

**Working Group on Effective Treaty Implementation
Sub-working Group on Articles 6 and 7**

**04 February 2020 - Geneva, Switzerland
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Thank you, Ambassador,

As we have not raised our flag under the previous agenda item, Control Arms wishes to take this opportunity to welcome the multi-year plan of this sub-working group, the methodology for unpacking concepts as well as the draft elements of a voluntary guide.

We agree on the importance of achieving a clear and common understanding of the different concepts that appear in Articles 6 and 7 as well as in other Treaty provisions, including such terms as “facilitate”, “serious” and “overriding risk”. These terms were heavily negotiated and, for some, remain intentionally ambiguous.

At the time of ratification and accession, some states parties, such as New Zealand, Liechtenstein and Switzerland, chose to include further formal guidance on how they will interpret the term “overriding risk” in the form of interpretive declarations. These types of declarations are useful as they provide specific guidance for the declaring states parties and a suggested roadmap for other states parties, but ultimately, it is state practice itself that will define these terms.

The draft methodology template for unpacking these key concepts will provide specific insight into how different States Parties interpret these terms and will support the identification of best practices. However, it should be noted that significant work has already been done to clarify these terms, and States Parties should strive to build on these existing resources rather than duplicate efforts. For example,

- the International Committee of the Red Cross’ paper on “[International Law and Gender-Based Violence in the Context of the Arms Trade Treaty](#)” published in April last year clarifies how the term “serious” is defined in International Humanitarian Law and provides a comprehensive overview of how this term relates to gender-based violence.
- The paper published by Control Arms and Harvard Law School Human Rights Clinic titled “Interpreting the Arms Trade Treaty: International Human Rights Law and Gender-Based Violence in Article 7 Risk Assessments” provides guidance relating to key terms under Article 7 including “serious violation of international human rights law”; “serious acts of gender-based violence”; “commit or facilitate”; “contribute to or undermine”; and “overriding risk.”
- Saferworld’s paper titled “Implementing the ATT: Undertaking an arms transfer risk assessment” published in August 2018 following the Seventh Meeting of the ATT Expert Group, provides specific guidance on how to operationalise Articles 6, 7 and 11.2 and contributes to a wider understanding of the arms export risk assessment process.

We encourage the sub-working group to use these and other existing resources as a basis for exploring how these terms might relate to other elements covered by Articles 6 and 7.

Control Arms also welcomes the recommendation by Switzerland to include an additional column on knowledge to the methodology template as this will avoid duplication of work and pave the way for

substantive discussions on the scope of Article 6, scheduled for the First CSP8 Preparatory Meeting. Similarly, we stand ready to contribute to the discussions on these key terms, as suggested by Canada.

Control Arms sees value in the inclusion in the multi-year plan of a discussion on obligations in Article 7.2 for exporting states to “consider whether there are measures that could be undertaken to mitigate risks identified”. However the mere presence of mitigation measures should not be used as grounds for approving a transfer that would otherwise be refused. Mitigation measures need to be assessed on the basis of their impact, not their existence, and should only be the basis for a transfer approval where the states concerned have strong reasons for assessing that they will lead to a substantive and significant reduction of risk to the point where the formerly problematic proposed transfer can be regarded as “safe”.

It would, therefore, be useful to hear from states not only about “confidence-building measures” and “jointly developed and agreed programmes” to mitigate risks but also concrete examples of cases in which mitigation measures have and have not had the intended results. We strongly believe it is important to link our discussions to concrete, real-world examples (anonymised or otherwise) and to share lessons learned from past experience with the aim of better understanding how to affect real, meaningful mitigation.

While Control Arms can see value in further unpacking States Parties’ **obligations under Article 6**, the proposed discussion in the multi-year work plan appears to cover concepts and terms that are already clearly defined in international law. For example, genocide is already defined in Article II of the Genocide Convention and in Article 6 of the Rome Statute of the International Criminal Court. Similarly, “crimes against humanity” are covered extensively in Article 7 of the Rome Statute. Opening these definitions up for further debate in the context of the ATT would not only be duplicative, it could potentially complicate, confuse or even undermine long-accepted standards of international humanitarian law.

Alternatively, more time should be allocated to national practices relating to assessing the risks identified in Article 7(1)(i) -(iv) and Article 7(4). The Working Group on Effective Treaty Implementation (WGETI) should be the principal arena to openly and constructively discuss treaty compliance issues with a view to strengthen the Treaty’s implementation and create high international norms. So far, there has been little discussion on the practical application of Articles 6 and 7, specifically, how States Parties develop and conduct risk assessment processes. Sharing state practice in these areas should be a key focus for the Working Group on Effective Treaty Implementation.

In addition, Control Arms recommends that theoretical definitions of terms and concepts included by the voluntary guide be accompanied by examples of hypothetical scenarios. Control Arms makes use of hypothetical situations in its training programmes - both with its ATT Academies as well as its specialized training programs on the ATT GBV criteria - and has found these exercises enable participants to both ground concepts in practical contexts, and to practice in a small group setting how to think through the process as it would present itself in real world situations.

As we reach agreement on this three-year work plan, it is also worth remembering that progress towards many of the objectives we set for this sub-working group will also contribute to progress towards the CSP5 Action Plan on Gender and Gender-based Violence. Latvia’s leadership and your active discussions and work on Gender and GBV led to the adoption of a practical and ambitious action plan, under which governments are encouraged to share information on how they are applying the gender-based violence risk assessment criteria in the Treaty, develop a training guide for export control officials, and discuss how they are interpreting and using language in the Treaty related to GBV. Together

we must ensure that this working group takes further action to implement this plan, this year and in the years to come. Therefore, both the multi-year work plan and the voluntary guide should reflect, where applicable, its contribution to the CSP5 Gender and GBV Action Plan.

Finally, we would like to remind the room of a number of legal processes currently underway with regard to arms exports in the context of the Yemen war, which bear directly upon the implementation of ATT Articles 6 and 7. We have previously drawn these to the attention of delegates at other ATT CSP related events, through side events and other means. We remain available to update delegates further on these processes.

Further to previous cases brought at national level, in a new development, the European Centre for Constitutional and Human Rights, supported by five NGOs, submitted in December 2019 a 300-page Communication and supporting evidence to the International Criminal Court's Office of the Prosecutor, calling on the ICC to investigate whether high-ranking officials, from both European companies and governments, bear criminal responsibility for supplying arms used by members of the Saudi Arabia and UAE-led Coalition in potential war crimes in Yemen. They requested an investigation into these company and government officials' potential complicity in 26 specific airstrikes which unlawfully killed or injured civilians, and destroyed or damaged schools, hospitals and other protected objects. This case is also directly relevant to the work of this sub-working group, and again we stand ready to provide further information, both now and as it develops.

Thank you for your attention.