



Options to strengthen end-use/r controls to prevent diversion

Paul Holtom

**Increasing accountability:
End-user control and identification of diversion**

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Outline

- End use/r controls and diversion
- UNIDIR Project (2015): ‘Examining Options to Enhance Common Understanding and Strengthen End Use/r Control Systems to Address Conventional Arms Diversion’
- Areas for EU engagement to strengthen end use/r controls:
 - Assurances on end use
 - Post-delivery cooperation to prevent diversion and unauthorized re-export
 - Exchanging information beyond the EU and export control regimes
- UNIDIR Project (2016): ‘Promoting Regional Dialogue to Enhance Shared Understanding and Cooperation to Strengthen End Use/r Control Systems’

“End-use certificates are designed to form a key line of defence against the diversion of authorized small arms transfers. These documents, however, are effective only in the context of a broader system that includes a comprehensive consideration of diversion risks at the licensing stage, the verification of end-user documentation and post-shipment controls.”

UN Secretary General Report on
Small Arms (2008)





Weak end use/r controls facilitate diversion

Evidence from diversion cases indicates that weak end use/r control systems can facilitate diversion:

- End use/r documentation is not authenticated by exporting States, and forgeries are used to acquire export licences to divert arms
- End use/r documentation is not verified by exporting States as part of a thorough risk assessment process
- Importing States lack the procedures for oversight and control of arms imports
- Assurances on end use or re-export are ignored by the importing State, adherence to assurances is not monitored by the exporting State and actions are not taken when reports of violations are presented to the exporting State and international community
- Officials in importing States are willing to provide authentic end use/r documentation to facilitate diversion for financial or strategic gains



Calls for strengthening end use/r controls

Calls to enhance cooperation to strengthen end use/r controls systems to make them more effective in preventing diversion

- Recommendations in UN Secretary General reports on small arms
- Recommendations of UN Panels, Groups and Committees of Experts on UN arms embargoes
- Recommendations of UN Member States in UN Security Council and General Assembly meetings
- Efforts undertaken at the regional level to provide minimum standards for end use/r documentation and guidelines for effective end use/r controls
- Efforts undertaken in multilateral export control regimes to provide minimum standards for end use/r documentation and guidelines for effective end use/r controls



Regional and multilateral guidance to strengthen end use/r controls

European Union (EU)	User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment (2015)
Organization for Security and Cooperation in Europe (OSCE)	Best practice guide on export control of small arms and light weapons (2003) Standard elements of end-user certificates and verification procedures for SALW exports (2004) Information Exchange with Regard to Sample Formats of End-User Certificates and Relevant Verification Procedures (2008) End User Certificate for Small Arms and Light Weapons (2010)
Regional Center on Small Arms (RECSA)	Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons (2010)
United Nations Coordinating Action on Small Arms (UN CASA)	National controls over the international transfer of small arms and light weapons (Module 03.20, International Small Arms Control Standards, 2014) National controls over the end-user and end-use of internationally transferred small arms and light weapons (Module 03.21, International Small Arms Control Standards, 2014)
Wassenaar Arrangement (WA)	Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons (1998/2004/2011) End-User Assurances Commonly Used: Consolidated Indicative List (1999/2005) Best Practices for Effective Enforcement (2000) Best Practice Guidelines for Exports of SALW (2002/2007) Elements for Export Controls of MANPADS (2003/2007) Best Practices to Prevent Destabilising Transfers of SALW through Air Transport (2007) Best Practice Guidelines on Subsequent Transfer (Re-export) Controls for Conventional Weapons Systems contained in Appendix 3 to the WA Initial Elements (2011) Elements for Controlling Transportation of Conventional Arms between Third Countries (2011) Introduction to End User/End Use Controls for Export of Military-List Equipment (2014)

Source: *Options to Enhance Common Understanding to Strengthen End Use and End User Control Systems to Address Conventional Arms Diversion*, UNIDIR, 2016, p. 38.



