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UNITED NATIONS  
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RESEARCH

**A Menu of Options to Enhance  
the Common Understanding of  
End Use/r Control Systems to  
Strengthen their Role in  
Preventing Diversion**

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## **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 activities are funded by contributions from Governments and donor foundations.

## **Note**

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## List of acronyms and abbreviations

ATT	Arms Trade Treaty
DVC	Delivery Verification Certificates
EU	European Union
MOSAIC	Modular Small-arms-control Implementation Compendium
NGO	Non-governmental organization
OSCE	Organization for Security and Cooperation in Europe
UNIDIR	United Nations Institute for Disarmament Research
UNODA	United Nations Office for Disarmament Affairs
WGEDI	Working Group on Effective Treaty Implementation

# 1 Purpose

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 understanding of definitions and information to be shared among relevant stakeholders, help to facilitate diversion.

Therefore, States in multilateral forums have called for an examination of ways to enhance the common understanding of end use/r control systems to strengthen 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.

The Arms Trade Treaty (ATT), and the working group on effective treaty implementation (WGETI), provide an opportunity to undertake such a discussion. The issue of end use/r controls is pertinent for Article 11, but also Articles 7, 8, 9, and 10. This menu of options is intended as a 'food-for-thought' contribution to the work of the WGETI, in particular the sub-working group on Article 11, in conjunction with preparations for the ATT Conferences of States Parties in 2019 and 2020. The menu could be used to explore the feasibility of the following options within the WGETI framework:

- good practice guidelines on end use/r controls, including common understanding, essential and desirable elements, assurances, and guidance on roles and functions;
- an exchange of documentation and national measures to authenticate, certify, and verify end use/r documentation; and/or
- a document template or checklist of contents for end use/r documentation.

## 2 Background

This ‘*menu of options to enhance the common understanding of end use/r control systems to strengthen their role in preventing diversion*’ is based on the results of the United Nations Institute for Disarmament Research (UNIDIR) project series “*Examining Options and Approaches to Strengthen End User/r Control Systems*”, which was undertaken during 2015-17.<sup>1</sup> The project series identified key aspects of end use/r control systems and the potential for:

- common definitions of key terms;
- common understanding of the exact details of items, end use and end user that should be provided to export control authorities;
- widely accepted types of assurances to be provided by the end user or importer; and
- a shared understanding of the role and function of end use/r documentation.

In addition, the project series identified two further areas as challenging for strengthening, but equally important to any effective end use/r control system:

- exchange of information and indicators of risk assessment; and
- post-delivery cooperation.

The project series findings supported enhancing international cooperation, working towards agreement on a common understanding of key terms and aligning standards.<sup>2</sup> This *menu of options* summarizes the main recommendations from the project series.<sup>3</sup>

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<sup>1</sup> The first phase of the project (2015-2016) sought to enhance the knowledge and capacity of policymakers and practitioners to identify frameworks, procedures and practical measures in strengthening end-use/r control systems in order to promote meaningful dialogue among States in mitigating risks of arms diversion. This phase produced a meeting summary from an informal expert group meeting in Vienna, Austria, and a research study. The second phase of the project (2016-2017) had a regional focus, dedicated to facilitating dialogue among States in Africa and the Middle East, Latin America and the Caribbean, and Asia and the Pacific, including States that were not participating in existing export control regimes. This phase produced three meeting summaries, from informal consultative meetings in Port of Spain, Trinidad and Tobago, Nairobi, Kenya and Bangkok, Thailand, as well as a research study.

<sup>2</sup> In particular, the project series findings supported aligning key elements to be contained in end use/r control documentation and the general principles for effective end use/r controls.

<sup>3</sup> For more information on the outputs and recommendations from this project series, see:

UNIDIR, “Meeting Summary: Examining Options and Model for Harmonization of End Use/r Control Systems”, Informal Expert Group Meeting, Vienna, 22–23 April 2015, <http://www.unidir.org/files/publications/pdfs/eucmeeting-summary-survey-en-632.pdf>;

UNIDIR “Examining Options to Enhance Common Understanding and Strengthen End Use and End User Control Systems to Address Conventional Arms Diversion”, 2016, <http://www.unidir.org/files/publications/pdfs/final-euc-2015-en-649.pdf>;

UNIDIR, “Meeting Summary. Examining Common Subregional Understandings to Strengthen End Use/r Control Systems to Prevent Arms Diversion”, Subregional Consultative Meeting, Port of Spain, Trinidad and Tobago, 21–22 September 2016, <http://www.unidir.org/files/publications/pdfs/eucii-caribbean-meeting-en-669.pdf>;

UNIDIR, “Meeting Summary: Examining Common Regional Understandings to Strengthen End Use/r Control Systems to Prevent Arms Diversion”, Regional Consultative Meeting, Nairobi, Kenya, 6–7 October 2016, <http://www.unidir.org/files/publications/pdfs/eucii-africa-meeting-en-670.pdf>;

UNIDIR, “Meeting Summary. Examining Common Regional Understandings to Strengthen End Use/r Control Systems to Prevent Arms Diversion”, Regional Consultative Meeting, Bangkok, Thailand, 1–2 March 2017, <http://www.unidir.org/files/publications/pdfs/eucii-thailand-meeting-en-681.pdf>; and

UNIDIR “Strengthening End Use/r Control Systems to Prevent Arms Diversion: Examining Common Regional Understandings”, 2017, <http://www.unidir.org/files/publications/pdfs/strengthening-end-use-r-control-systemsto-prevent-arms-diversion-en-686.pdf>.

