Ad Hoc ATT Working Group on Effective Treaty Implementation
Co-chairs' Draft Discussion Paper

Introduction

1.   This discussion paper is presented by the Co-chairs of the Working Group on Effective Treaty Implementation (WGETI) to reflect on the work carried out by the WGETI thus far and to put forward proposals on elements to be considered for future Treaty implementation discussions in the period beyond the Third Conference of States Parties (CSP3). The paper seeks to facilitate discussion on the how the WGETI terms of reference and priority areas for future discussions could be framed for consideration by the CSP3.

Background

2.   The Second Conference of States Parties (CSP2) established an ad hoc open-ended Working Group on 'Effective Implementation of the Arms Trade Treaty' (Working Group on Effective Treaty Implementation; WGETI) with the objective of sharing experiences, challenges and best practices on the national implementation of the Treaty's provisions. The WGETI would convene meetings, with the assistance of the Secretariat, twice per year, or as appropriate, in a public format, that would enable the participation of subject matter experts, as necessary, with the mandate to:

  a. exchange knowledge on the practical issues related to the national implementation of the ATT, including difficulties encountered;

  b. identify priority areas for capacity building and outreach with regard to the implementation of the ATT;

  c. make recommendations and, where possible, elaborate guidance for consideration by all States Parties on the practical national implementation of the ATT in accordance with Articles 5-15 of the Treaty; and

  d. identify priority themes of effective implementation for the up-coming CSP3 (paragraph 27, CSP2 Final Report, ATT/CSP2/2016/5).

3.   Furthermore, CSP2 decided that CSP3 will review the progress made by the WGETI with a view to take a decision on the continuation of its work, e.g. on a permanent basis based on a recommendation prepared by the Chair/s under an agenda item on subsidiary bodies.

Appointment of WGETI Co-chairs

4. On 21 September 2016, the President of CSP3 appointed Ambassador Elayne Whyte of Costa Rica and Ambassador Sabrina Dallafior of Switzerland as Co-chairs of the WGETI.

Preparation for the Work of the WGETI

5. In order to facilitate the work of WGETI, on 06 January 2017, the Co-chairs issued the WGETI Initial Work Plan which, in accordance with its mandate, set out the preliminary work of WGETI. The Initial Work Plan identified possible issues for discussion at the WGETI meetings. On 27 January 2017, the Co-chairs issued a Draft Annotated Programme of Work for the WGETI meeting over the period 06-07 February 2017.

First Meeting of WGETI

6. The WGETI held its first meeting over the period 06-07 February 2017 in Geneva, at the WMO building, the premises of the ATT Secretariat. Over the two days, the WGETI meeting was attended by representatives of 70 States, 3 international organisations and 12 civil society organisations.

7. The purpose of the first meeting of the WGETI was to address, in particular, the first two items of the mandate set forth by CSP2 for the working group, that is 1) *exchange knowledge on the practical issues related to the national implementation of the ATT, including difficulties encountered*; and 2) *identify priority areas for capacity building and outreach with regard to the implementation of the ATT*.

8. The WGETI meeting had five sessions in total, each with a dedicated objective. The first session provided an opportunity for the WGETI to take a general overview of the current status of ATT implementation by States Parties through overview presentations by the ATT Secretariat, experts and practitioners, and civil society. These presentations highlighted implementation trends arising from Initial Reports submitted by States Parties, findings from ATT implementation assistance projects as well as reflections on ATT implementation experience in the field. The second session provided States with an opportunity to share their own experiences of Treaty implementation.

9. The third session explored the implementation obligations under the ATT, with reference to the practical requirements (consideration or steps) for implementing Articles 5 to 13 of the Treaty. The fourth and fifth sessions looked at whether there are priority areas for Treaty implementation and capacity building, that could lead to a logical sequence to the national implementation of the Treaty obligations, or whether some issues are more urgent than others and require early attention. It also provided an initial opportunity for consideration of options available for planning the work of the WGETI in the period running up to CSP3 and recommendations to CSP3 on the future WGETI program and work content.

