Mechanism to address diversion in arms transfers: Examining end use and end user controls

The 24th Asian Export Control Seminar

Tokyo, Japan
February 2017

Outline of this presentation

- **Part 1**: Framing the issue

- **Part 2**: Sharing of key findings from UNIDIR's global study and regional consultation process

Diversion: A Global Challenge

" **The diversion of weaponry is a colossal problem in many parts of the world. It allows rebels, gangs, criminal organizations, pirates, terrorist groups and other perpetrators to exponentially bolster their power."**

Former UN Secretary General:
Ban Ki-moon
Statement from SG report 2015; 2008

Why focus on end use/r controls?

- **End use/r controls**, including documentation, are commonly recognized by practitioners as an **effective mechanism** to combat diversion.

- **End-use certificates** are designed to form a **key line of defense** against diversion. They are **effective in the context of a broader control system** that includes: **comprehensive risk assessment** at the licensing stage, the **verification of end user documentation** and **post-shipment controls**.

- **Evidence from diversion** cases suggests that **differences between national end use/r control systems**, as well as the **lack of shared understanding of definitions, information sharing needs and modalities, as well as roles/responsibilities** pose a challenge to the effective use of end use/r controls.

Diversion and end use/r controls

Weak end use/r control systems can facilitate diversion in cases where:

- 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, with **information missing** or **not checked adequately**;

- The importing State **lacks adequate procedures for oversight** of arms imports;

- **Assurances on end use are ignored** by the importing State, where **adherence to assurances is not monitored** by the exporting State and/or **actions are not taken when reports of violations are presented**; and/or

- Officials in importing States are **intentionally or accidentally undertaking an unauthorized re-transfer** of arms without the exporting State's prior consent.

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

Global call for action, limited progress

States in multilateral fora, Group of Governmental Experts and UN Panels of Experts have long called for the examination of opportunities to strengthen end use/r control systems, including to explore:

- An internationally standardized end user certificate;
- An international framework for exchanging information to assist in the authentication and verification of end user documentations; and
- An international database of entities that violate end use/r assurances.

Despite these repeated international calls, **there has not been a global, comprehensive, and inclusive dialogue on this issue** among States.

For further information, see *Options to Enhance Common Understanding to Strengthen End Use and End User Control Systems to Address Conventional Arms Diversion*, UNIDIR, 2016, pp. 5-40.

UNIDIR's response

Objective:

- To facilitate a global and regional dialogue and help identify options and avenues to strengthen end use/r control systems in preventing the diversion of arms.

Specifically:

- To help enhance international cooperation;
- Where possible, to work towards enhancing shared understanding of key terms, elements and roles/responsibilities related to end use/r controls;
- To align standards, in particular key elements to be contained in end use/r documentation and general principles for ensuring effective end use/r controls.

What UNIDIR has already undertaken

- **Informal Expert Meeting**: April 2015, Vienna, Austria
- **Informal Industry Meeting**: July 2015, Geneva, Switzerland
- **Global Survey:** June 2015 – December 2016, (English, Spanish, French)
- **Side-event at CSP1**: August 2015, Cancun, Mexico
- **Round-table on Menu of Options**: October 2015, New York, USA
- **Comprehensive study on end use/r controls**: Geneva, 2016
- **Training on end use/r controls for the ATT Network**: April 2016, Geneva
- **Presentation at 5th Consultative Meeting of EU Non-Proliferation Consortium**: July 2016, Brussels, Belgium
- **Side-event at CSP2:** August 2016, Geneva, Switzerland
- **First subregional consultations on end use/r controls:** September 2016, Port of Spain, Trinidad and Tobago
- **Second regional consultations on end use/r controls:** October 2016, Nairobi, Kenya
- **Capacity building workshop on end use/r controls:** November 2016, Ouagadougou, Burkina Faso

Key findings

Areas of focus

1. Definition of key terms
2. Information in end use/r documentation
3. Assurances on use and re-transfer
4. Roles and functions
5. Exchange of information
6. Post-delivery cooperation

Key Terms

Key Terms

"End User / End Use controls are put in place for exports of military equipment in order to ensure that exported equipment is not diverted to unintended end users or end uses, as the case may be. **National systems for this purpose vary considerably, as does the terminology used"**

Wassenaar Arrangement, 2014

Key Terms

➢ The UNIDIR research examined the potential for:

- Common definitions and terminologies in end use and end user controls, including for users, types of documentations and processes.