UNIDIR Project objectives

Provide options to facilitate a meaningful dialogue between relevant stakeholders on potential areas for cooperation, shared understanding and possible alignment of measures to strengthen end use/r control systems to address conventional arms diversion

1. Inform efforts to develop common understandings of key terms
2. Align standards on the key elements to be contained in end use/r documentation with regards to:
 - Items and end-use/r
 - Assurances on end use and re-transfer/re-export
3. Increase understanding of the roles and functions of on the key elements to be contained in end use/r documentation
4. Enhance international cooperation and information sharing



Assurances on end use

- The EU User's Guide recommends that an EUC includes 'an undertaking, where appropriate, that the goods being exported will not be used for purposes other than the declared use'
- Some EU Member States include in their EUC provisions that conventional arms being exported 'will not be used for human rights violations, e.g. torture, slavery, cruel and inhumane punishment'
- Do EU Member States monitor compliance? If yes, how?
- Should EU Member States request an undertaking from importing States that conventional arms will not be used in violation of the provisions contained in ATT Articles 6 and 7?



Post-delivery cooperation to prevent diversion and unauthorized re-export

The EU User's Guide contains three options for a clause on re-export

- Prohibit re-export of conventional arms
 - Prohibit re-export of conventional arms without authorization from original exporting state
 - Re-export of conventional arms for particular destinations
- What steps do EU Member States undertake to ensure respect for the 're-export' clauses in end use/r documentation?
 - Is the provision of a delivery verification certificate sufficient to reassure EU Member States regarding post-shipment diversion?
 - Should EU Member States request on-site inspections to ensure respect for 're-export' clauses in end use/r documentation?
 - Is the time ripe for the EU to promote discussion on post-delivery cooperation measures within a PoA or ATT framework?



Why exchange information?

- Lack of familiarity with end use/r control procedures and requirements, misperceptions with regard to checks and compliance inquiries
- Lack of resources for effective end use/r control system (e.g. to authenticate and verify end-use/r documentation)
- Lack of reliable or verifiable information in end use/r documentation
- Poor cooperation with relevant authorities in the country of import
- Poor cooperation with entities involved in the transfer
- Difficulties in identifying competent authorities and authorized signatories
- Changing circumstances regarding the country of import or end user
- Complex supply chains



Potential for exchanging information beyond the EU

- Effective risk assessments for many States require international cooperation and inter-agency cooperation procedures
- Repeated calls by States for information exchanges relating to end-use/r documentation and control systems, including measures to support authentication and verification
- A high level of willingness by States to exchange sample EUCs with other States
- Reluctance from States to share information on entities authorized to certify end-use/r documentation
- Potential for further consideration within a PoA or ATT framework

Next steps for the regional level

Three regional consultative meetings with States in Africa, the Americas and Asia that are not participating in existing export control regimes:

- Seek the identification of key areas to enhance cooperation and strengthen end use/r controls in Africa, the Americas and Asia
- Enhance common understanding of potential approaches, procedures and practices for strengthening end use/r controls to mitigate of the risk of diversion in these regions and globally
- Facilitate a regional dialogue on methods and processes to strengthen cooperation and alignment of end use/r control systems
- Improve regional understanding of practical steps that could be taken on a (a) regional and (b) global level to strengthen end use/r control systems



Next steps for the global level

- Forums for a global dialogue to strengthen end use/r controls
 - The United Nations (e.g. PoA)
 - The Arms Trade Treaty
- Types of outcomes
 - Template for standardized end-use/r documentation
 - Checklist of common and recommended elements for end-use/r documentation
 - Standards for risk assessment for end-use/r control systems
 - Information exchange mechanism
 - Post-delivery cooperation and monitoring mechanisms and processes



UNIDIR Project Team

Himayu Shiotani
Project Manger and Researcher
hshiotani@unog.ch

Hardy Giezendanner
Researcher
hgiezendanner@unog.ch

Paul Holtom
Expert Consultant

UN Institute for Disarmament Research (UNIDIR)
www.unidir.org
Twitter: @unidir