Exchanges on Treaty Implementation

10. The meeting provided an opportunity for an initial in-depth exchange on Treaty implementation. Meeting discussions underlined the following elements:

     a. Confirmation of the initial assumption that Treaty implementation is a complex subject with diverse approaches and practices. Treaty implementation is a long term endeavour that

requires an adoption of a reasonable level of ambition with clearly defined priorities to be executed over time.

b. For practical purposes, States Parties can be grouped into two broad categories. The first category comprises the States Parties that had national control systems in place before the ATT entered into force, including traditional arms exporters. For the most part, these States can rely on pre-existing structures to implement their Treaty obligations. However, many of the States in this category have had to make minor adjustments to their control systems in order to meet the requirements of the ATT, such as in implementing Articles 6 and 7. Despite their pre-existing control systems, States in this category still face challenges implementing some Treaty provisions, such as import, transhipment, diversion or the application of criteria like gender-based violence.

c. The second category comprises the States Parties that have to build national control systems from the ground up. This is a demanding task, even with external assistance. Taking into account their conventional arms transfer profiles, the national control systems to be established by these States do not need to be as elaborate or sophisticated as those of major exporting States, but must still address the applicable ATT obligations.

d. Irrespective of the category that States Parties can be put in, a general observation to be made is that all States Parties have one or the other Treaty implementation challenge to contend with. There are, however, some Treaty implementation challenges that appear to be common amongst many States Parties and these include, amongst others, challenges relating to arms diversion as well as arms transit and transhipment.

e. A better understanding of the nature and extent of Treaty implementation challenges needs to be developed through the creation of an appropriate forum for such challenges to be articulated and discussed. Preliminary assessment points to a requirement for Treaty implementation discussion to accommodate regional and sub-regional dynamics.

f. Exchanges also underlined the different national approaches adopted by States in Treaty implementation underscoring the principle that no one size fits all in implementing the Treaty. Treaty implementation discussion will benefit from the sharing of various national approaches from which lessons could be learned.

Organization of Work under the WGETI

11.   Guided by the understanding that Treaty implementation is a long term process, the WGETI discussion and exchanges considered both process and substantive aspects of Treaty implementation.

12.   In so far as the process aspects are concerned, the WGETI considered the formalities that need to be addressed to enable the Treaty implementation work beyond CSP3. The establishment by CSP3 of the WGETI as a permanent working group to create a continuous platform for the exchange of views, practices and approaches to Treaty implementation was supported by numerous participants. The WGETI should also provide an opportunity for detailed discussion on various Treaty implementation aspects that require more focused discussions on identified topics, and consideration could be given to the establishment of ad hoc, smaller sub-working groups focused on specific areas. In other words, to balance its work and

create a conducive discussion platform for all States, consideration should be given to the discussion of both specific issues as well as cross-cutting issues.

13.   In so far as the Treaty substance is concerned, the WGETI sought to identify Treaty implementation areas that lend themselves to priority discussion in the period beyond CSP3. In that regard and in view of the complexity of Treaty implementation, the WGETI felt that manageable priorities (specific topics) should be carefully identified for discussion each year. A number of Treaty obligations appeared to enjoy the broad support among participants as priority areas. These include Article 5 obligations, interagency cooperation and communication, transit and transhipment, diversion and record-keeping.

14.   To promote inclusiveness in its work, WGETI participants were of the view that the ATT sponsorship program should be leveraged to ensure as wide a geographical participation as possible. Further to this, WGETI considered the possibility of regionally organized meetings to discuss regional dynamics and synergies.

15.   The WGETI discussions underscored the importance of a carefully crafted set of recommendations to CSP3, by the Co-chairs, articulating the WGETI terms of reference beyond CSP3 as well as priority topics for discussion for the same period.

