



UNIDIR

**Strengthening End Use/r Control Systems
to Prevent Arms Diversion:
Examining Common Regional
Understandings**

UNIDIR RESOURCES

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 the 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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Acronyms and abbreviations

APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ATT	Arms Trade Treaty
CARICOM	Caribbean Community
CARICOM IMPACS	Caribbean Community Implementation Agency for Crime and Security
CIFTA	Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials
CSP1	First Conference of States Parties
CSP2	Second Conference of States Parties
CSP3	Third Conference of States Parties
DVC	delivery verification certificate
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
ECOWAS Convention	Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials
EUC	end user certificate
EUS	end use/r statement
IIC	International Import Certificate
ISACS	International Small Arms Control Standards
GGE	group of governmental experts
Kinshasa Convention	Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components That Can Be Used for Their Manufacture, Repair and Assembly
MANPADS	man-portable air defence systems
Nairobi Protocol	Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and Horn of Africa
OSCE	Organization for Security and Co-operation in Europe
PoA	United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
PSSM	physical security and stockpile management
RECSA	Regional Centre on Small Arms
RevCon	United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent,

	Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
SADC	South African Development Community
SADC Protocol	South African Development Community Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community
SALW	small arms and light weapons
SEESAC	South East and Eastern Europe Clearinghouse for the Control of Small Arms
UNIDIR	United Nations Institute for Disarmament Research
UNLIREC	United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean
Wassenaar Arrangement	Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies

Executive summary

This study presents the key findings of the second phase of the United Nations Institute for Disarmament Research (UNIDIR) project Tackling Diversion (Phase II): Promoting Regional Dialogue to Enhance Common Understanding and Cooperation to Strengthen End Use/r Control Systems, supporting the practical and effective implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) and the Arms Trade Treaty (ATT) as well as relevant regional and subregional instruments. It draws upon the discussions conducted during two regional and one subregional consultative meetings in Africa, Asia and the Caribbean during 2016–2017: Port of Spain, Trinidad and Tobago, 21–22 September 2016; Nairobi, Kenya, 6–7 October 2016; and Bangkok, Thailand, 1–2 March 2017. This study also draws upon the results of the UNIDIR survey, which was circulated to all United Nations Member States during the first phase of the project Tackling Diversion (Phase I): Examining Options and Models for Harmonization of End Use/r Control Systems in mid-2015, and re-circulated during project Phase II, as well as desk research. The three consultative meetings had several connected objectives:

- Review efforts, initiatives and international and sub/regional frameworks and instruments that strengthen cooperation and align end use/r control systems;
- Identify the key areas that would enhance cooperation and strengthen end use/r control systems;
- Explore the feasibility and desirability of different options for a sub/regional or global approach to strengthening end use/r control systems; and
- Consider challenges and opportunities for a sub/regional or global framework for strengthening end use/r control systems.

In achieving these objectives, the project intends to contribute to the overall goal of consolidating sub/regional shared understandings of desired and feasible methods and approaches to enhance cooperation and strengthen end use/r control systems at the sub/regional and global levels. The regional and subregional consultative meetings were intended to help establish:

- Enhanced sub/regional common understanding of potential approaches, procedures and practices as well as roles and responsibilities of national actors involved in strengthening end use/r controls to mitigate the risk of diversion;
- Increased awareness and dialogue between stakeholders among those States that are not participating in existing export control regimes on methods and processes to strengthen cooperation and alignment of end use/r control systems; and
- Improved sub/regional understanding of practical steps that States could take to undertake a sub/regional and/or global dialogue and process to strengthen end use/r control systems at the sub/regional and/or global levels.

Chapter 2 outlines four elements of an effective end use/r control system: end use/r documentation; importing State responsibilities; exporting State responsibilities; and post-delivery cooperation. It provides a summary of chapter 2 of the UNIDIR 2015 comprehensive study *Examining Options to Enhance Common Understanding and Strengthen End Use and*

End User Control Systems to Address Conventional Arms Diversion (hereinafter referred to as UNIDIR's 2015 study).

Chapter 3 provides an overview of deliberations of participant groups during the three consultative meetings on the six key issues raised in UNIDIR's 2015 study on end use/r control systems:

- Definition of terms: All three groups recognized the benefits of drawing upon existing definitions for an international dialogue to examine common understandings of terminology. The African and Caribbean consultative meetings considered that there is scope for a dialogue at the sub/regional level in addition to an appropriate international forum.
- Details of items, end use and end user to be provided to export control authorities: UNIDIR's review of completed UNIDIR surveys and national PoA reports demonstrates that a large number of United Nations Member States already request or provide information in line with recommended good practice. All three groups expressed a willingness to engage in an international process to develop a checklist of "essential elements" for end use/r documentation, utilizing existing guidelines and national practices.
- Types of assurances to be provided by the end user/importer: All three groups understood the rationale for the inclusion of assurances on end use, end users and re-export to address diversion, and welcomed an international dialogue to consider the possibility for including references to assurances of adherence to international humanitarian and human rights law merits further consideration, physical security and stockpile management (PSSM), and post-delivery cooperation.
- Role and functions of end use use/r documentation: All three groups stressed the importance of defining roles and responsibilities for national entities involved in maintaining an effective end use/r control system along with the roles and functions of end use/r documentation in the system.
- Exchange of information and indicators for risk assessment: All three groups considered the exchange of national templates or checklists of end use/r documentation and contact details for relevant officials involved in end use/r control systems to be both desirable and feasible. Participants in the African and Caribbean consultative meetings called for the development of sub/regional guidance for supporting national risk assessments and supporting information exchange.
- Post-delivery cooperation: All three groups were open to discussion at the international level on mechanisms to confirm delivery of arms to the declared consignee or end user. Participants in the African and Caribbean consultative meetings stressed the importance of good inter-agency cooperation in the importing State to ensure that assurances made to the exporting State on use, user, re-export and diversion prevention could be fulfilled. All groups were willing to propose measures to help build trust between exporting and importing States and undertake cooperative measures to ensure compliance with assurances made by end users in importing States.

Chapter 4 assesses the utility of existing sub/regional frameworks, institutions and understandings in Africa, Asia and the Caribbean to strengthen end use/r control systems,

focusing on the development of common standards for end use/r documentation, guidelines for effective systems and mechanisms for international cooperation.

