

**ATT WORKING GROUP ON EFFECTIVE TREATY IMPLEMENTATION
CHAIR'S SUMMARY REPORT 02-03 APRIL 2019 MEETING
AND WAY FORWARD**

INTRODUCTION

1. The Fourth Conference of States Parties (CSP4) of the Arms Trade Treaty, held in Tokyo on 20-24 August 2018, considered the report of the Chair of the Working Group on Effective Treaty Implementation (WGETI). It endorsed the conclusions and recommendations of the WGETI report, which 1) note the value of the establishment of Sub-working Groups in order to conduct targeted work and produce concrete results; and 2) underline that the work undertaken in 2018 on three priority issues (Articles 5, 6 and 7 as well as 11) requires further attention.

WGETI SUB-WORKING GROUPS

2. After careful consideration and guided by decisions of CSP4, the Chair of the WGETI decided to focus work until CSP5, first and foremost, on the three priority issues to be addressed in three Sub-working Groups listed below:

- a. Article 5 (General Implementation) facilitated by Mr. Leonard TETTEY of Ghana.
- b. Articles 6 (Prohibitions) and 7 (Export and Export Assessment) facilitated by Mr. Daniel NORD and later Mr. Ulf LINDELL of Sweden.
- c. Article 11 (Diversion) facilitated by Ms. Samantha ALLEN of Jamaica.

MEETINGS OF THE WGETI SUB-WORKING GROUPS

3. The WGETI Sub-working Groups held their first set of meetings from 29-30 January 2019 in Geneva, at the WMO Building. The WGETI meeting was attended by representatives of 60 States, 2 international organisations, 1 regional organisation, 24 civil society organisations and 3 industry organisations. A summary of this meeting was circulated to all ATT stakeholders on 21 February 2019.

4. The WGETI Sub-working Groups held their second set of meetings from 02-03 April 2019 in Geneva, at the Centre International de Conférences Genève (CICG). The WGETI meeting was attended by representatives of 75 States, 3 international organisations, 1 regional organisation, 19 civil society organisations and 5 industry organisations.

5. The WGETI Sub-working Groups' second set of meetings considered the work plans developed by the Facilitators setting out the aims and objectives of each of the Sub-working Groups, including a description of the key issues to be addressed and a list of guiding questions designed to guide discussions.

6. In general, the WGETI Sub-working Groups second set of meetings were characterized by active participation by numerous delegations from diverse backgrounds.

SUB-WORKING GROUP ON ARTICLE 5

7. Basic Guide. The meeting of the Sub-working Group on Article 5 reviewed the new draft section of the *Basic Guide to Establishing a National Control System* on record-keeping. The United Kingdom and Australia gave presentations on their record-keeping systems for exports and imports respectively. Many interventions were delivered from the floor on the different approaches taken and systems in place at the national level. Interventions were also made by States that have not yet established record-keeping systems and are looking for guidance on how to do so.

8. The discussions touched on issues of electronic record-keeping and options made possible by modern technology, including e-licensing. The discussions also acknowledged the relationship between the record-keeping obligations in Article 12 and the reporting obligations in Article 13, while confirming that this, of course, is not the only purpose of record-keeping under the Treaty, which has an important role to play in tracing and diversion detection and prevention.

9. Participants welcomed the addition of the section on record-keeping to the *Basic Guide*, noting its practical focus, and commending its usefulness for States that are trying to establish record-keeping systems in particular.

10. Conclusion. While the Sub-working Group on Article 5 was able to make progress in taking forward its mandate on the implementation of obligations under Article 5, participants were keen to explore options for other themes and areas that could be included in the *Basic Guide*. There is a general understanding and expectation that the Guide will be a living document that will continue to grow and be improved, as new topics and Articles are explored and discussed by the WGETI Sub-working Groups as well as other Working Groups. The Facilitator has prepared a revised version of the *Basic Guide* incorporating comments received and the discussions held during the April meeting, to be put to CSP5 for consideration and possible validation (see Annex A).