Conclusion

16.   On the basis of WGETI mandate issued by CSP2 and on the strength of the exchange of views and discussions during the WGETI's first meeting, the WGETI Co-chairs deems it an opportune moment that the WGETI second meeting focus on dealing with the following two issues in particular:

   a.   Possible terms of reference for a permanent WGETI to be established by CSP3, including its mandate, composition and membership, working methods, duration and budgetary implications.

   b.   Possible Treaty implementation priority issues (topics) to be addressed by the permanent WGETI in its work after the Third Conference of States Parties.

17.   Annexes A. and B. to this document have been drafted with a view to inform discussions on the two issues raised above which are considered essential to the work of WGETI in the period after CSP3.

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ANNEX A

CONSIDERATIONS REGARDING POSSIBLE ELEMENTS FOR TERMS OF REFERENCE FOR THE PERMAMENT WORKING GROUP ON EFFECTIVE TREATY IMPLEMENTATION (WGETI)

1.   During the first WGETI meeting, strong support was registered for the establishment of the WGETI on a permanent basis. However, clarity still needs to be established on a number of the WGETI structural elements to be included in any decision by CSP3. These elements include the following:

Mandate

2.   Exchanges during the WGETI first meeting underscored the view that that the permanent WGETI should serve as an ATT platform for the exchange of views, practices and national approaches to Treaty implementation. In terms of mandate, a general sense seemed to prevail during this meeting that the permanent WGETI should notably serve as a platform to:

   a.   Exchange information and challenges on the practical national implementation of the Treaty.

   b.   Address, in detail, specific issues defined as priority areas (topics) to take Treaty implementation forward.

   c.   Address priority areas for capacity building and outreach with regard to the Treaty implementation.

3.   Besides these three elements of the WGETI mandate, delegations may wish to consider the following additional points pertinent to the mandate of the permanent WGETI:

   a.   Whether the permanent WGETI should, in its own right, decide on the Treaty implementation priority areas (topics) to be considered in its deliberations or whether the Conference of States Parties should decide on the priority areas or give guidance thereto.

   b.   Whether the permanent WGETI should, on yearly basis, identify priority areas and themes for discussion for consideration and adoption by the Conference of States Parties.

   c.   Whether the permanent WGETI should make recommendations and, where possible, elaborate guidance on practical national Treaty implementation for consideration and possible adoption by the Conference of States Parties.

Composition and Membership

4.   With respect to the composition and membership of WGETI, consideration could be given to the following elements:

   a.   That, in view of the benefit of inclusiveness and transparency, the permanent WGETI should, as a general rule, be open to participation by States Parties, Signatory States and Observer States, as well as by representatives of civil society and industry.

b. Whether the co-chairs of the permanent WGETI should be appointed by the Conference of States Parties or should be appointed by the President of the Conference of States Parties.

c. Whether, consistent with the views of a number of delegations, an option should be left open for the permanent WGETI to, where necessary, invoke the provisions of Rule 42 (2) of the ATT Rules of Procedure.

Working Method

5. In order to ensure that the permanent WGETI is as effective as practically possible, the following elements could be considered as part of its working method:

a. The permanent WGETI shall operate in accordance with the ATT Rules of Procedures with particular reference to Rule 42 and 43.

b. The permanent WGETI shall hold its meetings on the back of other ATT events in Geneva for cost saving purposes and for ensuring maximum participation. It should be able to leverage the sponsorship programme to ensure as wide and inclusive a participation as possible.

c. To facilitate maximum participation, the meeting format to be adopted by the permanent WGETI shall be informed by the topic to be discussed.

d. To provide for an opportunity for detailed discussion on various Treaty implementation aspects that require experts' participation, the permanent WGETI could consider the establishment of smaller sub-working groups, whether of a thematic or regional nature.

e. Regions or sub-regions that establish independent initiatives or processes to consider or address ATT implementation at the regional level are encouraged to inform the WGETI about their work.

f. Where appropriate and feasible, the permanent WGETI should be able to work informally and intersessionally.

g. Information exchange amongst participants shall be processed through the ATT Secretariat, which shall provide administrative support to the Working Group.

h. The working language of the permanent WGETI shall be English.