- The African group considered subregional and regional approaches for strengthening end use/r control, noting that all four subregional small arms control instruments contain relevant provisions for strengthening end use/r control systems. In addition to continuing to work to strengthen end use/r controls within each subregional framework, the group called for a regional process to examine the synergies between the various subregional small arms control instruments in Africa. This could include an exchange of end use/r documentation and good practices for authentication and verification of documentation as well as risk assessment and identification. The development of guidance on effective end use/r control systems, including roles and responsibilities, at the African regional or subregional level could usefully reflect and address specific challenges faced by African States.
- The Asian region does not have the same network of subregional small arms control instruments as Africa. During the Asian consultative meeting, participants discussed the potential for greater cooperation between member States of the Association of Southeast Asian Nations (ASEAN) to prevent diversion. Overall, the Asian group focused its attention on utilizing “any platform that allows for maximum participation of states”¹ for an international dialogue to strengthen end use/r controls and prevent diversion.
- The Caribbean group noted the benefits and challenges of pursuing a subregional approach to strengthen end use/r control systems, recognizing that subregional consultative meetings and initiatives can support the implementation of international agreements and instruments such as the ATT and the PoA. The Caribbean Community Implementation Agency for Crime and Security (CARICOM IMPACS) was highlighted as a useful mechanism for facilitating work to strengthen end use/r control systems, but there is also a need for resources to be provided to enable efforts to be undertaken subregionally to develop guidelines, templates, checklists, and information collection and sharing mechanism to strengthen end use/r controls and address diversion in the subregion.

Chapter 5 considers the next steps for a comprehensive international approach, providing recommendations for action that could be undertaken in the framework of the United Nations and the ATT. Participants in the consultative meetings expressed support for an international process to examine possibilities for international cooperation to strengthen end use/r control systems. This is to ensure that States that approach the issue of end use/r controls from different perspectives can exchange their understandings and practices in order to strengthen efforts to prevent diversion via enhanced international cooperation and the implementation of robust end use/r control systems.

The Secretary-General’s biennial reports on small arms have emphasized the importance of adequate legislation and effective transfer and end use/r controls to prevent the diversion of small arms and light weapons (SALW) and to combat and eradicate the illicit arms trade.

¹ 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, p. 17.

Developments with regard to diversion and the illicit arms trade, as well as UNIDIR's research and the regional and subregional consultative meetings, indicate that there is merit in the Secretary-General encouraging Member States to examine measures to strengthen end use/r controls at the national level and enhanced international cooperation to build trust and capacity to prevent diversion.

- The next Security Council resolution on small arms, expected in 2017,² could consider: (i) a reference on the need for States to certify, authenticate and verify end use/r documentation, and that ensure end users comply with assurances on end use and re-export, as part of a comprehensive end use/r control system; and (ii) a call for the establishment of an international framework to examine the “essential elements” for end use/r documentation and measures to enhance the authentication and verification of such documentation.
- Security Council resolutions that permit the transfer of SALW to entities in States subject to United Nations sanctions, subject to notification and/or authorization by the Security Council sanctions committees through an exemption process, could require that such transfers will only be permitted if the importing State provides assurances in end use/r documentation on appropriate marking, record-keeping, PSSM, and disposal of surplus arms and ammunition. Troop contributing countries should also abide by provisions contained in Security Council resolutions on sanctions regarding the supply of conventional arms and other military equipment to host State security forces.
- The most appropriate General Assembly initiative for an international dialogue on end use/r controls is the PoA. The 2018 United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (RevCon) represents an opportune moment to consider a proposal to convene a group of governmental experts (GGE) on measures to strengthen end use/r control systems, including the harmonization of end use/r control documentation and an international framework or mechanism to enhance the authentication and verification of end user certificates (EUCs). A General Assembly resolution on the illicit trade in small arms and light weapons in all its aspects could request the establishment of a GGE to consider the adoption of a checklist of “essential elements” for end use/r documentation (possibly as an annex), and a framework for supporting international cooperation to support the authentication and verification of the contents of such documentation. The GGE could also facilitate the development of common understandings of key terms, concepts, and processes as a means of seeking to strengthen end use/r controls.

The ATT provides a framework for a multilateral dialogue on end use/r control systems between importing and exporting States. The establishment and maintenance of an effective national end use/r control system can contribute towards the fulfilment of the object and purpose of the ATT. The ATT also promotes international cooperation and assistance as a means to enhance national systems and prevent diversion. Participants in the African consultative meeting considered whether the ATT could provide a forum to

² Security Council, UN document S/RES/2220 (2015), 22 May 2015, para. 32.

facilitate an exchange of actionable intelligence to address diversion. Such an exchange could be covered by the Mexican proposal to establish an “information exchange mechanism to prevent diversion of conventional arms to the illicit market”. A subgroup of a working group on effective implementation could bring together technical experts to share experiences, challenges and best practices for further work to strengthen end use/r controls.

This study concludes with a series of recommendations for the most appropriate multilateral process for advancing each of the following activities to strengthen end use/r control systems to prevent diversion:

- Dialogue on understandings of key terms;
- Checklist of the “essential elements” for end use/r documentation (i.e. details of items, end use, end use/r, and assurances to be provided to export control authorities);
- Dialogue on assurances to be provided by the end user/importer (i.e. end use, re-export or re-transfer, security);
- Guidance on the role and functions of end use/r documentation;
- International mechanism to facilitate the verification and authentication of end/user documentation (i.e. exchange documentation and contact point details);
- Exchange of information that could be used to address diversion, including indicators for risk assessment; and
- Measures to facilitate post-delivery cooperation.

Annex 1 presents the results of the UNIDIR survey responses collected from 50 United Nations Member States on their national end use/r control systems and views on the potential for greater international cooperation.

1. Introduction

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. Diversion may occur as a result of a transfer without proper controls, unauthorized re-transfer, thefts from poorly secured stockpiles, hand-outs to armed groups or barter involving natural resources. Corruption is a problem often associated with diversion.³

Differences between national end use/r control systems (in particular the content, format and use of end use/r documentation), as well as the lack of shared understanding of definitions and information among relevant stakeholders, are being exploited by those seeking to divert arms to unauthorized end users.⁴ There are various ways in which inadequate end use/r control systems have been evaded to divert arms to unauthorized end users, including:

- 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 which should prompt the exporting State to conduct a thorough investigation of the proposed transfer;
- Importing States lack the procedures for oversight and control of arms imports;
- Constraints at the operational level to regulate arms transfers and detect and interdict the attempted diversion of arms, including challenges for effective inter-agency cooperation;
- States that host significant transit and trans-shipment hubs lack capacity to effectively manage risks to prevent diversion;
- Non-State end users in importing States with limited post-delivery monitoring and controls are considered a diversion risk;
- Assurances on end use or re-export are ignored or not widely understood 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; and
- High-ranking officials in importing States are willing to provide authentic end use/r documentation to facilitate diversion to embargoed entities, either en route or by undertaking an unauthorized re-export after taking delivery of arms and ammunition, for financial or strategic gains.

