



## **Examining Options to Enhance Common Understanding to Strengthen End Use/r Controls**

### **A Menu of Options**

## What this project seeks to achieve

### **The harmonization of end use/r control systems to prevent arms diversion**

The diversion of authorized conventional arms transfers, including small arms, poses a persistent problem for security at the global, regional and national levels, and lies at the heart of the illicit proliferation of arms. Evidence from diversion cases suggests that differences between national end use/r control systems (in particular the content, format and use of end use/r documentation), as well as a lack of common understandings of definitions and information to be shared among relevant stakeholders help to facilitate diversion.

Therefore, states at multilateral forum have called for the examination of the harmonization of end use/r control systems to improve their role in preventing diversion. Despite these repeated international calls, a global discussion has not yet been convened to consider possible ways and approaches to strengthen shared understanding and promote alignment in end use/r control systems.

### **Why explore harmonization?**

In 2015 the United Nations Institute for Disarmament Research (UNIDIR) initiated the project “Examining Options and Models for Harmonization of End User/r Control Systems”. This project responds to international calls to explore opportunities for greater harmonization of end use/r control systems in order to combat arms diversion. It seeks to identify key aspects of end use/r control systems that could be harmonized and unpack some of the key challenges and opportunities in this area. This project defines ‘harmonization’ as:

- **Enhancing international cooperation;**
- Where possible, **working towards agreement on common understanding of key terms;** and
- **Aligning standards,** in particular with regards to key elements to be contained in end use/r documentation and general principles for ensuring effective end use/r controls.

The project recognizes that greater cooperation and alignment between states with regards to common practices and procedures in end use/r control systems will enhance the ability of relevant stakeholders to more effectively identify and mitigate the risk of arms being diverted.

### **Added value of the project**

The intended added values of this project include:

- An analysis of key areas of national end use/r control systems that could be aligned and/or subject to enhanced cooperation at the national, regional and/or global levels;
- New ideas, avenues and potential areas for states to address challenges to, and opportunities for, cooperation towards alignment of common end use/r control practices and procedures;
- Targeted engagement with states that are not participating in the existing export control regimes in order to promote a comprehensive and global approach to strengthen end use/r controls to prevent diversion; and
- Identification of possible forums to further the discussion on international cooperation and shared understandings of end use/r control at the regional and global levels.

The project is also expected to contribute towards supporting the practical and effective implementation of the Arms Trade Treaty (ATT) and the UN Programme of Action (PoA), as well as relevant regional instruments.

### **Project Outputs**

In April 2015, UNIDIR organized an **informal expert meeting** with national experts in Vienna, followed by an **informal consultation with industry stakeholders** in July in Geneva. The **meeting summary** can be downloaded from the UNIDIR website: <http://www.unidir.org/EUC-Meeting-Summary-Survey>. From June to October 2015, UNIDIR has conducted **a global survey** of states’ national practices, expertise and experiences on end use/r control systems. The project was also introduced at a **side-event** at the 1<sup>st</sup> Conference of State Parties (1CSP) to the ATT in August in Mexico. UNIDIR will present preliminary findings of this project in **a workshop** in the margins of the UN General Assembly First Committee meeting in New York in October 2015.

## Menu of options for the harmonization of end use/r control systems

The objective of this menu is to outline the options—including practical measures and existing avenues—available to states to enhance cooperation and strengthen control measures on end use/r control to prevent arms diversion. The menu seeks to offer a taste of the areas that are being examined by UNIDIR for its comprehensive study on this issue, to be released by the end of 2015.

The menu draws upon existing national practices and multilateral good practice guidelines for conventional arms transfer controls, as well as research and consultations conducted during 2015 for this project. Each option in the menu represents an area that key stakeholders considered desirable and potentially feasible for greater harmonisation to strengthen efforts to prevent arms diversion.

There are a total of six options available in this menu. The first four options were identified by experts drawn from national governments, international and regional organizations, and civil society. The experts consider these areas merit further dialogue to strengthen common understandings and cooperative measures to harmonise end use/r control systems. These four options focus on the content, role and function of end use/r documentation. The additional two options are areas of end use/r control that could benefit from wider discussions among interested parties.

The project recognizes the difficulty and complexity of designing and implementing an end use/r control system and is aware that it is not desirable to seek the development of an one-size-fits-all model. Therefore, states may consider these options in the context of facilitating dialogue to enhance international cooperation, and where applicable, to work towards establishing common understanding on key terms and standards.