SUB-WORKING GROUP ON ARTICLES 6 AND 7

11. Approaching the implementation of Article 6 and 7. South Africa gave an overview of its implementation of Articles 6 and 7, as well as the broader context of its export control system. The presentation sparked questions and interactive discussions. It was widely acknowledged that the presentation had provided valuable further insights into the ways in which the Articles can be implemented. In addition, the Geneva Centre for Security Policy (GCSP) presented the results of a recent study of how States Parties are implementing Articles 6 and 7 in terms of legislation and regulations. The ICRC introduced a working paper on key concepts of International Humanitarian Law and gender-based violence in relation to the ATT. A large number of delegations participated in the discussions that followed.

12. Approaching the implementation of Article 7.4. In the follow-up to the 29 January meeting of the Sub-working Group, the importance of effective implementation of, and continued attention to, Article 7.4 was underlined by many delegations. The value of training of licensing officials about gender-based violence in the context of Article 7.4 was acknowledged by several delegations, and it was noted that further discussions would be needed to identify possible approaches to this. The sharing of existing material and practical experiences of States Parties was underlined as key. It was also pointed out that training activities would fall within the area of each State Party's national implementation.

13. *Conclusions:* The Sub-working Group agreed on the value for States Parties to be able to rely on guidance and to share experiences in relation to the implementation of Article 7.4. There was broad support for references being made to existing guiding documents on risk assessment under Article 7.4, to be used on a voluntary basis. Accordingly, the *List of Possible Reference Documents to Be Used by States Parties in Conducting Risk Assessments under Article 7* (included in ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep, Annex B) has been updated with the inclusion of existing guidance documents relating to the implementation of Article 7.4 (see Annex B). There was also continued support for the elaboration in the period after CSP5 of a document out setting basic elements for a voluntary training guide on GBV. It was noted that discussions addressing interpretations of Article 7.4 implementation would need to be addressed in the broader context of Articles 6/7 implementation rather than in isolation.

SUB-WORKING GROUP ON ARTICLE 11

14. *Draft revised multi-year work plan.* The Sub-working Group considered the revised draft Multi-year Work Plan that was updated to reflect comments from delegations at January's Working Group Meetings. Delegations welcomed the revised work plan, indicating that its objectives would facilitate enriched exchanges on diversion. There was reiteration of the need for focus on issues pertaining to re-transfers/re-exports, monitoring and post-delivery follow-up.

15. *Import documentation.* The Sub-Group continued discussions on import documentation, which had commenced at the January 2019 meeting. These discussions were guided by a Background Paper that highlighted certain key findings of a UNIDIR study on End Use/r Documentation¹, as well as presentations from Dr. Paul Holtom and Mr. Himayu Shiotani, the two (2) authors of the study.

16. Participants were generally receptive of the Background Paper, which elicited a diverse exchange of views, and yielded the recommendations discussed below.

17. With respect to terminology, the group highlighted the lack of shared understandings on terminology for end use and end user documentation and there was general support for the development of a voluntary guide that serves as a repository of key terms used by States. This voluntary guide would provide States with an option to select the terms most suitable to their national systems and could also serve to systematize national practices.

18. With respect to the preparation of documents, there was reiteration of the fact that 'one size does not fit all' as different methods are used by States in the preparation of documents, based on their national systems. States were therefore encouraged to explore existing low-cost options to support the authentication of import documentation/EUCs, such as verifications by embassies, etc.

19. With respect to the content of EUCs, there was general recognition of variations in the information of certain groups within the transfer cycle, such as intermediaries. States were encouraged to use prior work done in this area, such as that done by the former Facilitator of the Sub-group, Australia, on identifying essential versus optional information on EUCs, to guide their decisions on the content of EUCs.

20. With respect to end use/r assurances and gaps relating to compliance with assurances, a key observation was the failure of compliance in moving from executive level down to the operational

¹ [Examining Options to Enhance Common Understanding and Strengthen End Use and End User Control Systems to Address Conventional Arms Diversion](#) (2016) and [Strengthening End Use/r Control Systems to Prevent Arms Diversion: Examining Common Regional Understandings](#) (2017).

level. Inconsistent record keeping practices could also contribute to potential misunderstanding and diversion of arms. It was recommended that states explore the option of establishing national guidelines to assess compliance with end use/r assurances on a case-by-case basis.