There have been repeated calls for a comprehensive and inclusive international dialogue to examine ways to strengthen shared understandings and promote alignment in end use/r

³ Security Council, *Report of the Secretary-General: Small Arms*, UN document S/2015/289, 27 April 2015, para. 9, pp. 2–3.

⁴ For the purpose of this study, “arms” is used to cover all conventional arms, including small arms and light weapons (SALW) as well as ammunition.

control systems.⁵ The United Nations Institute for Disarmament Research (UNIDIR) responded in 2015 with the project Tackling Diversion (Phase I): Examining Options and Models for Harmonization of End Use/r Control Systems. This phase identified key aspects of end use/r control systems that could be examined by States to establish shared understandings that inform, legitimate and motivate dialogue and collective action in strengthening end use/r controls, including enhancing international cooperation and, where possible, working towards alignment in standards and terms. An important element of this phase of the project included global distribution of the UNIDIR survey for examining options for cooperation to strengthen end use/r control systems, which has collected information on national practices, challenges and options for multilateral processes from 50 United Nations Member States.⁶ The UNIDIR 2015 comprehensive study *Examining Options to Enhance Common Understanding and Strengthen End Use and End User Control Systems to Address Conventional Arms Diversion* (hereinafter referred to as UNIDIR's 2015 study) was published in February 2016.⁷ The key findings of this project have been shared at various meetings and events, including:

- UNIDIR informal expert group meeting, Vienna, April 2015;
- UNIDIR informal industry consultative meeting in Geneva, July 2015;
- First Conference of States Parties (CSP1) to the Arms Trade Treaty (ATT) (side event), Cancún, August 2015;
- Meeting of the United Nations General Assembly First Committee in New York (side event), October 2015;
- ATT Network Training Course, Geneva, April 2016;
- Fifth Consultative Meeting of the European Union Non-Proliferation Consortium, Brussels, July 2016;
- UNIDIR round-table discussion event in the margins of the Second Conference of States Parties (CSP2) to the ATT, Geneva, August 2016;
- European Union Partner-to-Partner (P2P) Working Party on Conventional Arms Exports (COARM) workshop, Ouagadougou, November 2016;
- Arms Transfer Dialogue (ATD) event, Geneva, February 2017;
- 24th Asia Export Control Seminar, Tokyo, 2017; and
- GCSP ATT Training Course, Geneva, April 2017.

This study presents the key findings of the second phase of the UNIDIR project Tackling Diversion (Phase II): Promoting Regional Dialogue to Enhance Common Understanding and Cooperation to Strengthen End Use/r Control Systems, which draws upon discussions conducted during one subregional consultative meeting in the Caribbean (Port of Spain, Trinidad and Tobago, 21–22 September 2016) and consultative meetings in Africa (Nairobi,

⁵ P. Holtom, H. Giezendanner and H. Shiotani, *Examining Options to Enhance Common Understanding and Strengthen End Use and End User Control Systems to Address Conventional Arms Diversion*, UNIDIR, 2016, pp. 24–37.

⁶ The UNIDIR survey was circulated to all UN Member States during Phase I of the project in summer 2015; 41 Member States, including major importing and exporting States across the world, returned a completed survey. The survey was recirculated in 2016 and early 2017 to States in regions and subregions that participated in the consultative meetings as part of Phase II of the project. As of 2 March 2017, 50 responses to the survey (2015–2017) had been received.

⁷ Holtom et al., *op. cit.* Further information on Phase I of the project is available at: <http://bit.ly/2cABOkc>.

Kenya, 6–7 October 2016) and Asia (Bangkok, Thailand, 1–2 March 2017) during 2016–2017. It also draws upon the results of the UNIDIR survey, which was circulated to United Nations Member States during Phase I of the project in summer 2015, and desk research.

Phase II continues to pursue the overall objective of the project to enhance the knowledge and capacity of policymakers and practitioners to identify frameworks, procedures and practical measures aimed at developing shared understanding, strengthening national end use/r control systems and facilitating cooperation at sub/regional and global levels as a means of promoting dialogue between States conducive to mitigating risks of arms diversion.

Box 1. A note on end use/r control systems

This study uses the term “end use/r control systems” and not the more common terms “end user certificate” or “end use certificate”. This is a conscious decision to demonstrate that the research project and the study are not only interested in the format and content of end use/r documentation, but also in the processes of certification, authentication and verification of such documentation and its role in international cooperation to prevent diversion.

1.1. Rationale for regional and subregional consultative meetings

UNIDIR’s 2015 study noted that during 2003–2013, States representing the Africa Group, the Caribbean Community (CARICOM) and the Common Market of the South (MERCOSUR) called for the use of validated end use/r documentation that is subject to authentication and verification as part of an effective transfer control system to address diversion.⁸ UNIDIR’s research indicates that export control regimes and Euro-Atlantic organizations have been most active in the multilateral development of measures to strengthen end use/r controls. Thus, the study examined several sub/regional initiatives to gather and analyse national experiences in order to develop guidance to support the implementation of common basic standards for effective end use/r control systems. It noted that most of the initiatives had

⁸ For examples of the statements regarding end use/r control systems and documentation on behalf of regional groupings and organizations, see: Africa Group, 58th Session of the General Assembly First Committee 13th meeting, UN document A/C.1/58/PV.13, 22 October 2003, p. 8; CARICOM, 58th Session of the General Assembly First Committee 5th meeting, UN document A/C.1/58/PV.5, 9 October 2003, p. 3; General Assembly 59th Session of the United Nations First Committee 4th meeting, UN document A/C.1/59/PV.4, 7 October 2004, p. 3; European Union, 58th Session of the General Assembly First Committee 6th meeting, UN document A/C.1/58/PV.2, 6 October 2003, p. 10; General Assembly 58th Session of the United Nations First Committee 23rd meeting, UN document A/C.1/58/PV.23, 6 November 2003, p. 2; General Assembly 59th Session of the United Nations First Committee 12th meeting, UN document A/C.1/59/PV.12, 20 October 2004, p. 9; General Assembly 60th Session of the United Nations First Committee 11th meeting, UN document A/C.1/60/PV.11, 13 October 2005, p. 3; MERCOSUR, 63rd Session of the General Assembly First Committee 12th meeting, UN document A/C.1/63/PV.12, 20 October 2008, p. 18; General Assembly 65th Session of the United Nations First Committee 13th meeting, UN document A/C.1/65/PV.13, 18 October 2010, p. 6; General Assembly 66th Session of the United Nations First Committee 16th meeting, UN document A/C.1/66/PV.16, 19 October 2011, p. 7.

