.org/resource/whose-risk-understanding-states-parties-implementation-arms-trade-treaty-gender-based>.

Chapter 3 of the proposed Voluntary Guide to implementing Articles 6 & 7.²⁰ As indicated in the draft elements, also these documents should be taken into account if further ATT guidance is considered.

Proposed issues for further discussion

34. As the CSP9 encouraged States Parties explicitly “to initiate the discussion and exchange of information and good practices on this topic *in the CSP10 cycle*”, this Sub-working Group will provide the opportunity to do so, while taking note of the extensive discussions and guidance described in the previous section. As a starting point, the Sub-working Group will further consider the working papers that were presented by Argentina and by Mexico, Spain and Small Arms Survey in the CSP9 cycle, both of which were explicitly taken note of by the CSP9.

35. Concerning the working paper by Argentina, the Sub-working Group is reminded of the suggested course of action in the paper. Argentina prepared a questionnaire, aiming to gather voluntary information from States parties about their national, including data-gathering and data disaggregation of crimes relevant to the gender and GBV discussion. This questionnaire was circulated by the ATT Secretariat to States Parties. Argentina aims to use the information obtained through the questionnaire as input to the preparation of a possible “*Guide to Good Practices for arms control for the prevention of gender-based violence*”. In addition, Argentina proposed that the information would be published on the ATT website, on a voluntary basis and to the extent that technical capabilities allow, so that States Parties could have access.

36. In line with the overall aim of this meeting of the new Sub-working Group, to delineate its further work, in the meeting, the Facilitator will give Argentina the opportunity to brief the Sub-Working Group on the results of its questionnaire so far and the feasibility of developing the proposed good practices guide. The Facilitator will subsequently invite the views of delegations on the proposed course of action. The Facilitator will also give Mexico, Spain and Small Arms Survey the opportunity to present how they see the policy recommendations contained in their working paper aligning with the course of action proposed by Argentina. Finally the Facilitator will seek the views of delegations whether the Sub-working Group should still address other specific aspects of the risk of conventional arms being used for GBV or violence against women and children. The Facilitator will also provide the opportunity to delegations to share any information or good practices about this topic, which they want to share at this time.

37. In reflecting about further work on this topic, as indicated above, it is important that the proposed discussions and possible outcomes focus entirely on issues within the scope of the ATT, i.e. international transfers of conventional arms and related items and the risk of those being used to commit or facilitate serious acts of GBV or serious acts of violence against women and children. In that respect, the Sub-working Group should not duplicate the work of other international fora dealing with issues of GBV violence against women and children such as working groups in the context of the UN

²⁰ In addition to those previously mentioned, these were: Control Arms, “ATT Gender Action Plan: Operationalizing CSP5 Decisions on Gender and Gender-based Violence”, 2022, available at <https://controlarms.org/wp-content/uploads/2022/08/Control-Arms-Gender-and-GBV-Methodology.pdf>; Women’s International League for Peace and Freedom (WILPF), “Preventing gender-based violence through arms control: tools and guidelines to implement the Arms Trade Treaty and UN Programme of Action”, 2016, available at <http://reachingcriticalwill.org/images/documents/Publications/preventing-gbv.pdf> and WILPF, “Preventing Gender-Based Violence through Effective Arms Trade Treaty Implementation”, 2017, available at <http://reachingcriticalwill.org/images/documents/Publications/preventing-gbv-summary.pdf>.

Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.²¹ In addition, when considering the feasibility of WGETI to take on the development of the proposed good practices guide, delegations should also take into account the above-mentioned existing body of work and be careful not to engage in an exercise that might create new norms and standards, establish an agreement on a single interpretation of the obligation in Article 7 (4), or reinterpret established definitions.

CURRENT AND EMERGING TREATY IMPLEMENTATION ISSUES PROPOSED FOR DISCUSSION

38. The following current and emerging Treaty Implementation issues were proposed by States Parties and other stakeholders for discussion in the 21 February meeting of the Sub-working Group on current and emerging implementation issues:

- a. Impact of arms transfers on the Israel – Palestine conflict, proposed by the State of Palestine as well as Control Arms.

39. The explanatory memoranda that accompanied the proposals are attached to this working document.

²¹ See in that regard <https://www.unodc.org/unodc/en/organized-crime/intro/COP/working-groups.html>.