➢ **UNIDIR observed that:**

- **Most States indicated exchange on definitions as a good starting point in dialogue on end use/r controls, examining existing definitions**

- **Some terms are used interchangeably, reflecting the plurality of terms—indicating a potential for streamlining terms**

- **Particular challenges exist for definitions of actors (end user)**

Information to be provided in end use/r documentation

End-use/r documentation

➤ The UNIDIR research examined the potential for:

- Synergies and harmonization of information to be provided in end use/r documentation.

- Considerable work already undertaken by Euro-Atlantic organizations and export control regimes for Government end users

- Majority of exporting States provide different end use/r documentation templates or checklists of elements to be included in end use/r documentation:
  - Items (conventional arms; SALW; parts and components; dual-use items)
  - End users (State; non-State)

End use/r documentation contents (Government end users)

Document contents	UN (ISACS)	EU	OSCE	WA
Exporter details	X	X	X	X
End user details	X	X	X	X
Contract number	X	-	X	X
Country of final destination	X	X	X	X
Description of items	X	X	X	X
Quantity / Value	X	X	X	X
End user representative details	X	X	X	X
Date of issue	X	X	X	X
Description of end use	X	X	X	X
Intermediary details	-	X	X	X
Government issuing agency details	X	-	X	X
Date of expiration / Period of validity	X	-	X	-
National register number for EUC	X	-	X	-
Seal / Apostille				

End use/r documentation

- ➢ **The UNIDIR research indicates potential to:**

    - • **Further consolidate the elements to be included in end use/r documentations, especially for Government end users**

    - • **Examine more closely synergies in elements to be included for non-state end users and on particular items**

    - • **Seek further synergies and cooperation in the verification of information provided in the end use/r documentation between the exporting and importing national authorities involved in the transfer**

Assurances

Assurances on end use and unauthorized re-transfer

➢ UNIDIR examined the potential for framework to strengthen:

- Assurance on end use;
- Assurance that the end user will be the ultimate recipient and will not divert or relocate to another destination or location in the importing state;
- Assurance not to re/transfer:
  - re-export under any circumstances
  - re-export without prior, written authorization from the original exporting State
- Assurance on confirmation of delivery or post-shipment cooperation

Assurances on end use/r

Type of assurance	UN (ISACS)	EU	OSCE	WA
The item(s) being exported will not be used for purposes other than the declared use	X	X	X	X
The item(s) will be installed at the premises of the end user or will be used only by the end user	X	-	X	X
The importer/end user will not divert or relocate the item(s)	X	-	-	X
A clause prohibiting re-export of the item(s)	X	X	X	X
Re-export will only be carried out under the authority of the importer's/end user's export licensing authorities	X	X	X	X
Re-export will only take place after authorization has been received from the export licensing authorities of the original exporting State	X	X	X	X

Types of assurances

➢ **UNIDIR research indicates that:**

- **Most importing States are familiar with exporting States seeking assurances on end use, end user and re-export—however the familiarity decreases when national responsibilities are diversified at national level;**

- **Assurances may be linked in the future closely to ATT provisions, in particular Articles 6 & 7, to strengthen the process;**

- **Exporting States use different assurance options depending on the end user and items—indicating that further mapping on types and conditions would be useful.**

- **Dialogue on recordkeeping of documentation is needed to better monitor and oversee assurances in order to avoid accidental diversion**