been undertaken in Europe and North America or by export control regimes in which the participating States are significant arms exporters. Therefore, the guidance and standards that resulted from such initiatives are directed towards States that have an arms industry and export control system. The study also recognized that “the progress made in step-by-step processes in Euro-Atlantic organizations to harmonize end use/r control systems, in particular on documentation, provides a potentially useful model for other regions to consider”.⁹ As such, it recommended the exchange of views, practices and documentation between States, which are not members of export control regimes, at the sub/regional level.

Building on this recommendation from Phase I of the project (2015), Phase II (2016–2017) included two regional consultative meetings in Africa and Asia and one subregional consultative meetings in the Caribbean with the aim of engaging with regions and States that were not participating in existing export control regimes in order to promote a comprehensive approach to strengthening end use/r controls to prevent diversion. The three consultative meetings had several interrelated objectives:

- Review efforts, initiatives and international and sub/regional frameworks and instruments that strengthen cooperation and align end use/r control systems;
- Identify the key areas that would enhance cooperation and strengthen end use/r control systems;
- Explore the feasibility and desirability of different options for a sub/regional or global approach to strengthening end use/r control systems; and
- Consider challenges and opportunities for a sub/regional or global framework for strengthening end use/r control systems.

In achieving these objectives, the project aims to contribute to the overall goal of consolidating sub/regional shared understandings of desired and feasible methods and approaches to enhance cooperation and strengthen end use/r control systems at the sub/regional and global levels. The regional and subregional consultative meetings were intended to help establish:

- Enhanced sub/regional common understanding of potential approaches, procedures and practices as well as roles and responsibilities of national actors involved in strengthening end use/r controls to mitigate the risk of diversion;
- Increased awareness and dialogue between stakeholders among those States that are not participating in existing export control regimes on methods and processes to strengthen cooperation and alignment of end use/r control systems; and
- Improved sub/regional understanding of practical steps that States could take to undertake a sub/regional and/or global dialogue and process to strengthen end use/r control systems at the sub/regional and/or global levels.

This study presents the key findings of Phase II of the project to support the practical and effective implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) and the ATT as well as relevant sub/regional instruments.

⁹ P. Holtom et al., *op. cit.*, pp. 107–108.

Box 2. UNIDIR regional and subregional consultative meetings, 2016–2017

UNIDIR convened two regional consultative meetings in Africa and Asia and one subregional consultative meeting in the Caribbean during 2016–2017. The meetings brought together expertise on end use/r control systems and measures to address diversion in each sub/region from relevant national authorities, the United Nations and sub/regional organizations and researchers. Summary reports have been published that record the key issues discussed at each meeting.

Caribbean consultative meeting

The first consultative meeting was organized in partnership with the Caribbean Community Implementation Agency for Crime and Security (CARICOM IMPACS) in Port of Spain, Trinidad and Tobago, on 21–22 September 2016.¹⁰ Ten States from the Caribbean and North America attended: Antigua and Barbuda, Bahamas, Barbados, Grenada, Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago and the United States of America. The meeting brought together senior officers of national police and defence forces and several participants from national customs authorities, ministries of foreign affairs and ministries/departments of justice. Experts from specialized regional organizations such as CARICOM IMPACS and the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and Caribbean (UNLIREC) also participated in the meeting.

African consultative meeting

The second consultative meeting was convened at the United Nations Office at Nairobi, Kenya, on 6–7 October 2016.¹¹ The meeting brought together a cross section of African States, with not only geographical representation—i.e. participants from each of the subregions that have a small arms and light weapons (SALW) instrument—but also a balance of States that have export, transit and import profiles and included States that have been subject to United Nations arms embargoes. Seven States from the African region attended: Algeria, Burkina Faso, Ghana, Mauritius, Somalia, South Africa, and the United Republic of Tanzania. The meeting brought together representatives from national arms transfer control authorities, presidential advisers and representatives of diplomatic missions located in Nairobi. In addition, experts from specialized organizations such as the Conflict Armament Research, the International Peace Support Training Centre (IPSTC) and the Regional Centre on Small Arms (RECSA) in the Great Lakes Region, the Horn of Africa and Bordering States participated in the meeting.

¹⁰ For more information on the first consultative meeting, see: 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://bit.ly/2flqYzX>.

¹¹ For more information on the second consultative meeting, see: 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://bit.ly/2ieuyyc>.

Asian consultative meeting

The third consultative meeting was convened at the United Nations Conference Center (UNCC) in Bangkok, Thailand, from 1–2 March 2017.¹² The meeting brought together a cross section of States from the Asian and Oceania regions, with not only geographical representation—i.e. participants from different subregions—but also a balance of States that have export, transit and import profiles. Nine States from Asia and Oceania attended: Australia, India, Kazakhstan, Malaysia, Mongolia, Myanmar, the Philippines, the Republic of Korea and Thailand. The meeting brought together representatives from national arms transfer control authorities, ministries of foreign affairs and trade, as well as a representative of the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific (UNRCPD).

1.2. Outline of this study

The next five chapters document the outcomes of the three consultative meetings and a series of potential steps for examining the issue of strengthening end use/r controls at the sub/regional and international levels. Chapter 2 outlines the key elements of an effective end use/r control system: end use/r documentation; importing State responsibilities; exporting State responsibilities; and post-delivery cooperation. Chapter 3 provides an overview of deliberations by participants during the three consultative meetings on the six key issues raised in UNIDIR’s 2015 study on end use/r control systems: definition of key terms; details of items, end use and end use/r to be provided to export control authorities; types of assurances to be provided by the end user/importer; role and functions of end use/r documentation; exchange of information and indicators for risk assessment; and post-delivery cooperation. Chapter 4 assesses the utility of existing sub/regional frameworks, institutions and understandings in Africa, Asia and the Caribbean to strengthen end use/r control systems, focusing on the development of common standards for end use/r documentation, guidelines for effective systems and mechanisms for international cooperation. Chapter 5 considers the next steps for a comprehensive international approach, providing recommendations for action that could be undertaken in United Nations and ATT frameworks. Chapter 6 provides concluding remarks and a series of recommendations. Annex 1 presents the results of the UNIDIR survey, which has collected responses from 50 United Nations Member States on their national end use/r control systems and their views on the potential for greater international cooperation.