### ➤ Option 1: Definition of key terms

Various Euro-Atlantic organizations (e.g. the European Union, EU, and the Organization for Security and Cooperation in Europe, OSCE) and transfer control regimes (e.g. the Wassenaar Arrangement) have devoted extensive time and effort in their attempt to develop common understanding of key terms used in end use/r control systems, such as:

- End use;
- End user;
- Assurances;
- Names and types of relevant documentation; and
- Relevant entities involved in international arms transfers.

Yet, research conducted by UNIDIR has found that these definitions are underutilized by many states, in particular those states that are not participating in transfer control regimes. This finding points to a need for a **wider global dialogue on key terms** used in end use/r control systems and to establish common understanding on their application.

The first option, on the definition of key terms, draws upon existing definitions contained in national legislation and good practice guidelines developed by international and regional organisations, as well as export control regimes. The UN Office for Disarmament Affairs (2011) *Study on the Development of a Framework for Improving End-Use and End-User Control Systems*; and the Wassenaar Arrangement (2014) *Introduction to End User / End Use Controls for Exports of Military-List Equipment* provide states with a good basis from which definitions of key terms could be further examined. For example:

#### Defining end use

*“Stated end use is the information provided in the end-use certificate on the intended use of the notified commodity (e.g., spare part for ..., incorporation in ..., use as ...)”. (Wood and Dansaert, 2011, p. 10)*

*“(...) the focus may be on the end user when a final product is being exported, and on end use when a component is being exported for integration into another country’s product.[Therefore] ‘End Use’ could be integration of a component or subsystem into a larger end product. While some national systems control components and subsystems in the same way as finished products, another*

*approach often used is to require an assurance specifying integration as the end use". (Wassenaar Arrangement, 2014)*

This option aims to address the following question:

- *Can existing end use/r control definitions developed by international and regional organizations and export control regimes serve as the basis for harmonization efforts?*

### ➤ **Option 2: Details on items, end use/r to be provided to export control authorities**

Information on items, end use, end users and entities involved in the transfer of conventional arms is recognized as being critical for informing assessments of the risk of diversion conducted by export control authorities. UNIDIR research indicates that there is a general consensus in the best practice guidelines of the Euro-Atlantic organizations and export control regimes on the types of information that are regarded as the minimum required to be included in end use/r documentation, but national practice varies. For example, the following types of information have been identified as the minimum required by export control authorities:

- Information on the items
  - Description of the conventional arms being exported (e.g. type, characteristics);
  - Quantity;
  - Value;
- Information to be provided on the end use/r
  - Details of the end user (e.g. name, address);
  - Signature, name and position of the end user's representative / importer / consignee;
  - Description of the end use of the conventional arms;
- Information to be provided on entities involved in the transfer
  - Details of the exporter (e.g. name, address and business name);
  - Details of the importer / consignee (e.g. name, address and business name);
  - Details, where appropriate, of any intermediaries involved in the transfer.

The second option draws upon national practices, international and regional good practice guidelines, research conducted by UN Panels of Experts for sanctions monitoring, and academic research findings on 'common' information required for conducting risk assessments before authorizing an arms export. UNIDIR research has found that the major exporting states request similar information, but have different national templates or checklists for end use/r documentation. In some cases, these templates or checklists demand additional information based on items, end use/rs or types of transfers. This option aims to address the following questions:

- *Is it feasible and desirable to develop a standardized end user certificate?*
- *Would it be feasible to at least achieve agreement on 'common minimum elements' on details of items, end user and relevant entities involved in the transfer?*
- *Is there a need for different end use/r control approaches for (a) state and (b) non-state importers / end users?*

### ➤ **Option 3: Types of assurances to be provided by the end user / importer**

Exporting states often seek assurances from the end user on use and re-export. States utilise different types of assurances on use and re-export, dependent upon the end user, proposed end use and type of item. For example, research conducted by UNIDIR found that states utilise the following types of assurances regarding use:

- A statement, where appropriate, that the conventional arms being exported will not be used for purposes other than the declared use;
- A statement that the declared end user will be the ultimate recipient of the conventional arms being exported;
- A statement from the importer / end user not to divert or relocate the conventional arms to another destination or location in the importing state;

- A statement by the importer / end user to provide, upon request, the relevant authorities in the exporting state with confirmation of arrival at the intended final destination (e.g. delivery verification certificate);
- Agreement by the importer / end user to allow on-site verification by the exporting state's competent authority.

