The Working Group on Effective Treaty Implementation (WGETI) is 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

The sub-Working Group addressed the various obligations in Article 6, and participants exchanged views on scope of Article 6. Ambassador Ignacio Sanchez de Lerin, who facilitates the work of the Sub-working Group, reiterated that the Voluntary Guide to assist State Parties in implementing Articles 6 and 7 (“Voluntary Guide”) is based on internationally agreed instruments which are recognized by the majority of States.

Key points from the discussions included:

- Several ATT stakeholders (Japan, China) cautioned that the Voluntary Guide must not create new norms and standards, while others (Ireland, Control Arms) cautioned against the reinterpretation of concepts that have established interpretations in international law.
- Some State Parties (Ghana, Argentina and the US) were concerned that ATT State Parties may not be Parties to all international instruments and conventions under reference in the Guide. It was thus suggested to consider including some caveat language (the US) or specific definitions contained in these instruments (Ghana).
- Attention was drawn by Ireland, the US and the ICRC to the difference between the actual knowledge and constructive knowledge approach.
- The civil society (Control Arms and ASER) as well as the EU made reference to the situation in Ukraine and the way it relates to the effective implementation of Articles 6 and 7.
- The Philippines took the floor for the first time as an ATT State Party, noting that the Treaty will enter into force in the country in June 2022.

Ambassador Sanchez de Lerin clarified that ATT State Parties are not obliged to adhere to conventions and international instruments referenced in the Guide to which they are not Parties.
Rather, the Guide attempts to provide general guidelines that are to be considered as orientations.

The ICRC suggested focusing the Guide on practical experiences. The Guide could contain contextualized case studies that illustrate, for instance, how State Parties address challenges, as these are useful to all states parties to establish the highest possible common standard for the international trade of conventional weapons. Cross-referencing existing resources may be helpful too. The ICRC would welcome the opportunity to frame the Voluntary Guide as a living document, with a possibility to add new insights on an open-ended basis.

Ireland and Switzerland stressed that there is no need to define concepts such as genocide and crimes against humanity in the Voluntary Guide, as these are already well rooted in international law. Rather, references to relevant international instruments are preferred. In relation to what constitutes knowledge at the time of authorization, Ireland drew attention to the difference between actual knowledge and constructive knowledge, underlying in accordance with the ICRC’s position that constructive knowledge is sufficient for Article 6.3 prohibitions to apply. The US emphasized that from Treaty negotiating records it is clear that, in terms of knowledge standards to be applied, the minimum States are required to do is to apply an actual knowledge standard.

Mexico and Panama, as well as Maat for Peace, highlighted the use of weapons, SALW in particular, by organized crime. Panama expressed reservations in redefining concepts such as “genocide” and “crimes against humanity” and suggested to add to the current list of international instruments States are party to and rely on as a source of human rights law the International Convention on the Elimination of Racial Discrimination and the Convention against Forced Disappearances and the Exploitation of Prostitution. In relation to violence against children, an additional instrument that should be referred to is the Protocol on the Use of Children in Pornography and Trade in Sex.

The civil society (Control Arms and ASER) and the EU made reference to the current situation in Ukraine, specifically the way it relates to the effective implementation of Articles 6 and 7. Both the EU and Control Arms believe that a rigorous application of ATT Articles 6 and 7 should stop all transfers of arms or related equipment to Russia, whether under new or existing contracts, that could facilitate the commission of war crimes and other serious violations of international humanitarian law by Russian forces in Ukraine. Control Arms also highlighted the need for all ATT States Parties transferring arms to Ukraine to apply the Treaty’s provisions in full, in particular conducting due diligence in the application of Articles 6 and 7. Likewise, Control Arms called on all ATT State Parties to share within the forum the ways in which they are maintaining their ATT obligations when assessing whether to authorize arms transfers into the current conflict in Ukraine.

With regard to the Voluntary Guide, Control Arms appreciates the recognition that the list of legal instruments is not exhaustive, and reflects the views of specific State Parties, rather than any common understanding among them. Control Arms drew attention to the fact that the Voluntary Guide does not clearly indicate that the information collected in Chapter 1 consists of
survey responses provided by anonymous stakeholders, and pointed out that for key concepts that do not have existing or accepted legal definitions, responses provided are not deemed to provide sufficient guidance. It was thus suggested that the sub-Working Group consider other approaches that States Parties could use to further explore and elaborate these concepts, for example convening small group meetings of stakeholders to share ideas with the Sub-Working group on Article 6 as a way to refine definitions.