¹² For more information on the third consultative meeting, see: 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://bit.ly/2rU9vGr>.

2. Key elements of an end use/r control system

Effective national end use/r control systems undertake a comprehensive assessment of the risk of diversion. This chapter summarizes the four key features of effective end use/r control systems, as outlined in UNIDIR's 2015 study *Examining Options to Enhance Common Understanding and Strengthen End Use and End User Control Systems to Address Conventional Arms Diversion*:

- End use/r documentation;
- Importing State responsibilities;
- Exporting State responsibilities; and
- Post-delivery cooperation.¹³

2.1. End use/r documentation

End use/r documentation “comprises documents whose purpose is to identify, authorize, commit to certain undertakings and verify delivery”.¹⁴ A distinction is usually made between end use/r documentation covering arms transfers to State end users and for transfers to non-State end users (e.g. commercial entities). In cases where the recipient is a State entity (e.g. armed forces, police), the relevant State authorities are generally expected to issue an “end user certificate” (EUC), which is provided to the exporter or relevant authorities in the exporting State. For transfers to non-State entities, an import licence or an International Import Certificate (IIC) can be provided to demonstrate that the competent authorities in the importing State have authorized the proposed arms import. An end use/r statement (EUS) is issued by the non-State entity that is importing the arms or for which the arms are being imported. The EUS should be certified or validated by competent authorities in the importing State. This is not always the case.

Table 1 provides an overview of the recommended types of information to be included in end use/r documentation, most of which are already used in national practice (see Annex 1). In addition, best practice guidelines also provide recommendations on assurances relating to end use and re-export. While the assurances contained in an EUC are of a political nature, such as an agreement between the exporting and importing governments, assurances can also be contained in commercial contracts that are legally enforceable. The only common essential element for all of the best practice guidelines relates to an assurance that the items will be used only by the declared end user for the declared end use. There are three main options that are utilized when a re-export clause is included in end use/r documentation:

- Prohibition of re-export;
 - Prohibition of re-export unless approval has been received from the original exporting State that re-export is permitted under certain conditions, such as authorization from the export licensing authorities of the State in which the end user/importer is located;
- or

¹³ P. Holtom et al., op. cit., pp. 41–62.

¹⁴ United Nations Coordinating Action on Small Arms (UN CASA), *International Small Arms Control Standard (ISACS) 03.21: National Controls over the International Transfer of Small Arms and Light Weapons*, United Nations, 17 June 2014, p. 3, section 6.

- An assurance that re-export will only take place after authorization has been received from the export licensing authorities of the original exporting State.

Table 1. Recommended types of information and assurances for end use/r documentation

Details/contents	Recommendations contained in guidelines produced by:				
	European Union	Wassenaar Arrangement	Organization for Security and Co-operation in Europe (OSCE)	International Small Arms Control Standards (ISACS)	Regional Centre on Small Arms (RECSA)
<i>Essential elements</i>					
Details of the exporter (at least name, address and business name)	X	X	X	X ^a	X
Details of the end use/r (at least name and address)	X	X	X	X	X
Contract number or order reference and date	-	-	X	X ^a	-
Country of final destination	X	X	X	X	-
Description of the goods being exported (type, characteristics) or reference to the contract concluded with the authorities of the country of final destination	X	X	X	X	X
Quantity and/or value of the exported goods	X	X	X	X	X
Signature, name and position of the end user's representative	X	X	X	X	-
Date of issue of the EUC	X	X	X	X	-
Description of the end use of the goods	X	X	X	X	X
<i>Additional or optional elements</i>					
Full details, where appropriate, of any intermediaries involved in the transfer	X	X	X	-	X ^b
Name, address and contact details of the government agency issuing the certificate	-	X	X ^c	X ^c	-
Date of expiration of the EUC	-	-	X	X ^d	-
Register number for the EUC	-	-	X	X ^d	-
Assurance					
<i>Essential elements</i>					
An undertaking, where appropriate, that the goods being exported will not be used for purposes other than the declared use	X	X	X	X	X

Details/contents	Recommendations contained in guidelines produced by:				
	European Union	Wassenaar Arrangement	Organization for Security and Co-operation in Europe (OSCE)	International Small Arms Control Standards (ISACS)	Regional Centre on Small Arms (RECSA)
An undertaking that the declared end user will be the ultimate recipient of the goods being exported	-	-	X	X	X
<i>Additional or optional elements</i>					
Clause prohibiting re-export of the goods covered in the certificate	X	X	X	X ^b	X
Commitment by the importer to provide the exporting state with a delivery verification on request	X	X	X	X	-
Certification that the goods will be installed at the premises of the end user or will be used only by the end user	-	X	-	X	-
Agreement by the importer/end user to allow on-site verification	-	X	-	X	-
Assurance from the importer/end user that any re-exports will only be carried out under the authority of the importer's/end user's export licensing authorities	-	X	-	X ^b	-
An undertaking from the importer/end user not to divert or relocate the goods covered by the end use certificate/statement to another destination or location in the importing country	-	X	-	X ^b	-

Notes:

^a Regarded as an optional element in the ISACS module and should be included if known.

^b Regarded as an essential element in the ISACS module and RECSA guidelines.

^c Regarded as an essential element in the ISACS module and OSCE best practices guidelines.

^d Regarded as an essential element in the ISACS module.

- Element that is not included.

Sources: Adapted from: M. Bromley and H. Griffiths, "End User Certificates: Improving Standards to Prevent Diversion", Stockholm International Peace Research Institute (SIPRI), SIPRI Insights on Peace and Security, March 2010, p. 4. See also: Council of the European Union, *User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment*, EU document 9241, 29 April 2009; United Nations Coordinating Action on Small Arms (UN CASA), *International Small Arms Control Standard (ISACS) 03.20: National Controls over the International Transfer of Small Arms and Light Weapons*, United Nations, 17 June 2014; United Nations Coordinating Action on Small Arms (UN CASA), *International Small Arms Control Standard (ISACS) 03.21: National Controls over the End User and End Use of Internationally Transferred Small Arms and Light Weapons*, United Nations, 17 June 2014; Organization for Security and Co-operation in Europe (OSCE), "Best Practice Guide on Export Control of Small Arms and Light Weapons", in *Handbook on Best Practices on Small Arms and Light Weapons*, 2003, pp. 53–54; Organization for Security and Co-operation in Europe (OSCE), *Forum for Security Co-operation*,

Decision No. 5/04: Standard Elements of End User Certificates and Verification Procedures for SALW Exports, OSCE document FSC/DEC/5/04, 17 November 2004; Regional Centre on Small Arms and Light Weapons (RECSA), *Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons*, 2005; Wassenaar Arrangement, *End User Assurances Commonly Used: Consolidated Indicative List*, adopted in 1999, revised in 2005; Wassenaar Arrangement, *Introduction to End User/End Use Controls for Export of Military-List Equipment*, adopted in July 2014.

