

**Arms Trade Treaty
Working Group on Effective Treaty Implementation
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Food for thought Paper on practical measures to conduct likelihood assessments under Articles 6 and 7 of the Arms Trade Treaty

**Submitted by Switzerland
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Article 6(3) of the Arms Trade Treaty (ATT) provides that “A State Party shall not authorize any transfer of conventional arms [...] if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.” Furthermore, according to Article 7(1), an exporting State Party “shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State [...] assess the potential that the conventional arms or items [...] could be used to [*inter alia*][...] commit or facilitate a serious violation of international humanitarian law [or] a serious violation of human rights law.”

While Article 6(3) requires *knowledge* of the commission of particularly grave offences under international criminal law, Article 7 requires a sufficient degree of likelihood or, in the terms of the treaty, an *overriding risk* that the relevant negative consequences mentioned in paragraph 1 of that article could occur. This two-tiered regime, at each juncture of a national assessment, raises not only questions of legal interpretation but also questions of practical nature. The latter is the focus of this working paper.

The ATT intends, amongst others, to contribute to international peace and security and to reduce human suffering caused by the irresponsible and unregulated arms trade. To achieve these aims, it is important that national agencies tasked with the review of transfers and exports under Articles 6 and 7 can conduct their work with as much accuracy and thoroughness as possible.

The present non-paper offers considerations to support discussions within the Working Group on Effective Treaty Implementation (WGETI) on the obligations stemming from Articles 6 and 7 and the development of concrete practical tools that could be helpful for States in implementing their assessments of arms transfers and exports.

The following indicative questions could lend themselves for further exchange and discussion on practices followed by States Parties in their implementation of Articles 6 and 7:

- What sources, both governmental and non-governmental, can efficiently provide useful information for the assessments required under Articles 6 and 7?
- What sources, both governmental and non-governmental, can efficiently provide useful information on the role of arms in relation to the crimes and negative consequences mentioned in Articles 6 and 7?
- What sources, both governmental and non-governmental, can efficiently provide useful information on the chain of causality between a potential authorization and the subsequent commission of crimes or the occurrence of the negative consequences mentioned in Articles 6 and 7?
- What means are available to ascertain the reliability of information available?
- What is a good practice to follow-up on incomplete information or contradictory information?
- What level of certainty is obtainable?
- What is to be done in light of new relevant information emerging after an authorization?
- How can expertise in human rights law, international humanitarian law, terrorism and organized crime be included assessments?

States could share experiences and lessons learned in how they approach the questions raised above. Possibly, the sub-working group could also benefit from briefings by selected experts. The WGETI could also discuss multi-dimensional approaches that could help States to conduct their assessments, notably linkages to other fields relevant for the implementation of the ATT such as human rights and humanitarian law, development or other arms controls regimes. While this certainly would strengthen the implementation of articles 6 and 7, it would also strengthen the coherence and effectiveness of the ATT regime. Moreover, it would facilitate cooperation, information exchange and international assistance among States Parties. Above all, an exchange and discussion within the WGETI would inform and enhance national decision-making designed to implement articles 6 and 7, acknowledging that available resources may not be unlimited and that there are different ways to approach national assessments.

The WGETI is well placed to provide an overview and discuss experiences in implementing Articles 6 and 7 ATT. In view of the limited time available and the many different aspects that need to be taken into account for effectively implementing Articles 6 and 7, such discussions require a long-term approach. Thus, there would be merit if the WGETI continued to systematically include these articles on its agenda as one of its priority issues.

Moreover, the WGETI could, in accordance with its Terms of Reference,¹ identify priority topics related to the implementation of Articles 6 and 7 for the consideration of the next Conference of States Parties. This would allow for the best possible inclusion and engagement of all States Parties and governmental experts as well as civil society in the discussions within the WGETI and support the identification of next steps.

¹ See Annex A of the Co-chairs' report of 2017, [ATT/CSP3.WGETI/2017/CHAIR/158/Conf.Rep.](#)