The State of Palestine stressed the importance of *jus cogens* rules, which apply independently of the ATT. Palestine gave examples of serious violations of internationally recognized human rights, and suggesting adding the following to the list contained in the Voluntary Guide: apartheid, discrimination based on ethnic, linguistic, and religious grounds, the targeting of civilians and indiscriminate attacks in situations of armed conflict, and the excessive use of force. Regarding the Voluntary Guide, Palestine suggested including reference to the general rules of interpretation of treaties, as well as further references to legal studies issues by international bodies like the ICRC. Ambassador Sanchez de Lerin also stressed during the meeting that studies carried out by independent organizations in relation to the implementation of Article 6 and 7 are fundamental, and provide valuable resources for carrying out export assessments. France, echoing the Facilitator, stressed that export assessments should be conducted on a case-by-case basis.

The Republic of Korea underlined that they have established a system to comply with UN arms embargoes. Argentina, echoing other statements, stressed that when identifying international law applicable there is a need to clarify that it is only applicable to States that are bound to the specific international agreement under reference. Argentina also gave an overview of a project linking the use of firearms with gender-based violence (GBV), with a view to designing preventive measures to reduce the risk of GBV. The Philippines stated that the Voluntary Guide will be useful in the implementation of Treaty provisions, in view of the entry into force of the ATT in June 2022 for the Philippines.

Maya Brehm from the ICRC delivered a presentation on ‘Article 6.3: Knowledge and related terms’. The presentation was centered on the practical application of Article 6 and 7 provisions, with a focus on *genocide, crimes against humanity, and war crimes*. With regards to the latter, the ICRC’s recommendation for ATT State Parties is to adopt a broad scope of war crimes in the application of Article 6.3. To this end, the ICRC has produced a number of resources.

Relevant to the application of Article 6.3 is that genocide, much as crimes against humanity, can be related to both armed conflict and non-armed conflict situations, and is prohibited not only by the Convention on the Prevention and Punishment of the Crime of Genocide but also by international customary law. On crimes against humanity, a global convention is still lacking. The issue of States’ due diligence to prevent genocide was also addressed, also in light of recent ICC judgements. On the prohibition to transfer arms under Article 6.3, a restrictive interpretation is that there needs to be ‘actual’ knowledge of such crimes, whilst another interpretation is there only needs to be constructive knowledge of such crimes. In this regard, ICRC recommends that the term ‘knowledge’ be interpreted objectively based on publicly available information a state can be expected to know. There is an obligation incumbent upon ATT State Parties to actively
seek out information that is available before agreeing to transfer arms, which includes indications as to the likely future behaviour of a recipient. Art 6.3 entails evaluation of risk; however, it cannot be assimilated to the standard risk assessment process.

2. ATT Sub-Working Group on Article 9

The Sub-Working Group, chaired by Mr Rob Wensley, invited Dr Julia Hörnig to present on the Legal Aspects of sea trans-shipment.

Following an extensive presentation, States Parties (France, Argentina, and Peru) provided input relating to national and regional practices adopted to regulate transit and trans-shipment by sea. Key points from the discussions included the following:

- Training the crew, including arms handling, is key for the effective regulation of transit and trans-shipment by sea.
- It is usually not sufficient to share info between two or three parties as many other parties are generally involved at the same time; the involvement of sub-contractors can make the flow of information even more complicated.
- Cooperation with maritime operators is fundamental, but it is also necessary to cooperate with land operators, who are key to the whole operation.
- Private actors play a crucial role in mitigating illicit transfers, including by sea.

Dr Hörnig gave an overview of private laws on Transport. The Hague Visby Rules or Domestic Law apply to the sea, whereas on the regulatory side two instruments apply: the Firearms Protocol and the Wassenaar Agreement. Dr Hörnig also referred to Storage Safety, covered by the The International Convention for the Safety of Life at Sea Convention (SOLAS), and to Dangerous Goods, covered by the International Maritime Dangerous Goods (IMDG) Code. It was clarified that both the Hague Visby Rules and the Hamburg rules apply to transport by sea, although the latter is less frequently used. In addition, the Hague Visby Rules only apply where a bill of lading or similar document exists. Domestic law typically applies for waybills.

Dr Hörnig highlighted that the ATT does not define trans-shipment. A useful reference in this regard can be the User’s Guide to EU Common Position 944 of 2008 (CFSP), which clearly defines trans-shipment. Also, the 1991 UN Convention on Liability of Operators of Transport Terminals in International Trade applies to storage, loading, and unloading.

According to Article 3 of the Hague Visby Rules, the shipper needs to provide all necessary information and licences, whereas the carrier has the duty of storage and loading. This also means that the crew needs to be trained specifically to handle arms. In the context of arms transfers, if the vessel is loaded on only one side by heavy weapons, the seaworthiness is endangered. Therefore, weapons could go overboard, and bulky cargo needs to be lashed properly.