2.2. Importing State responsibilities before export authorization

The competent authorities in the importing State have a key role in the end use/r control process. It is recommended that the number of government agencies permitted to issue an EUC, and senior officials permitted to sign them, be limited.¹⁵ Furthermore, importing States should consider taking measures to prevent forgery, copying and fraudulent use. The utilization of the Apostille Certificate process is recognized as one way to reassure exporting States of the authenticity of such documentation.

In general, importing States should seek to provide the information requested by the export licensing authorities in the exporting State and take appropriate measures to reassure these authorities of the legitimacy of the transfer. It is recommended that an EUS should be “certified” or “validated” by the importing State authorities or that an additional document, such as an import licence, should be provided to show that the non-State importer/end user has received permission from the relevant government authorities in the importing State to import the controlled items. Certification or validation means that the EUS is “stamped and signed (or otherwise certified) by a competent authority of the importing State”.¹⁶ These measures are intended to reassure the export licensing authority in the exporting State that the relevant authorities in the importing State are aware of the proposed import and do not oppose it.

2.3. Exporting State responsibilities before export authorization

Exporter State licensing/authorization authorities are expected to undertake a comprehensive risk assessment before authorizing an export. End use/r documentation provided in support of the applications plays an important role in this process. Exporting State authorities *authenticate* the document, checking the signatory, signature and stamp or seal on the document to ensure it is not a forgery.¹⁷ The exporting State’s diplomatic mission in the prospective importing State can play an important role in supporting this process.

Unfortunately, even if the document is authentic, the signatory or provider of the documentation could be involved in the diversion of the transfer. Therefore, it is necessary to *verify* the information contained in the end use/r documentation. A first check is to ensure that the end use/r documentation contains all of the information that the export licensing

¹⁵ Ibid., p. 4, section 6.

¹⁶ Ibid., p. 6 section 6.3.

¹⁷ B. Wood and P. Danssaert, *Study on the Development of a Framework for Improving End Use and End User Control Systems*, United Nations Office for Disarmament Affairs, Occasional Paper No. 21, United Nations, December 2011, p. 10.

authorities requested. The second step is to check that the information provided in the end use/r documentation is reliable and can be verified. A thorough risk assessment will cross-check information in the documentation with intelligence and databases held in the exporting State, lists of sanctioned entities and with intergovernmental information exchange mechanisms and open source information. The UNIDIR Expert Group April 2015 meeting on end use/r control systems and the informal consultations with key arms industry stakeholders in July 2015 also stressed the importance of cooperation with trusted partners in the arms industry.¹⁸ Significant arms producers and exporters are now expected to have internal compliance programmes in place that can conduct preliminary risk assessments and work towards ensuring that the requirements of the export licensing authority are fulfilled when making an export licence application. Thus, industry is expected to play an important role in preventing diversion.¹⁹

2.4. Post-delivery cooperation

This study uses the term “post-delivery cooperation” to capture measures that have also been labelled as “post-delivery controls” or “post-delivery monitoring”. Post-delivery cooperation measures are sometimes adopted in cases involving the transfer of particularly sensitive items (e.g. man-portable air defence systems, or MANPADS) or for State end users that are subject to provisions in Security Council resolutions regarding post-conflict arms supplies. This study focuses on three of the main forms of post-delivery cooperation discussed in best practice guidelines.

Delivery confirmation and verification relates to an obligation of the importer/consignee/end user to provide the exporter, who in turn provides it to the export licensing authority, with documentation confirming delivery and/or receipt of the conventional arms by the authorized end user or representative. The most common form of documentation for confirming delivery is a delivery verification certificate (DVC), which is a written proof, usually certified by customs, that the authorized end user has received the items covered by the export licence and end use/r documentation. This document, therefore, reassures the export licensing authorities that the items have not been diverted since leaving the exporting State. It is also a measure for addressing diversion en route to the end user from the exporting State.

Routine or ad hoc post-delivery checks are intended to address the risk of diversion or misuse after delivery. In cases where an on-site inspection is used as a post-delivery measure, it tends to be for particularly sensitive items or in cases where the export licensing authorities consider it necessary to monitor the end use and end user due to a heightened risk of diversion, perhaps because of limited physical security and stockpile management (PSSM) capacities. Provisions for post-delivery inspections can be included in end use/r documentation or contracts. Inspections could be undertaken by officials of the exporting State (e.g. a dedicated unit or the defence attaché of the exporting State’s diplomatic

¹⁸ UNIDIR’s informal expert group was established at the beginning of Phase I of the project (2015) to lay the groundwork for it. 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, June 2015.

¹⁹ UNIDIR Informal Industry Consultative Meeting, Geneva, 9 July 2015.

mission in the importing State) or contractors hired by the exporting State from an independent entity that both exporting and importing States are willing to accept.

An investigation into reports or allegations of diversion or unauthorized re-transfer can be undertaken in response to reports or allegations of misuse, diversion or an unauthorized re-transfer. The Small Arms Survey identified three approaches that an exporting State can undertake for such investigations:

- The exporting State could undertake a unilateral investigation;
- The exporting State and importing State could undertake a joint investigation; or
- An independent team could be appointed, acceptable to both the exporting and importing States.²⁰

The South East and Eastern Europe Clearinghouse for the Control of Small Arms (SEESAC) provides a toolkit for addressing unauthorized re-export or re-transfer of arms and ammunition that includes a section on responding to violations of re-export or re-transfer restrictions.²¹ Therefore, tentative steps are being taken to codify the different responses that States have undertaken to allegations of diversion. While such responses usually entail investigations by the relevant law enforcement agencies in the exporting State, international cooperation is also often a critical element for resolving the allegation. Furthermore, sharing information on the investigation and its results with other exporters via regional organizations or export control regimes is an important outcome.