- **Further discussion is needed on assurances as it relates to the process of disposal of surplus and/or obsolete weapons**

Roles and functions

Roles and functions

> UNIDIR examined the potential for common understanding on roles and functions of national authorities in the process of end use/r control in the following areas:

- Verification of the *bona fides* of the end user/consignee

- Certification of relevant end use/r documentation provided by a non-state end user/consignee

- Authentication of end use/r document

- Verification of content in end use/r document

- Cooperation and exchange information:

  - between competent State authorities

  - with transit/transshipment State competent authorities

  - with producers, brokers, transportation

Roles and functions

> **UNIDIR has observed that:**

- **Limited number of States certify and authenticate documentation for non-State end users**

- **Not all States have in place dedicated entities or particular measures to prevent forgery and misuse of documentation and assist in authentication**

- **Most States seek to verify the details contained in documentation, but this is not always the case in practice, and the process to verify detail vary—indicating potential for harmonization**

- **There exists an opportunity to further discuss the roles and responsibilities involved in the process for certifying and verifying end use/r documentation**

Exchange of information

Exchange of information

➢ The UNIDIR examined the potential for:

- Exchange of end use/r documentation templates

- Agreement on establishing an exchange of information on agencies authorized to issue, certify and authenticate end use/r documentation

- Exchange of information related to risk indicators

Exchange of information

➤ **UNIDIR research revealed:**

- **A high level of willingness by States to exchange template EUCs with other States, which could aid authentication**

  - Over 90 per cent of States in UNIDIR survey replied positively

  - WA website already contain EUC documents from States

- **Resistance by a significant cohort of States to sharing information on entities authorized to certify end use/r documentation**

- **Challenges faced by States in seeking to authenticate and verify end use/r documentation**

- **Possible challenges on exchange of information related to risk indicators at regional and multilateral levels**

Post-delivery cooperation

Post-delivery cooperation

➢ The UNIDIR research examined the potential for:

- **Cooperation on delivery confirmation or verification,** provided by the importer / consignee / end user to the exporter, confirming delivery and/or receipt of the conventional arms by the authorized end user or representative (e.g. DVC)

- **Willingness of the importing authority to accept routine or ad hoc post-delivery checks** to prevent misuse after delivery or post-delivery diversion.

- **Cooperation on investigations into reports or allegations of diversion or unauthorized re-transfer.**

Post-delivery cooperation

➢ **UNIDIR's research indicates:**

- **Willingness of importing States to provide confirmation of delivery contrasted with a low number of exporting States that seek delivery confirmation;**

- **A very low number of States consider the option to seek the possibility for on-site inspections;**

- **Some recipient States are more open to the concept of post-delivery cooperation on items that have been purchased, rather than items received as grants/gifts;**

- **Further mapping on varying conditions placed on post-delivery cooperation would be beneficial.**

Identification of possible avenues for moving forward

Possible Opportunities

- The UN Programme of Action on Small Arms
- UN General Assembly Resolutions
- Group of Governmental Experts
- The Arms Trade Treaty
- Sub/Regional Processes

Arms Trade Treaty

- Reporting on measures to implement the ATT
- Working Group on Implementation
  - Exchange documentation and practices
  - Explore good practice guidelines
  - Examine discussions on end use/r controls
- Exchange information between States Parties

Questions & Discussion

Contact Us

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Reference documents: United Nations

Organization	Relevant end use/r control system initiative or instrument
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 (ISACS), 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 (ISACS), 2014)
United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC)	Arms Trade Treaty Implementation Course (ATT-IC): Module 4. Conventional Arms Import Control Tools and Measures

Reference documents: Regional organizations

Organization	Relevant end use/r control system initiative or instrument
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)
	Template End User Certificate (EUC) for Small Arms and Light Weapons (2010)

Reference documents: Wassenaar Arrangement

Relevant end use/r control system initiative or instrument
Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons (1998 / 2004)
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)