Duration

6. In view of the significant Treaty implementation work to be performed at this early stage in the life of the Treaty, the permanent WGETI will have to be active for a number of years. As a consequence of this, the WGETI should be established as a permanent working group whose mandate shall last until such time that it is revoked or adjusted by the Conference of States Parties.

Budgetary Implications

7.   Direct meetings costs, such as for meeting support, technical support and documentation shall be covered by the budget of the Conference of States Parties. Indirect meeting costs, such as travel and accommodation, shall be borne by participants.

**KEY CONSIDERATIONS REGARDING A POSSIBLE WORK PLAN
FOR THE WGETI IN THE POST CSP3 PERIOD**

Priority Issues for Discussion

1.   The permanent Working Group on Effective Treaty Implementation (WGETI) should serve as an ATT platform for the exchange of views, practices and national approaches to Treaty implementation. Discussions during the first WGETI meeting indicated that the permanent WGETI should, within the context of its broad mandate, focus its attention on Treaty implementation priority areas. The following topics were identified as possible priority areas for discussion in the period leading up to the Fourth Conference of States Parties:

    a.   Article 5 obligations (National control system, National Control Lists, Legislative framework, National Competent Authorities and National Points of Contact).

    b.   Interagency cooperation or communication.

    c.   Transit and transshipment.

    d.   Diversion.

    e.   Record keeping.

2.   Delegations may wish to address the following considerations with regard to the identification of Treaty implementation priority areas to be considered by the permanent WGET in the period running up to the Fourth Conference of States Parties:

    a.   Taking into account the Treaty maturity, are there any other Treaty implementation priority topics that should be considered?

    b.   Should the permanent WGETI address all these priorities in parallel or should the priorities be sequenced or be further delineated? If the answer is to the affirmative, what issues should be taken up first?

    c.   How many meetings should the permanent WGETI convene and how long should they be?

    d.   In terms of format of meetings, are there options that could be considered in order to make the permanent WGETI work as efficient as possible? For instance:

        i.   Some of the priority topics for discussion are inclined towards political/diplomatic participation whereas others are inclined towards technical/expert participation. To accommodate these varied participation, should the permanent WGETI, where appropriate, consider the establishment of focused smaller sub-working groups?

ii. Some issues may be of more direct interest and concern to specific regions. How could these dimensions be best integrated in the work of the permanent WGETI?

iii. Are there any other meeting format options that could be considered in order to improve the efficiency of the permanent WGETI?

Exchanges of Information on Implementation

3. Regarding the part of the mandate of the permanent WGETI relating to exchange of information, its agenda may be structured, *inter alia*, with a view to addressing measures that States have to consider or take to implement their obligations under the Treaty. In framing the meetings' agenda, it could be suggested that consideration could be given to the following specific questions with respect to the different provisions:

Article 5	1. What are the elements of a national control system?
	2. What are the considerations for establishing a national control list?
	3. What are the practical considerations for establishing competent national authorities?
Articles 6&7	1. What does a State need to have in place in order to make a licensing decision?
Article 8	1. What mechanisms and structures does a State need to have in place to exchange information on licensing decisions?
	2. What measures does a State need to take to regulate the import of conventional arms?
Article 9	1. What measures does a State need to take to regulate the transit and transhipment of conventional arms?
Article 10	1. What measures does a State need to take to regulate the brokering of conventional arms?
	a. What is needed to establish a registration system for brokers?
	b. What is required to establish and operate a process/mechanism for requiring brokers to obtain written authorization before engaging in brokering?
Article 11	1. What are the elements a State will need to have in place in order to prevent diversion?
	2. What are the elements a State will need to have in place in order to detect diversion?

	3.	What mechanisms and structures does a State need to have in place to exchange information on diversion?
Article 12	1.	What is required to keep records of export authorizations/actual exports?
	2.	What is required to keep records of imports?
	3.	What is required to keep records of conventional arms that transit/transship through a State?

4.   Delegations may wish to consider whether the permanent WGETI would benefit from relying on such a structured approach.

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