The Working Group on Effective Treaty Implementation (WGETI) was chaired by Ambassador Sang-beom Lim of the Republic of Korea. WGETI's work is undertaken by three Sub-Working groups on the following topics: Articles 6 and 7 (prohibitions, export and export assessment), Article 9 (transit and trans-shipment), and Article 11 (diversion).

1. ATT Sub-Working Group on Articles 6 and 7

First, the sub-Working Group addressed the draft of Chapter 1 - Key Concepts of a proposed Voluntary Guide to assist State Parties in implementing Articles 6 and 7 (Voluntary Guide). Key points from the discussions:

- States Parties (including Belgium, China, Japan, Palestine, the Republic of Korea) expressed concern that the Voluntary Guide to assist State Parties in implementing Articles 6 and 7 (“Voluntary Guide”) is working with concepts that are rooted in different fields of international law and cautioned against engaging in a reinterpretation exercise of certain concepts in the context of the Arms Trade Treaty (ATT).

- For Chapter 1 - Key Concepts, only 20 of the 110 State Parties, as well as the EU and three NGOs, submitted their inputs on their practices and approaches to interpreting key concepts. The Facilitator encouraged civil society in particular to contribute to the Voluntary Guide more generally.

- It was reiterated by several ATT stakeholders that the Voluntary Guide must not reinterpret or call into question already well-established terms of international law. The Facilitator reminded States Parties that the Voluntary Guide is not mandatory but should be deemed as indicative only, and emphasised that its aim is to provide guidance to licensing officials and others in charge of implementing the Treaty.

- The sub-Working Group indicated that the summary report of the responses to the methodology template for unpacking key concepts presented during the CSP7 preparatory meeting in April 2021 can be considered as the final version; however, it conceded that there is room for improving Chapter 1 of the Voluntary Guide on an ongoing basis.
While preliminary remarks were provided on the scope and obligations of Article 6, more substantive discussions on this item will be held during the CSP8 preparatory meeting.

Ambassador Ignacio Sanchez de Lerin facilitated the work of the Sub-working Group on Articles 6 and 7. Ambassador Sanchez de Lerin stressed that the ultimate goal of the Voluntary Guide is to assist States in improving their capacities to effectively and efficiently implement Article 6 and 7. The Republic of Korea underlined that the Voluntary Guide can be particularly helpful for States that are in the process of developing their export control system for capacity building and training purposes.

Both Control Arms and WILPF noted that the Guide should be considered as a survey of current state practice and as an entry point to identifying weaknesses and recommending ways to improve and strengthen State Parties’ application of international law. The organizations encouraged the inclusion of a clear reference at the outset of the document. In this regard, WILPF also stressed that inputs provided to date by State Parties in relation to serious violations of international humanitarian law (IHL) contribute to the colloquial understanding of the concept of “seriousness”, but do not necessarily comply with the legal definitions rooted in international law. Inclusion of references to research undertaken by the ICRC and civil society organizations (CSOs) was encouraged. WILPF also expressed concerns about the fact that some State Parties continue to apply an understanding of gender-based violence (GBV) that is incomplete or too narrowly focused.

Germany stressed that it takes GBV criteria seriously when deciding on export applications. In addition, it called on the development of further expertise on how to approach arms control in a gender sensitive way and supported the continuation of civil society engagement in promoting work on Women, Peace and Security (WPS). Canada highlighted that their national control system has recently been reviewed and that GBV criteria have been embedded into risk assessment criteria.

Palestine recalled that general rules on the interpretation of treaties as set out in Article 31 of the 1969 Vienna Convention on the Law of Treaties apply to the Arms Trade Treaty. Subsequently, the delegate stressed the need to consider the concepts of ‘jus cogens’ and ‘erga omnes’ when discussing the scope of Article 6 as well as related concepts. The importance of a correct interpretation of Articles 6 and 7 was underscored and noted as instrumental to putting an end to serious violations of international humanitarian law (IHL) and international human rights law (IHRL). Switzerland clarified that serious violations of IHL go beyond war crimes and can apply to acts that are not criminalized as well. Attention was drawn to the List of Possible Reference Documents to Be Used by States Parties in Conducting Risk Assessments and, in regard to references in the draft document to the ICC Statute, Switzerland cautioned against applying criminal law standards to provisions that relate to State responsibility.

Maat for Peace expressed its willingness to carry out a survey in conflict settings on gross violations with a focus on the Middle East region. Recognizing that weapons fuel violations in Tigray as well as in many other conflict settings where violations of IHL and IHRL have been
documented, Control Arms highlighted that establishing and refining national policies and processes that support effective implementation of Articles 6 and 7 is critical to achieving the ATT’s purpose, which is to reduce human suffering. Also, according to Control Arms, political will is key to ensuring the Treaty provisions are implemented faithfully in spirit and to the letter.

Recalling that prohibitions and assessments contained in Articles 6 and 7 are mirrored in CFSP 2008/244, the EU representative outlined a plan to promote convergence among EU Member States through the launch of an internal database accessible to all licensing officers from EU Member States, with country pages on all potential export destinations for European military equipment and technology. Mexico highlighted the need to have a Voluntary Guide that addresses all the elements of Article 7, with priority given to risks associated with organized crime in the transfer of weapons, in addition to grave and serious violations of IHL and IHRL.