And the following assurances for re-export:

- No re-export of conventional arms under any circumstances;
- No re-export of conventional arms without prior, written authorization from the original exporting state;
- Re-export of conventional arms is permitted if expressly permitted by the original exporting state.

Existing best practice guidelines recommend that a high-level official in the government of an importing state or a representative of the end user provide assurances on use of items—although this is not always followed in practice. National export control authorities will take these assurances into account in their risk assessment. Therefore, this is an important area for cooperation as well as building trust and confidence between the governments of the exporting and importing state.

The third option provides an overview of the different types of assurances that are requested by exporting states and provided by the end user with regards to use and re-export. It draws upon good practice guidelines developed by international and regional organisations and export control regimes. The option also reflects the challenges in acquiring assurances as well as implementing possible responses when the end user is found to not abide by the assurances provided. This option, therefore, aims to address the following question:

- *What measures could be undertaken to help build trust between exporting and importing state on assurances?*

#### ➤ **Option 4: Roles and functions of end use/r documentation**

Much of the attention on end use/r control systems has focused upon the contents of end use/r documentation requested by exporting states as part of the application for a licence to export controlled items. However, efforts have also been undertaken by regional and international organizations, as well as export control regimes, to elaborate on the roles of such documentation in end use/r control systems, in particular for risk assessment. For example, the ISACS module 03.21, '*National controls over the end-user and end-use of internationally transferred small arms and light weapons*', provides voluntary guidance on roles for government agencies, including for the importing state (verification of the *bona fides* of the end user and permission to import the items, certification of end use/r documentation) as well as for the exporting state (authentication of the end use/r documentation and verification of its contents as one part of a broader risk assessment).

The fourth option draws upon international efforts to define the roles and functions of key stakeholders in the end use/r control system. Best practice guidelines recommend that the importing state certifies end use/r documentation and assurances, in effect providing a guarantee regarding the end user and end use to the exporting state. The exporting state is expected to authenticate the documentation and verify its contents as part of a broader risk assessment. This option seeks to examine and clarify the roles and functions of key stakeholders in the transfer process, including for actors such as arms producers, brokers and dealers, and those entities involved in transportation. Mechanisms for facilitating cooperation, in particular the exchange of relevant information prior to the transfer, are also considered under this option. This option aims to address the following question:

- *Is there a need for international guidelines on the roles and functions of end use/r documentation for all relevant stakeholders involved in the regulation of the international arms trade?*

## Two additional courses

### ➤ Option 5: Exchange of information and indicators for risk assessment

A critical aspect of end use/r control systems is the ability of the export control authorities to conduct a thorough assessment of the risk of diversion for each proposed transfer. The previous options all help to answer the following questions:

- Is there a significant risk that the items could be misused?
- Is the end user trustworthy? And what of the other entities involved in the transaction?
- Is there a significant risk that the items could be diverted?

For many states, it can be useful to receive information from other states and external sources to help conduct a thorough risk assessment. In some cases, it could be useful for risk assessment indicators and guidance on sources of information to be shared between states. The UNIDIR research, however, revealed states' uncertainties on the utility of such information exchanges, as well as hesitancy from some states to share valuable but sensitive information. This option, if interest exists among states, aims to address the following questions:

- *Is exchanging lessons learned and sources of information for risk assessment procedures and verification useful? Is it feasible?*
- *Should guidance be developed for assisting risk assessments on diversion?*

### ➤ Option 6: Post-delivery cooperation

One of the means to mitigate the risk of end users not abiding by assurances and undertakings is to put in place mechanisms to enable cooperation between the relevant authorities in the exporting state and the end user to increase confidence and ensure that follow-on deliveries are possible. Good practice guidelines refer to post-delivery cooperation measures as 'optional' elements for systems, or worth considering for particularly sensitive items, destinations and/or end users. The recommendations of UN Panels of Experts tasked with monitoring the implementation of sanctions, as well as findings from research institutes on this issue, strongly recommend the development and use of measures to facilitate cooperation and information sharing on post-delivery. These include:

- Confirmation of receipt of items (e.g. delivery verification certificates – DVC);
- Record-keeping by recipients of controlled goods;
- Notifying, in a timely manner, relevant authorities in exporting states on loss or theft of controlled items;
- Abide by assurances on re-export, whichever options are utilized;
- On-site inspections of the location of end use by the relevant authorities in the importing state and/or in cooperation between the relevant authorities in the importing and exporting states.