21. With respect to the options for verification and authentication, participants referenced existing practices and mechanisms through which verification and authentication could be done, such as through local embassies etc. States were encouraged to explore such options to support the verification process.

22. Role of the Private Sector. In an effort to explore the role of the Private Sector in import documentation, the group heard from two (2) industry representatives who provided the perspective of industry. The need for effective internal compliance programmes was highlighted.

23. Conclusions/Way Forward. The Facilitator proposes to make the following recommendations arising out of the Sub-working Group meetings:

- 1) Validation of the revised draft Multi-year Work Plan at the CSP5 in August 2019 (see Annex C) to establish the mandate for the Sub-working in the CSP6 and CSP7 cycles;
- 2) Development of a voluntary guide on end use/r documentation that serves as a repository of State Practice in this area; and
- 3) Encourage States Parties to share information on end use/r documentation, which may be done through the ATT Secretariat.

24. The Facilitator has prepared a draft proposal regarding a voluntary guide to end use and end user documentation, including 'Elements of a guide to end use and end user documentation' for consideration and possible validation at CSP5 (see Annex D).

OTHER MATTERS ADDRESSED BY THE WGETI

25. Gender and implementation. In light of the fact that gender and arms related gender-based violence (GBV) is the focus theme of the ATT CSP5 Presidency, the WGETI held a focused discussion on the gender aspects of Treaty implementation. The aim of this exchange was to identify the possible gender dimension of the Articles falling under the WGETI mandate (Article 5 to 12), seeking thereby to complement the specific work undertaken by the Sub-working Group on Articles 6 and 7 with regard to Article 7.4.

26. The exchange underlined that several Articles within the WGETI mandate have a gender dimension. The participation of women in the national control system, including national authorities, is an important element to take into account when implementing Article 5. Also, GBV experts should be included in the establishment of a national control system. There are multiple gender dimension to Article 8, whether regarding the provision of relevant information by an importing State to the exporting Party or the regulation of arms by an importing States in view of its gendered impact. A link also exists between Article 7.4 on the one hand and Articles 11 as well as 9 on the other, as diverted weapons could be misused to commit acts of gender-based violence.

27. In conclusion, exchanges indicated that gender is a largely crosscutting issue that has a bearing on various articles addressed by the WGETI. It will be important that the WGETI continue giving careful consideration to gender aspects of ATT implementation as it takes its work forward. Exchanging on national practice and seeking to generate the appropriate data will be two important aspects of this effort.

28. WGETI focus after CSP5. The WGETI also discussed its method of work and the focus of its efforts going forward. Regarding methods of work, the current approach where specific issues are addressed in dedicated Sub-working Groups enables the WGETI to work effectively and efficiently. The fact that the WGETI meets only twice a year imposes some constraints on its activities. In this context, adopting a medium-term plan for the issues addressed by the WGETI could allow for better planning and preparation. Similarly, options to take work forward between sessions could be furthered, including leveraging the ATT web portal to that effect. Options for better articulating efforts at regional level with those undertaken at the overall level in the context of the WGETI may also warrant further consideration.

29. Regarding substance, efforts to focus on practical Treaty implementation should be continued. Marked progress has been made regarding Article 5 implementation, notably with the drafting of the *Basic Guide*, and work on this Article has come to an end[, for now]. Bearing in mind the priorities that CSP3 adopted for the WGETI, it would make sense to initiate work on Article 9 (transit and transshipment) instead. Further unpacking of Articles 6 and 7 is warranted, after focused consideration of Article 7.4 between CSP4 and CSP5. Continuing regular presentations by States Parties regarding how they practically implement these Articles would be welcome, and practical guidance concerning their structuring may warrant further consideration. For its part, the consolidation of the medium-term work plan on Article 11 underlines that work on this issue should continue after CSP5. Finally, there may be value in due course to address ATT implementation from a regional perspective.

30. Conclusions. In conclusion, there may be value in the WGETI broadly maintaining the approach to its work that it has developed while seeking to improve it where possible, notably regarding intersessional work. Going forward, there may be value in furthering work on Articles 6 and 7 as well as on Article 11 based on the elaborated medium-term plan. Finally, initiating work on Article 9 would seem timely and complementary to that undertaken on diversion. Developing an initial plan for addressing this Article would facilitate efforts going forward.