²⁰ P. Holtom, I. Pavesi and C. Rigual, "Trade Update: Transfers, Retransfers and the ATT", in *Small Arms Survey 2014: Women and Guns*, Cambridge University Press, 2014, pp. 126–127.

²¹ South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), *Toolkit for Addressing Unauthorized Re-Export or Re-Transfer of Arms and Ammunition*, June 2014, pp. 25–27. See also the research report: South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), *Addressing Unauthorized Re-Export or Re-Transfer of Arms and Ammunition*, SEESAC, June 2014.

3. Key issues raised in consultative meetings to strengthen end use/r controls

Below is a summary of the key issues raised in the two regional consultative meetings in Africa and Asia and the subregional consultative meeting held in the Caribbean during 2016–2017. It presents reflections on the six key issues that were identified in UNIDIR’s 2015 study as worth considering for the development of common understandings, alignment and cooperation in end use/r control systems in order to contribute to addressing the diversion of conventional arms. The study identified four issues where progress was regarded as “feasible” in the short term:

- Definition of key terms;
- Details of items, end use and end use/r to be provided to export control authorities;
- Types of assurances to be provided by the end user/importer; and
- Role and functions of end use/r documentation.

The two issues where challenges exist, but merit further consideration because of their potentially significant contribution to efforts to address diversion are:

- Exchange of information and indicators for risk assessment; and
- Post-delivery cooperation.

3.1. Definition of key terms

UNIDIR’s 2015 study presented several key terms and concepts for which export control regimes, regional organizations and International Small Arms Control Standards (ISACS) have provided definitions.²² Participants in the consultative meetings recognized the benefits of drawing upon related existing definitions. For example, participants in the African consultative meeting agreed that these definitions are based on existing knowledge and have already been tested. Thus, there is potential for an international dialogue to develop common understandings of the various forms of end use/r documentation—i.e. EUC, EUS, DVC and IIC—and “authentication”, “certification” and “verification” processes.

The African and Caribbean consultative meetings considered that there is scope for a dialogue at the sub/regional level as well as in an appropriate international forum. Both groups also considered the benefits of engaging in these meetings before participating in an international process on the issue. In this regard and in advance of work at the international level, participants in the African consultative meeting proposed exploring the potential to consolidate the different definitions contained in African subregional and regional instruments for small arms control, such as: the Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and all Parts and Components That Can be Used for Their Manufacture, Repair and Assembly (ECCAS, also known as “Kinshasa Convention”);²³ the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (ECOWAS

²² P. Holtom et al., *op. cit.*, pp. 88–93.

²³ Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and all Parts and Components that can be used for their Manufacture, Repair and Assembly, signed in Kinshasa, Democratic Republic of the Congo, on 30 April 2010, entered into force on 8 March 2017.

Convention);²⁴ the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (Nairobi Protocol);²⁵ and the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC Protocol).²⁶ Participants in the Caribbean consultative meeting considered whether end use/r control definitions in the existing guidelines could be adapted and used in CARICOM's ATT Model Law and potential regulations developed at the subregional level. The revised/amended definitions could then be introduced into deliberations at the global level.

All three groups emphasized problems with utilizing the existing definitions for the term "end user". The Caribbean group expressed the view that the definition of "end user" in the ISACS glossary and Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement) reflected the interests and perspective of an exporting State and not an importing State. Participants from larger Caribbean island States explained that authorized arms dealers can receive permission to import hundreds of arms or a considerable volume of ammunition and the "ultimate" or "final" end user for the imported arms—i.e. a private security company or civilian—might not be known in advance of the issuance of an import licence. Therefore, this group considered that it might be most appropriate to develop a definition for "end user" that was applicable for a national, sub/regional context and secure common understanding of its use rather than secure international agreement for a definition.

Participants in the Asian consultative meeting proposed the establishment of an international working group to share definitions, best practices, experiences and challenges for end user control systems. The working group would then consolidate these materials into a set of common guidelines that would outline common understandings with regard to key terms and roles and functions of end use/r documentation in effective national systems. This proposal is considered in more detail in chapter 5.

The consultative meetings indicated that it will be difficult to reach international agreement on definitions for all key end use/r control system terms, but all groups expressed support for an international dialogue to establish common understandings of what each key term means. Participants also regarded the definitions contained in existing best practice guidelines as a useful starting point for such a process.

3.2. Details of items, end use and end user to be provided to export control authorities

Table 1 shows that existing best practice guidelines are in general agreement on the information to be provided to export control authorities as part of an application for authorization to export arms. UNIDIR's review of completed surveys and national PoA

²⁴ ECOWAS Convention, Abuja, Nigeria, 14 June 2006.

²⁵ The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, signed in Nairobi on 21 April 2004.

²⁶ South African Development Community (SADC), Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community, Blantyre, 14 August 2011.

reports demonstrates that a large number of United Nations Member States already request or provide information in line with recommended good practice (see annex 1, section 1).

The three consultative meetings revealed a desire for more predictability with regard to the information that should be provided in end use/r documentation for exporting States. Current practices include the use of end use/r documentation provided by national export control authorities when importing conventional arms as well as the use of national templates and checklists developed by importing States that are provided to authorities in exporting States. The UNIDIR survey revealed that 35 of the 38 respondent States that authorize arms exports provide an export licence applicant with a template or checklist for end use/r documentation, which contains the required details on end use/r, items, entities involved in the transfer, unique identifiers, and assurances. Participants in the African and Asian consultative meetings shared information on templates and checklists that had been developed by predominantly importing States and which are provided to exporting States when seeking to import arms. The information contained in such documentation is in line with guidance developed by and for exporting States. Therefore, the potential for a productive and inclusive dialogue in this regard appears positive.

Concurrently, an international dialogue on the contents of end use/r documentation could help importing States to understand why all exporting States do not seek exactly the same types of information for every transfer. The consultative meeting groups expressed the view that the same list of “essential elements” on items, entities involved in the transfer and end use/r could be used in end use/r documentation for transfers to both State and non-State end users. However, the Caribbean group made a proposal for an addition to the “essential elements” for firearms transfers, further recommending that the inclusion of serial numbers for firearms in end use/r documentation to be shared between the competent authorities in the exporting and importing State should be regarded as an essential element.