This option recognizes the various challenges posed for putting in place a mechanism for post-delivery cooperation, including with its definition, such as 'post-delivery controls and 'post-delivery monitoring'. On the part of exporting states, there is reticence regarding the costs of post-delivery cooperation programmes. For some importing states, there are concerns that post-delivery measures are intrusive and infringe on sovereignty. This option seeks to examine mechanisms for potential cooperation and information sharing in building confidence between the exporting and importing states. This option aims to address the following questions:

- *Are 'post-delivery controls' and 'post-delivery monitoring' more accurately identified as 'post-delivery cooperation and information sharing'?*
- *Are there cases where 'post-delivery cooperation and information sharing' should be regarded as essential elements of end use/r controls – e.g. in cases where states need to cooperate with UN Sanctions Committees regarding arms imports?*

## Possible avenues for harmonizing end use/r control systems

This project recognizes the ongoing work in international and regional organizations, as well as in the export control regimes, to strengthen end use/r control systems as a measure to address the diversion of conventional arms. The project is not intended to simply replicate work that has already been undertaken, but rather to explore the potential for options and avenues that can be taken to widen the number of stakeholders involved in the international arms trade in efforts to strengthen end-use/r control systems. In particular, this project seeks to promote regional and international dialogue that involve a broad range of states and other important stakeholders, such as industry, in consultations and the development of common understandings to strengthen end use/r control systems. The following questions are considered when exploring possible avenues to support states in their effort to strengthen end use/r control systems:

- What existing processes—e.g. UN, ATT or regional— could be utilized to facilitate dialogue?
- Can all three processes be utilized at the same time or could there be sequencing?
- Which regions should be the focus if a regional approach is considered?

This section presents three possible avenues that could be used to promote and engage in a global dialogue to strengthen end use/r controls. The possible avenues here are not exhaustive—UNIDIR recognizes that there are other existing avenues which may be useful for states in carrying such dialogue forward.

### ➤ **United Nations processes**

A General Assembly-led process in the United Nations offers a possible avenue for all UN Member States to consider possible options for global, regional and national action on end use/r controls. The desirability and feasibility of this option will depend significantly on interest and support by UN Member States. The findings of the UNIDIR study, including results of the global survey, may provide useful background to consider this option. In examining this option, states may consider—among others—the following potential outputs:

- A report and/or study that presents states' views, practices and understanding on this issue, which may include potential recommendations for 'possible actions' to be adopted in the General Assembly, that could be in a form of:
  - Formulation of a Group of Governmental Experts;
  - Development of technical definition, guidelines or templates/checklists.

### ➤ **Arms Trade Treaty processes**

The issue of end use/r controls could be raised in the context of the Arms Trade Treaty in accordance with Articles 7, 8, 9, 10 and 11. Should working groups be established in supporting its implementation, such groups could examine the feasibility of an exchange of documentation and practices to inform consultations leading to the delivery of:

- Good practice guidelines on end use/r controls, in including common understanding, essential and desirable elements, assurances, and guidance on roles and functions; and/or
- EUC document template or checklist.

### ➤ **Regional processes**

The progress made in step-by-step processes in Euro-Atlantic organisations to harmonise end use/r control systems, in particular on documentation, provides a potentially useful model for other regions to consider. Regional process could be initiated by exchange of views, practices and documentations which could then be subject to a comparative study and analysis. Such processes could be undertaken in formal or informal settings. As in the case of the Arms Trade Treaty process, proposals could be made for the delivery of:

- Good practice guidelines on end use/r controls, in including common understandings, essential and desirable elements, assurances, and guidance on roles and functions; and/or
- EUC document template or checklist.

## **About UNIDIR**

The United Nations Institute for Disarmament Research (UNIDIR)—an autonomous institute within the United Nations—conducts research on disarmament and security. UNIDIR is based in Geneva, Switzerland, the centre for bilateral and multilateral disarmament and non-proliferation negotiations, and home of the Conference on Disarmament. The Institute explores current issues pertaining to a variety of existing and future armaments, as well as global diplomacy and local tensions and conflicts. Working with researchers, diplomats, government officials, NGOs and other institutions since 1980, UNIDIR acts as a bridge between the research community and governments. UNIDIR's activities are funded by contributions from governments and donor foundations.

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