31. In order to be in a position to take this issue forward, the Chair has developed a draft list of proposed topics and elements for consideration by a Sub-working Group on Article 9 (see Annex E). The aim of the draft list is to provide a general framework for the elaboration of a programme of work and multi-year work plan on Article 9 in the period following CSP5.

CONCLUSION AND WAY FORWARD

32. This paper provides a summary of the April discussions highlighting the main points discussed or areas of consensus. It also includes elements from the Facilitators on how to go forward, notably possible recommendations for CSP5. **ATT stakeholders are invited to provide comments on the Facilitators' suggestions and other considerations, including the revised documents and proposals, by 05 June 2019 to the following email address: info@thearmstradetreaty.org**

33. On the basis of feedback received, the WGETI Chair and Facilitators will prepare the Draft Report to CSP5.

ANNEX A. [BASIC GUIDE – ARTICLE 5; separate document]

ANNEX B.

LIST OF POSSIBLE REFERENCE DOCUMENTS TO BE CONSIDERED BY STATES PARTIES IN CONDUCTING RISK ASSESSMENT UNDER ARTICLE 7

The following public documents with associated links are referenced as optional sources that States Parties may choose to draw from, when relevant and useful in conducting risk assessment process under Article 7. Use of these documents is not mandatory. A State Party may also draw from other sources of information to assist in implementing its obligations under this article, such as reports from Government agencies, Embassies, foreign Government as well as international and regional organisations.

The list is not exhaustive and the fact that an organization is referenced on the list does not in itself imply that States Parties endorse with its findings.

A. Information provided by importing state party upon request by exporting state party - Art 8.1

Upon request, the importing state party shall ensure that appropriate and relevant information is provided, pursuant to its national laws, to assist the exporting state party in its national export assessment.

A.bis General resources on risk assessment

- **The Wassenaar Arrangement best practices and guidelines on arms transfers, <https://www.wassenaar.org/best-practices/>**
- **European Union User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, <http://data.consilium.europa.eu/document/ST-10858-2015-INIT/en/pdf>**

B. Contribute to or undermine peace and security – Art 7.1.a

- United Nations, <http://www.un.org>
- UNSC 1540 Committee , <http://www.un.org/en/sc/1540/>
- International Crisis Group CrisisWatch and country reports, <http://www.crisisgroup.org/>
- Center for Systemic Peace 'State Fragility Index', <http://www.systemicpeace.org/inscr/inscr.htm>
- Institute for Economics and Peace "Global Peace Index", <http://economicsandpeace.org/>
- Uppsala University Conflict Data Programme, <http://www.pcr.uu.se/research/UCDP/>

C. Commit or facilitate a serious violation of international humanitarian law – Art. 7.1.b.i

- United Nations, <http://www.un.org>

- International Committee of the Red Cross, <http://www.icrc.org>
- Human Rights Watch 'World Report' and country reports, <http://www.hrw.org/home>
- International Criminal Court, <http://www.icc-cpi.int/>
- Coalition to Stop the Use of Child Soldiers, <http://www.child-soldiers.org/>

D. Commit or facilitate a serious violation of international human rights law – Art. 7.1.b.ii

- United Nations Office of the High Commissioner for Human Rights Report, <http://www.ohchr.org>
- United Nations Human Rights Council reports as part of the Universal Periodic Review, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>
- United Nations Development Programme (UNDP) Human Development Reports, <http://hdr.undp.org/en>
- Amnesty International Annual Report 'The State of the World's Human Rights' and country, reports, <http://www.amnesty.org/en/human-rights>
- Human Rights Watch 'World Report' and country reports, <http://www.hrw.org/home>
- Cingranelli-Richards (CIRI) Human Rights Dataset, <http://ciri.binghamton.edu/>
- Fédération internationale des ligues des droits de l'homme, <http://www.fidh.org>
- Organisation mondiale contre la torture, <http://www.omct.org>
- Association for the Prevention of Torture, <http://www.apt.ch>
- International Commission of Jurists, <http://www.icj.org>
- Political Terror Scale Database, <http://www.politicalterroryscale.org>

E. Commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party – Art. 7.1.b.iii

- UN Security Council Counter Terrorism Committee, <http://www.un.org/en/sc/ctc/>
- UN Office of Counter Terrorism, <http://www.un.org/en/counterterrorism/>
- UNSC 1540 Committee, <http://www.un.org/en/sc/1540/>

F. 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 – Art.7.1.b.iv

- United Nations Convention against Transnational Organized Crime
- UN Office on Drugs and Crime, <http://www.unodc.org/>
- Interpol, <https://www.interpol.int/en/Internet>

- Small Arms Survey, <http://www.smallarmssurvey.org/>

G. Commit or facilitate serious acts of gender based violence or serious acts of violence against women and children – Art. 7.4

-Control Arms: How to Use the Arms Trade Treaty to address Gender-Based Violence: A Practical Guide to Risk Assessment, August 2018, https://controlarms.org/wp-content/uploads/2018/08/GBV-practical-guide_ONLINE.pdf

-Women’s League for International League for Peace and Freedom: Preventing Gender-Based Violence through Effective Arms Trade Treaty Implementation, 2017, <http://reachingcriticalwill.org/resources/publications-and-research/publications/11843-preventing-gender-based-violence-through-effective-arms-trade-treaty-implementation>

ICRC Reports on Sexual Violence, <https://www.icrc.org>

- UN Security Council resolution 1325 (2000) and related resolutions, for reports on national implementation

- International Convention on the Elimination of Discrimination Against Women (CEDAW) and other relevant UN human rights treaty monitoring bodies, for Reports and concluding observations

- UN Special Rapporteur on violence against women, its causes and consequences

- UN Secretary General annual reports on conflict related sexual violence (pursuant to paragraph 18 of UNSCR 1960 (2010)).

- Office of the Special Representative on Sexual Violence in Conflict, including the early warning matrix for sexual violence and its Annex

-UN Women Global Database on Violence against Women, <http://evaw-global-database.unwomen.org>

-UN Team of Experts on the Rule of Law/Sexual Violence in Conflict reports, <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/Team-of-Experts-on-Rule-of-Law-Sexual-Violence-in-Conflict-Annual-Report-2017.pdf>

-OECD data on sexual violence, <https://data.oecd.org/inequality/violence-against-women.htm>

-UNICEF data on sexual violence prevalence among girls and boys, <http://dataunicef.org/topic/child-protection/violence/sexual-violence/#>

H. General information on international arms transfers

- Reports of the UN-appointed groups or panels of experts that monitor UN Security Council sanctions, <http://www.un.org/sc/committees/>

- Stockholm International Peace Research Institute (SIPRI), <http://www.sipri.org/>

- Small Arms Survey, <http://www.smallarmssurvey.org/>

- Other research institutes

I. Other sources of information

- Judgments and reports by the International Criminal Court and ad hoc tribunals

- International agencies operating in the recipient state

- Local media reports

- Reports by NGOs on country situations, which may include relevant information regarding compliance with international humanitarian law

- Military doctrine, manual and instructions

ANNEX C. **DRAFT** MULTI-YEAR WORK PLAN FOR THE WGETI SUB-WORKING GROUP ON ARTICLE 11 (DIVERSION)

1 st CSP5 Preparatory Meeting, 30 January 2019	
10.00-11.00	<p>Draft Multi-year Work Plan</p> <p>Introduction by facilitator</p> <p>Open discussion</p> <p><i>In reviewing the draft proposed multi-year plan, participants are invited to consider, amongst others, the following questions:</i></p> <ol style="list-style-type: none"> a. <i>Has sufficient time has been allocated to each topic?</i> b. <i>Have any topics been omitted that should be included?</i> c. <i>Has any consideration been omitted?</i>
Transfer chain stage 1: Before the transfer	<p>11.00-13.00</p> <p>1. Import documentation²</p> <p><i>This discussion will explore the types of written documentation submitted as part of an application for an export licence from the exporting State (such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances). It will consider:</i></p> <ul style="list-style-type: none"> - <i>What types of written documents exist?</i> - <i>How are such documents prepared? Which ministries and agencies are involved?</i> - <i>What is the role and/or responsibilities of the importing State regarding such documents?</i> - <i>What is the role and/or responsibilities of the transit/transshipment State(s)?</i> - <i>What is the role and/or responsibilities of the brokering State(s)?</i> - <i>What is the role of the exporting State (i.e. verification and authentication as part of diversion risk assessment)?</i> - <i>In practice, what are the common elements of such documents? What assurances are provided? What is the minimum that should be required?</i> <p><i>It will also examine the role of information exchange in verifying and authenticating import documentation and identify the types of information exchange that are relevant and necessary.</i></p>