### 3 Menu of options

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 draws upon existing national practices and multilateral good practice guidelines for conventional arms transfer controls, as well as research and consultations conducted during 2015-17. Each option in the menu represents an area that key stakeholders considered desirable, and potentially feasible, for enhancing common understanding in order 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 to 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 authors recognize the difficulty and complexity of designing and implementing an end use/r control system and are aware that it is not desirable to seek the development of a one-size-fits-all model. Therefore, States may consider these options in the context of facilitating dialogue to enhance international cooperation, and, where applicable, as material to support work towards establishing common understanding on key terms and standards.

#### 3.1 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 significant effort towards the development a common understanding of key terms and requirements 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.

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.

This 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 United Nations Office for Disarmament Affairs "*Study on the Development of a Framework for Improving End-Use and End-User Control Systems*"<sup>4</sup> and the

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<sup>4</sup> UNODA, "Study on the Development of a Framework for Improving End-Use and End-User Control Systems", 2011, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/HomePage/ODAPublications/OccasionalPapers/PDF/OP21.pdf>.



Wassenaar Arrangement "Introduction to End User / End Use Controls for Exports of Military-List Equipment"<sup>5</sup> provide States with a good basis from which definitions of key terms could be further examined.

For example, these documents provide guidance on the definition of "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 ...).<sup>6</sup>

and

(...) 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.<sup>7</sup>

This first option aims to address the following question:

### Key Question for Option 1:

- Can existing end use/r control definitions developed by international and regional organizations and export control regimes serve as the basis for dialogue and efforts to secure a common understanding of key terms for end use/r controls?

## 3.2 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. Research conducted by UNIDIR 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, including:
  - description of the conventional arms being exported (e.g. type, characteristics);
  - quantity; and
  - value;
- information to be provided on the end use/r, including:
  - details of the end user (e.g. name, address);
  - signature, name and position of the end user's representative / importer / consignee; and

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<sup>5</sup> Wassenaar Arrangement, "Introduction to End User / End Use Controls for Exports of Military-List Equipment", 2014, <https://www.wassenaar.org/app/uploads/2015/06/End-User-Use-Controls-Export-ML-Equipment.pdf>.

<sup>6</sup> UNODA, "Study on the Development of a Framework for Improving End-Use and End-User Control Systems", 2011, pg. 10 <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/HomePage/ODAPublications/OccasionalPapers/PDF/OP21.pdf>.

<sup>7</sup> Wassenaar Arrangement, "Introduction to End User / End Use Controls for Exports of Military-List Equipment", 2014, para. 2 & para. 4, <https://www.wassenaar.org/app/uploads/2015/06/End-User-Use-Controls-Export-ML-Equipment.pdf>.

- description of the end use of the conventional arms; and
- information to be provided on entities involved in the transfer, including:
  - details of the exporter (e.g. name, address and business name);
  - details of the importer / consignee (e.g. name, address and business name); and
  - details, where appropriate, of any intermediaries involved in the transfer.

This second option draws upon national practices, international and regional good practice guidelines, research conducted by United Nations Panels of Experts for sanctions monitoring, and academic research findings on ‘common’ information required for conducting risk assessments before authorizing an arms export. Research conducted by UNIDIR 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, end users, or types of transfers. This second option aims to address the following questions:

### Key Questions for Option 2:

- Is it feasible and desirable to develop a standardized end user certificate?
- Would it be feasible to at least achieve agreement on ‘common essential 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?

### 3.3 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, depending on the end user, proposed end use and type of item. For example, research conducted by UNIDIR found that States utilize 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 (DVC)); and
- agreement by the importer / end user to allow on-site verification by the exporting State’s competent authority.

In addition, research conducted by UNIDIR found that State's utilize 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; and

- 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.

This 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. This 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 third option, therefore, aims to address the following questions:

### Key Questions for Option 3:

- What measures could be undertaken to help build trust between exporting and importing State on assurances?
- What types of information exchange among States on assurance would be useful to prevent diversion?

## 3.4 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 Modular Small-arms-control Implementation Compendium (MOSAIC) 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).<sup>8</sup>

This 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

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<sup>8</sup> UNODA, "Modular Small-arms-control Implementation Compendium", module 03.21, "National controls over the end-user and end-use of internationally transferred small arms and light weapons", <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2019/01/MOSAIC-03.21-2014EV1.0.pdf>.

relevant information prior to the transfer, are also considered under this option. This fourth option aims to address the following question:

#### **Key Question for Option 4:**

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

### **3.5 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. Research conducted by UNIDIR, 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 fifth option, if interest exists among States, aims to address the following questions:

#### **Key Questions for Option 5:**

- 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?
- Would a mechanism to facilitate verification and authentication of end use/r document be useful? Is it feasible?

### **3.6 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. Such cooperation may 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 as worth considering for particularly sensitive items, destinations and/or end users. The recommendations of the United Nations 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;

- abiding by assurances on re-export, whichever options are utilized; and
- on-site inspections of the location of end use by the relevant authorities in the importing State and/or in cooperation with the relevant authorities in the importing and exporting States.

This sixth option recognizes the various challenges involved in putting in place a mechanism for post-delivery cooperation. This option also notes the need for a clear and agreed-upon definition of this cooperation, whether it be "post-delivery cooperation", "post-delivery measures", "post-delivery information sharing", "post-delivery controls", or "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 sixth option aims to address the following questions:

### **Key Questions for Option 6:**

- 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 United Nations Sanctions Committees regarding arms imports?



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