2. ATT Sub-Working Group on Article 9

First, the sub-Working Group invited Dr Julia Hörnig to present on the legal basis underpinning transport and transit of arms by road and air. Following this extensive presentation, States parties provided input relating to their national practices on transit and transshipment of arms by land and air. Key points from the discussions:

- According to Dr. Hörnig, International Transport Conventions apply directly between the Parties; in principle, relevant Dangerous Goods Regulations apply only to loaded weapons.
- Measures governing the transit and transportation of goods by road, rail and air may differ at the national level; the crucial issue is to what extent States distinguish between different transport modalities.
- Multimodal arms transport can pose challenges to regulation because the Transport Conventions only apply to a single specific means of transport; an additional challenge is the limited liability of “carriers” under the Montreal Convention.
- From the regulatory standpoint, the ECOWAS Convention on Small Arms and Light Weapons (SALW) is to be considered as a key regional instrument governing the transfer including transportation of SALW within the region.

Mr. Rob Wensley from South Africa facilitated the Sub-Working Group on Article 9. The discussions began with a presentation by Dr Julia Hörnig, Assistant Professor at the Erasmus School of Law, on Transport and Transit of Arms by Road and Air. Dr Hornig first clarified on the relation between Transport Law and Transit Regulation, highlighting that transit regulation always starts with an “if” - i.e., whether permission is given and whether all involved countries of the transit of transshipment gave permission.

Transit has no well-established international definition: in principle, it can be understood as transport of goods across the territory of Member States. From a transport law perspective, transshipment involves unloading of a container from one transport means and de-loading to another transport means. Transshipment involves operations that include unloading, processing, inspection, warehousing, and custom clearance. Transit regulation also covers the requirements
regarding documentation and information, training of employees, and safety of the voyage. Transport Law relates to the obligations and rights of parties to a transport contract such as duty of information, labelling, packing, storing and lashing, and duty of care.

Dr Hörmig further briefed on the duties of the “shipper” and of the “carrier” from a Transport Law perspective. Transit regulation comes into play as it influences the obligation to pack, label, inform, and safeguard the transport. In general terms, transit regulations concern both the shipper’s and carrier’s duties. The International Transport Law Conventions are unique instruments as they apply directly between the private parties; nonetheless, they are mandatory laws, regardless of what the parties have agreed upon. Most relevant to transport of arms by road is the 1956 International Convention on the Contract for the International Carriage of Goods by Road (CMR), which also has a regional impact due to the limited number of State Parties from specific regions. Relevant regional Instruments include the 1989 Inter-American Convention on Contracts for the International Carriage of Goods by Road and relevant ECOWAS Conventions (1982 Convention Regulating Inter-State Road Transportation between ECOWAS Member States and 1982 Convention relating to Inter-States Road Transit of Goods), among others.

When international and/or regional conventions do not apply, national laws and regulatory measures apply, which is typically the case for freight forwarding contracts. In relation to dangerous goods, the 1957 Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) is relevant to all explosive goods (e.g. ammunition). The shipper is required to provide special information and special labelling, security measures, and training of staff. However, due to the scope of Article 9 and reference to Article 2 of the ATT, all transported goods that fall under Article 2 of the ATT are not considered dangerous goods except if they are loaded.

When it comes to transit regulation, the 1996 Wassenaar Agreement and the 2001 UN Firearms Protocol as well as, at the regional level, Directive 2009/43/EC of the European Parliament should be considered. Broader international instruments apply to transport by air including the 1999 Convention on International Civil Aviation (Montreal Convention), to which the EU is also a member. The Chicago Convention Annex 18 & Technical Instructions relating to dangerous goods come into play only for loaded arms. Article 3 and 6 as well as Article 4.6 of Annex 17 to Chicago Convention provide for a secured transport chain and applies to every single type of cargo. Multimodal transport can pose a variety of uncertainties due to the scope of the Transport Conventions; however, there is room for interpretation of certain provisions. Transport by air can be even more challenging as the Montreal Convention applies to all operations within the airport regardless of the means of transport. Nonetheless, transit regulations are more certain as they apply for the entire voyage.

Ghana stressed the importance of regulating transfer of dangerous goods by road, also in the light of the huge explosion of a truck carrying explosives in Ghana in January 2022. As dangerous goods, arms are not subject to free trade in the ECOWAS region. The 2006 ECOWAS Convention on Small Arms and Light Weapons (SALW), in addition to other regional instruments regulating the transport of goods by road, should be taken into account. The
Convention regulates the transfer of SALW within the region, including import, export, transit, transshipment, and transportation. The transfer of SALW is subject to the ECOWAS exemption regime. Ghana does not have specific regulations on the transfer of goods by rail. Cameroon quoted Article 3 of the 2010 Kinshasa Convention governing the authorization of transfers to States. Cameroon also has bilateral agreement with neighbouring countries for the transport of goods. Zambia briefed on internal regulations that apply to transit, with a focus on measures taken to avoid diversion within its jurisdiction.

Switzerland and Romania elaborated on their thorough export control provisions relevant to transit and transshipment, the role of national licensing authorities, government departments involved, and measures to facilitate the transit for border-crossing of certain types of arms. In Switzerland, no distinction is made between the different transport modes; according to Dr Hörnig, this may pose challenges.

Control Arms suggested enhanced collaboration between the Sub Working Groups on Articles 6 and 7, Article 9, and Article 11 with a view to ensuring coherence of implementation throughout Treaty provisions. The FAIR Trade Group highlighted the need to be consistent with UN views and programmes and to take into account the work done by the UN Transportation Group that creates regulation for shipment particularly of ammunition and components.

According to Mauritania, context specific phenomena such as the manufacturing of weapons need to be taken into account when discussing transit and transshipment. Barbados welcomed a further discussion on transit and transshipment by sea.

END.