² Paragraphs 3, 6 and 7 of the Sub-working group paper : [Possible measures to prevent and address diversion](#) (available in other languages [here](#)).

Transfer chain stage 1: Before the transfer	3 hours	<p>2. Import documentation³ (continued)</p> <p><i>This discussion will continue to explore the types of written documentation submitted as part of an application for an export licence from the exporting State (such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances). The Facilitator will circulate a background paper in advance of the 2nd series of CSP5 meetings to facilitate discussion, including the following elements:</i></p> <ul style="list-style-type: none"> - <i>What types of written documents exist?</i> - <i>How are such documents prepared? Which ministries and agencies are involved?</i> - <i>What is the role and/or responsibilities of the importing State regarding such documents?</i> - <i>What is the role and/or responsibilities of the transit/transshipment State(s)?</i> - <i>What is the role and/or responsibilities of the brokering State(s)?</i> - <i>What is the role of the exporting State (i.e. verification and authentication as part of diversion risk assessment)?</i> - <i>In practice, what are the common elements of such documents? What assurances are provided? What is the minimum that should be required?</i> - <i>What sanctions do exporting States impose for non-compliance with end-use/r assurances and undertakings?</i> <p><i>It will also examine the role of information exchange in verifying and authenticating import documentation and identify the types of information exchange that are relevant and necessary.</i></p> <ul style="list-style-type: none"> - <i>How do exporting States verify and authenticate import documents as a part of a broader risk assessment framework?</i> - <i>What mechanisms are used?</i> - <i>Which agencies are involved?</i> - <i>How long does it take?</i> - <i>What steps are taken if the documentation is found to be fraudulent?</i>
	1 hour	<p>3. The role of the private sector in import documentation</p> <p><i>This discussion will explore the role of the private sector, including arms manufacturers/industry and civil society, in mitigating diversion risk before the physical transfer takes place. It will also examine the role of internal export control compliance programmes.</i></p> <ul style="list-style-type: none"> - <i>What is the role of industry in helping State agencies verify and authenticate import documentation?</i> - <i>What could be done to encourage industry to develop internal control compliance programmes?</i>

³ Paragraphs 3, 6 and 7 of the Sub-working group paper : [Possible measures to prevent and address diversion](#) (available in other languages [here](#)).

Transfer chain stage 1: Before the transfer	3 hours	<p>4. Assessing the risk of diversion⁴</p> <p><i>This discussion will explore the practicalities (including resource requirements and challenges) associated with assessing the risk of diversion of an export and the possible establishment of mitigation measures. The Facilitator will circulate a background paper in advance of the 1st series of CSP6 meetings to facilitate discussion, including the following elements:</i></p> <ul style="list-style-type: none"> - <i>How to undertake consistent and objective transfer risk assessments that take into account the risk of diversion (Articles 7(1) and 11(2));</i> - <i>How to identify certain diversion risk indicators;</i> - <i>How to establish the legitimacy and credibility of all parties involved in the transfer, such as the exporter, brokers, shipping agents, freight forwarders/intermediate consignees and stated end-use/r (Article 11(2));</i> - <i>How to examine the risks arising from the proposed shipment arrangements;</i> - <i>How to assess the reliability of controls in the importing country and the transit country (if applicable); and</i> - <i>How to examine the risk that a conventional arms transfer would increase the risks of diversion of the existing holdings of the end-user.</i> - <i>What are the options for mitigating detected risk(s)?</i> <p><i>It will also examine the role of information and information exchange in conducting a risk assessment and identify the types of information and mechanisms of information exchange that are relevant and necessary.</i></p>
	1 hour	<p>5. The role of the private sector in mitigating diversion risk</p> <p><i>This discussion will explore the role of the private sector, including arms manufacturers/industry and civil society, in mitigating diversion risk before the physical transfer takes place. It will also examine the role of internal export control compliance programmes.</i></p>

⁴ Paragraph 5 of the Sub-working group paper : [Possible measures to prevent and address diversion](#) (available in other languages [here](#)).