State of Palestine

Permanent Observer Mission to the United Nations

Geneva



دولة فلسطين

البعثة الدبلوماسية لدى الأمم المتحدة

جنيف

Geneva 10 January 2024

The Permanent Observer Mission of the State of Palestine to the United Nations Office and other international organisations in Geneva presents its compliments to the Secretariat of the Arms Trade Treaty and has the honour to propose the following Treaty implementation issue for an ad hoc discussion during the Working Group on Effective Treaty (WGETI) Implementation meeting on 20-21 February 2024: **“Upholding legal obligations under the ATT: The case of the Palestinian people”**.

We are including the following explanatory memorandum in our proposal to enable preparation by delegations.

Objectives:

The ad hoc discussion will focus on the extent to which ATT States Parties and Signatories have implemented or abided by the legal provisions of the ATT, particularly Articles 6 and 7, in relation to the trade of arms used to commit serious violations of international law by Israel, the occupying Power, against the Palestinian people and perpetuate their occupation. They will address these issues from a legal perspective and by drawing on lessons from relevant historical experiences. The topic hopes to spark a discussion on options for enhanced cooperation to prevent and more effectively combat the irresponsible trade of conventional arms with Israel and increase adherence to international legal frameworks.

Context:

Gaza, a besieged occupied enclave of Palestinian land of 365 square kilometers, is one of the most densely populated places on Earth. 2.3 million people live there—50% of them children, 70% of them refugees. Over the past two months, Israel, the occupying Power, has unleashed in Gaza the most sustained and intense bombing campaign of a populated area in history.

Relentless bombardment has been accompanied by a ground invasion, and by Israel shutting down all exits from Gaza, cutting off food, water, fuel, gas, electricity and, on several occasions, telecommunications, from the civilian population. More than **22,800** Palestinians have been killed; more than **9,600** of them are children; **73%** of them are children, women and the elderly. This does not include more than **7,000** Palestinians who are still missing, buried under the rubble. **142** United Nations Staff—the highest number of UN fatalities recorded in a single conflict—other humanitarian aid workers, more than **300** medical personnel and more than **85** journalists and media workers have been killed. **85%** of Gaza’s population has been forcibly displaced from their homes since the aggression began. More than **58,400** Palestinians have been injured.

Residential areas including refugee camps, apartment buildings, hospitals and schools, as well as ambulances, bakeries, mosques and churches have been directly targeted. **60%** of all residential units in Gaza have been destroyed or damaged, and **23 of 36** hospitals rendered non-functional.

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State of Palestine

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Geneva



دولة فلسطين

البعثة الدبلوماسية الدائمة لدى الأمم المتحدة

جنيف

Since 7 October 2023, Israel has also escalated its aggression against the Palestinian civilian population in the West Bank, including East Jerusalem, where more than **330** Palestinians, including **83** children, have been killed by Israeli occupation forces and armed settlers. Israel has provided arms to thousands of illegal settlers in the West Bank, and settler terrorism has increased dramatically, leading to the depopulation of several Palestinian villages and communities.

Findings that Israel has committed grave breaches of international law have been made by numerous United Nations experts, civil society organisations and international lawyers worldwide. These violations were facilitated with the use of a wide range of imported weapons, aircrafts, and other equipment. In light of the foreseeable possibility that arms and military items imported by Israel might be used to perpetuate international crimes in occupied Palestine, the State of Palestine considers discussion of this topic to be of the utmost urgency.

The Permanent Observer Mission of the State of Palestine avails itself of this opportunity to renew to the Secretariat of the Arms Trade Treaty the assurances of its highest consideration.



His Excellency Christian Guillermet Fernández
Permanent Representative of Costa Rica to the United Nations
Avenue de France 23
1202 Geneva

15 January 2024

Your Excellency,

On behalf of the Control Arms Coalition, I wish to convey my gratitude for Costa Rica's taking on the responsibilities of Chair of the ATT Working Group on Effective Treaty Implementation. At this time when there are significant concerns regarding violations of the ATT's obligations, robust leadership in the work of the Treaty's implementation is much needed. We also welcome the opportunity, as outlined in your letter dated 13 December 2023, to all States Parties, observer States and stakeholders to raise "any current or emerging Treaty implementation issue."

Control Arms has made clear its deep concern at the developments in the Israel - Palestine conflict and the possibility that arms transfers by ATT States Parties and Signatory States could be used in the ongoing violence. Therefore, we believe that it is critical to hold a discussion at the upcoming Working Groups on the impact of arms transfers to this conflict and to invite States Parties and Signatory States to address their approach to transferring arms to this context. Initiating such discussions is vital not only for preserving the credibility of the ATT as a forum to address irresponsible arms transfers, but also for safeguarding the integrity of the Treaty itself.

Yours sincerely,



Hine-Wai Loose
Interim Director, Control Arms