For dangerous goods, the SOLAS Convention makes reference to arms but only in regards to ammunition. The issue of deviation was also raised, and from a law perspective the carrier can
deviate only as long as it is reasonable. Dr Hornig also touched upon transit restrictions. As regards inspections on sea, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea under UNCLOS convention. However, this rule is superseded in cases of arms embargoes; as regards the port of destination, goods can only be released if there is no prohibition, justified for example by an arms embargo.

One civil society organisation, Recherche Documentation Juridique Africaine, stressed the importance of training crew. Nonetheless, challenges relate to the fact that major shipping companies often do not provide for such training. Also, feeder ships are used to discharge cargo including arms, in non-official ports.

France stated that transit and trans-shipment by sea is an extremely complex area that is governed by a patchwork of regulations. For this reason, while France controls transit and trans-shipment, it is not able to do so for all operations. Trans-shipment in French ports requires an authorisation beforehand, delivered by the customs agency which also controls the goods; customs agents oversee document controls and can control goods and means of transport. Typically, an authorization is required for private actors to be engaged in transit and trans-shipment activities, and only entities that have an accredited economic operator status can engage in trans-ship activities. France also undertakes a number of activities to sensitize private actors, who play a crucial role in mitigating illicit transfers, including by intercepting physical goods.

Argentina intervened to highlight that MERCOSUR Decision No. 2 of 1994 adopted an agreement named “Transport for dangerous goods in MERCOSUR”, which also applies to air, land, as well as maritime transport. This agreement identifies dangerous goods and transport and the training requirements for drivers and carriers. Peru pointed out that Article 9 is extremely pertinent to ATT implementation with a view to controlling conventional weapons and avoiding diversion. It was also stressed that effective communication is key, and that training operators and crew is fundamental.
Side events held during the ATT Working Group and Informal Preparatory Meetings for the Eighth Conference of States Parties to the Arms Trade Treaty

Title: Advancing Universalization of the Arms Trade Treaty in Africa
Organiser: Control Arms

Control Arms convened an event on ‘Advancing Universalization of the Arms Trade Treaty in Africa’. The meeting brought together Ambassador Gberie of Sierra Leone, the ICRC, Control Arms staff, delegates from Malawi and Gambia, as well as one Cameroonian civil society organisation to discuss progress made so far towards universalization of the ATT in Africa. Ambassador Gberie, noting that Africa has been disproportionately impacted by illicit arms trade, highlighted possible reasons for non-participation in the ATT process by African countries. While challenges are highly context-specific, there are commonalities that relate to the lack of necessary resources and capacities needed to join the Treaty, as well as to implement it.

The ICRC gave an overview of work that has been conducted to support African States during the ratification and implementation process, and presented several tools developed by the ICRC to facilitate these processes. Similarly, Raluca Muresan, Control Arms Co-Director, explained that Control Arms members serve as long-standing partners to a number of African governments and gave an overview of advocacy, research, and capacity building programs undertaken in the region. The Gambia, after having announced their willingness to join the Treaty during CSP7, stated that the Treaty is now ready for approval, in accordance with internal procedures. CAMYOSFOP, Control Arms member in Cameroon, illustrated the process of fast tracking the ratification of ATT in Cameroon, which was grounded on excellent collaboration between the government and civil society.

Title: Thematic debate on Post Shipment Controls
Organiser: Germany

In the context of ATT meetings, Germany chose to make post-shipment controls the thematic focus of CSP8. The event, chaired by Ambassador Göbel, gathered experts from UNIDIR, BAFA (Germany), SIPRI, and the industry, and provided an opportunity to share existing experiences on post-shipment controls. The workshop touched upon different solutions regarding the introduction of post-shipment controls focusing on on-site visits, operational challenges (including human resources, safety and security, involved authorities, and reporting), economic aspects of post shipment controls, and the perspective of the industry. Germany is in the process of collaborating with Canada in the preparation of a paper that will provide a toolbox for the implementation of post shipment controls. The paper is based on a questionnaire that was shared last year by Canada with a view to collecting experiences and good practices, and to which 13 States and two civil society organizations have responded.
UNIDIR explained that the work on post shipment controls should be seen as an opportunity to strengthen cooperation and build confidence between exporting and importing States and presented some key research findings outlining the benefits of post shipment controls, including facilitation of international assistance and cooperation to prevent diversion and technical expertise supporting PSV on the private sector side. Experts from the industry stressed that, since it can be time consuming to enforce checks physically, technologies have been developed to facilitate these checks, including a data matrix code, RFID chips, and forensic markings. BAFA (Germany) stressed that implementation of post shipment controls in export control regimes starts with a political commitment as well as a determination of which items and which regions should be the focus of post shipment verification. The legal and practical aspects of checks were also recalled. SIPRI underlined that 10 States have carried out at least one inspection this year and confirmed that there is growing awareness of the issue amongst governments. Possible challenges related to the adoption of on-site inspections, to requesting on-site inspections, and to conducting on-site inspections were also discussed.

END.