Transfer chain stage 1: Before the transfer	3 hours	<p>6. Assessing the risk of diversion⁵ (continued)</p> <p><i>This discussion will continue to explore the practicalities (including resource requirements and challenges) associated with assessing the risk of diversion of an export and the possible establishment of mitigation measures, including the following elements:</i></p> <ul style="list-style-type: none"> - <i>How to undertake consistent and objective transfer risk assessments that take into account the risk of diversion (Articles 7(1) and 11(2));</i> - <i>How to identify certain diversion risk indicators;</i> - <i>How to establish the legitimacy and credibility of all parties involved in the transfer, such as the exporter, brokers, shipping agents, freight forwarders/intermediate consignees and stated end-use/r (Article 11(2));</i> - <i>How to examine the risks arising from the proposed shipment arrangements;</i> - <i>How to assess the reliability of controls in the importing country and the transit country (if applicable); and</i> - <i>How to examine the risk that a conventional arms transfer would increase the risks of diversion of the existing holdings of the end-user.</i> - <i>What are the options for mitigating detected risk(s)?</i> <p><i>It will also examine the role of information and information exchange in conducting a risk assessment and identify the types of information and mechanisms of information exchange that are relevant and necessary.</i></p>
	1 hour	<p>7. Discussion on paper outlining elements of a process for assessing the risk of diversion</p> <p><i>The Facilitator will circulate a paper in advance of the 2nd series of CSP6 meetings outlining the elements of a process for assessing the risk of diversion, based on the discussion that took place during the 1st meeting, for consideration and possible adoption at CSP6.</i></p>

⁵ Paragraph 5 of the Sub-working group paper : [Possible measures to prevent and address diversion](#) (available in other languages [here](#)).

Transfer chain stage 2: During the transfer	3 hours	<p>1. The role of transit and transshipment States in preventing diversion</p> <p><i>This discussion will explore the measures that can and are being taken by transit and transshipment States to mitigate the risk of diversion during a transfer. The Facilitator will circulate a background paper in advance of the 1st series of CSP7 meetings to facilitate discussion, including the following elements:</i></p> <ul style="list-style-type: none"> - <i>Issuing delivery notification (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Article 11(3));</i> - <i>Conducting routine risk assessment or due diligence checks on conventional arms shipments, in cooperation with local, regional or international law enforcement organizations and other regulatory agencies, prior to approval of transfers; and</i> - <i>Monitoring and protecting conventional arms shipments, in cooperation with customs service, law enforcement and other industry parties involved (e.g. freight forwarders/intermediate consignees, transporters etc).</i> <p><i>It will also examine the practical and legal challenges faced by transit and transshipment States in preventing diversion during transit (by sea, air or land – road and rail), as well as the role of cooperation and information exchange among States involved in a transfer during the transfer phase and identify the types of information exchange that are relevant and necessary.</i></p> <ul style="list-style-type: none"> - <i>What mechanisms are used in ensuring cooperation and information exchange to mitigate diversion?</i> - <i>Which ministries or agencies are involved in the information exchange process?</i> - <i>Are there national legal restrictions that can impact the information exchange process?</i>
	1 hour	<p>2. The role of the private sector in mitigating diversion risk</p> <p><i>This discussion will explore the role of the private sector, in particular transporters (road, rail, air and sea), freight forwarders/intermediate consignees, etc mitigating diversion risk during transfer.</i></p>

Transfer chain stage 3: At or after importation / Post-delivery	2 hours	<p>1. The role of importing States in preventing diversion</p> <p><i>This discussion will explore the measures that can and are being taken by importing States to mitigate the risk of diversion post-delivery, including</i></p> <ul style="list-style-type: none"> - <i>Issuing delivery notification by the importing State (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Articles 8(1) and 11(3));</i> - <i>Registering and maintaining records of conventional arms entering their national territory, as well as the secure transfer of these to the authorised end-user (Article 12 (2)); and</i> - <i>Ensuring robust stockpile management procedures (including routine security inspections and audits of the conventional arms stockpiles of all end users). Note: it is anticipated that the topic of post-delivery storage and stockpile management would be discussed as part of a future multi-year work plan that will address Transfer chain 4.</i> - <i>Effective legislation for investigating and/or punishing diversion-related offences.</i>
	2 hours	<p>2. Post-delivery cooperation</p> <p><i>This discussion will explore the possibility of exporting States conducting post-delivery checks in cooperation with competent authorities in the importing State to verify compliance with end-use conditions, such as the condition that no re-export can take place without prior notification to the country of origin. It will examine the political and resource implications of such checks.</i></p> <ul style="list-style-type: none"> - <i>What are some challenges/concerns regarding post-delivery cooperation?</i>

ANNEX D. PROPOSAL REGARDING A GUIDE TO END USE AND END USER DOCUMENTATION

Introduction

34. Possible recommendations for further work arising out of the discussions that took place during the meeting on 03 April 2019 of the Sub-working Group of the Working Group on Effective Treaty Implementation (WGETI) focusing on Article 11 (Diversion) included:

- a. Developing a guide to end use and end user documentation.
- b. Encouraging States Parties to share information with other States Parties via the ATT Secretariat and the national points of contact – on a voluntary basis – on end-use and end user documentation.

35. Attachment A contains a list of possible elements for an online guide or repository of State Party practice in the context of end use and end user documentation that could be used as the basis or framework for the Sub-working Group to develop a process for compiling such information and making it accessible to States Parties.

36. The Facilitator proposes that these elements be included in a recommendation to CSP5 to mandate the Sub-working Group to develop the tool described, with the support of the ATT Secretariat.

ATTACHMENT A. Elements of a guide to end use and end user documentation

1. What will the guide consist of?

The guide to end use and end user documentation will consist of a repository of terminology used by States in this area, as well as types of assurances States include in their EUCs and common approaches to verification and authentication. The guide will be organized under the following areas:

- Terminology
- Types of assurances
- Approaches to verification and authentication
- Examples of EUCs
- [Other]

States that are new to this area or are developing their systems could use this guide in developing their national systems.

2. Where will the guide be located?

The guide will be available to States Parties online in the restricted area of the ATT website.

3. How will the guide be established and developed?

The guide will be established by the ATT Secretariat, which will compile State practice in this area through:

- Research using open-source information
- Regular invitations and reminders to States Parties to share their information – on a voluntary basis - with other States Parties through the dedicated webpage
- Targeted engagement with States Parties’ national points of contact to encourage the sharing of information on end use and end user documentation
- [Other]

The guide will be a ‘living’ document that is updated as new information is submitted or becomes available.

ANNEX E. DRAFT LIST OF PROPOSED TOPICS AND ELEMENTS FOR CONSIDERATION BY A WGETI SUB-WORKING GROUP ON ARTICLE 9 (TRANSIT AND TRANS-SHIPMENT)

The following topics and elements for consideration have been compiled to guide the work of a WGETI Sub-working Group on Article 9 to be established after the Fifth Conference of States Parties to the Arms Trade Treaty (ATT). They are designed to provide a general framework for the Facilitator of the Sub-working Group, once appointed, to develop a programme of work and multi-year work plan for the Sub-working Group.

1. Scope of Article 9
 - a. Exchange of understandings on the scope of transit and trans-shipment covered by Article 9
 - b. Definitional issues
 - i. What is transit?
 - ii. What is trans-shipment?
 - c. Jurisdictional issues
 - i. How do States understand/interpret the phrase 'under its jurisdiction' in Article 9?
 - ii. What are the obligations of flag states in the context of Article 9?
 - iii. What are the implications of the United Nations Convention on the Law of the Sea (UNCLOS) on State jurisdiction over transit?
2. Options for regulating transit and trans-shipment (including an exchange of State practice in the following areas, as well as an overview of international and regional instruments governing transit and transportation of goods)
 - a. Transit by road
 - b. Transit by rail
 - c. Transit by air
 - d. Transit by sea
3. Who has responsibility for complying with transit and trans-shipment obligations?