All three groups expressed a willingness to engage in an international process to determine “essential elements” for end use/r documentation, utilizing existing guidelines and national practices. Although all groups were sceptical that an international process could produce a common international end use/r document template, they agreed that the development of a checklist of “essential elements” for end use/r documentation was feasible. The data provided in annex 1, section 1 could be utilized as the basis for such a process.

3.3. Types of assurances to be provided by the end user/importer

UNIDIR’s research found that States seek and provide assurances in end use/r documentation or commercial contracts on:

- End use of items
- End user or location of use
- Re-export; and
- Confirmation of delivery or post-shipment inspections.

UNIDIR’s 2015 study considered whether an international process could seek agreement on the inclusion of clear language relating to assurances not only in these areas, but also whether it is possible to explicitly request assurances that recipients use the imported items

in accordance with provisions contained in articles 6, 7 and 11 of the ATT.²⁷ The three groups deemed that the possibility of including references to assurances on adherence to international humanitarian and human rights law merited further consideration, although several participants questioned whether this needs to be made with explicit reference to the ATT as not all United Nations Member States have signed or ratified the treaty. All participants were flexible as to whether assurances on end use should be expressed in positive (i.e. arms shall only be used for the designated end use) or negative (i.e. arms shall not be used in a designated manner) terms.

The consultative meetings generated rich discussions on the way in which importing States regarded assurances made on end use, end use/r and re-transfer and re-export, and the linkages between assurances provided by end users and possibilities for pre- and post-delivery cooperation to address diversion risks. Such deliberations provided a useful qualitative dimension to complement the quantitative analysis presented in annex 1.

All three groups understood the rationale for the inclusion of assurances on end use, end users and re-export to address diversion. However, there were a variety of responses in the discussions regarding respect for re-export assurances and the way in which a sovereign State can determine its own preferred method for the disposal of surplus arms and ammunition. Participants in both the African and Caribbean groups mentioned at least one case whereby imported arms and ammunition were “re-exported” without notifying or seeking authorization from the original exporting State, in violation of assurances on re-export. In both groups, such cases were “honest mistakes” in which officials had “forgotten” or were “unaware” of the assurances on re-export that had been made many years in the past. While participants in both groups accepted assurances that were interpreted as imposing conditions for disposal/re-export for arms and ammunition that had been delivered as part of a military aid or donation, they were sceptical about the introduction of a “new for old” condition on arms exports for State end users if the importing State had purchased the arms.

All three groups were open to further discussion on ways in which assurances could be linked with pre- and post-delivery cooperation measures to address diversion, especially for SALW. It was recognized that some exporting States already seek assurances before authorizing exports of MANPADS on safe and secure storage and transportation to prevent their diversion to unauthorized non-State end users. One of the participants in the Asian consultative meeting explained their national practice of ensuring safe storage for imported small arms and conducting and recording information on the “test fire” of civilian firearms

²⁷ Article 6 of the ATT prohibits arms transfers that would violate UN arms embargoes, other arms control commitments or where the items could be used directly or indirectly in war crimes, crimes against humanity or genocide. Article 7 of the ATT obliges States Parties to assess and mitigate the risk that arms are not exported for use in violation of international humanitarian and human rights law, international agreements on terrorism and transnational organized crime, acts of gender-based violence or violence against women and children. Article 11 of the ATT obliges States Parties to undertake measures to prevent diversion.

as measures to prevent diversion.²⁸ Discussion ensued whether such measures could be included as assurances to be provided by the competent authorities in the exporting State.

States Parties to the ECOWAS Convention are obliged to mark SALW on import.²⁹ Therefore, the African group considered different options for ensuring that SALW are marked by the importing State, including for cases where the importing State has limited or no marking capacity. First, marking machines, record-keeping materials and training would be provided in advance of the supply of SALW to ensure that the arms could be marked on import. Second, an agreement could be reached between the exporting State, importing State and manufacturer for the SALW to be marked for the importing State by the manufacturer. Such measures could provide reassurance to assist in tracing efforts. All groups welcomed the possibility of further consideration of linking assurances to prevent diversion with pre- and post-delivery cooperation measures.

3.4. Role and functions of end use/r documentation

UNIDIR's 2015 study reviewed the significant body of work that has been carried out on the role and functions of end use/r documentation as part of effective end use/r control systems to prevent diversion by both importing and exporting States.³⁰ The study considered measures to prevent forgery and the misuse of end use/r documentation to facilitate diversion, drawing upon the results of the UNIDIR survey and analysis of national PoA reports (see annex 1, section 3). All three consultative meetings emphasized the importance of establishing a solid legal framework for an effective national end use/r control system. As part of this system, participants stressed the importance of defining roles and responsibilities for national entities involved in maintaining an effective system as well as the roles and functions of end use/r documentation in the system. Inter-agency cooperation was emphasized as particularly important for ensuring control. Poor cooperation between different national agencies was raised as a particular concern in the African consultative meeting.

The three groups provided a variety of responses to the question: Who is authorized to sign end use/r documentation? In the Caribbean consultative meeting, participants explained that the relevant minister, permanent secretary or senior official in the defence forces or constabulary is authorized to sign an EUC, which is then provided to the vendor for use in its export licence application. Participants in the African and Asian consultative meetings shared experiences of centralized and decentralized systems for arms transfer authorization and/or signing EUCs. For example, some participants in the Asian meeting explained that they operate a centralized system with a limited number of high-level government officials permitted to sign an EUC, while others maintain a decentralized system in which a representative of the "contracting agency" in the respective national service (e.g. army, air force, navy) signs end use/r documentation. In the latter case, it was also noted that there

²⁸ For the purposes of this study, "test fire" is the process by which a firearm or small arm is fired after production or import and a record is kept of the markings made on the projectile fired from the weapon. Such records can subsequently be used to check against ballistic material recovered from a crime scene.

²⁹ ECOWAS Convention, Abuja, Nigeria, 14 June 2006, article 18.

³⁰ P. Holtom et al., *op. cit.*

is no standardized national end use/r document used by all services, which was regarded by some as posing further challenges for assessing its authenticity. In contrast to the variety of approaches used for signing end use/r documentation, most participants in the group explained that the written authorization (licence or permit) for an export or import is usually signed by a minister or high-ranking civil servant (e.g. permanent secretary), although often devolved to the ministry or government agency responsible for handling authorizations.

Although one of the foremost issues discussed in UNIDIR's 2015 study was how regional and multilateral initiatives had focused on end use/r controls for State end users, an interesting area for further investigation was the role played by non-State end users and non-State entities involved in international arms transfers. It became a central point of discussion in all three consultative meetings. Participants in all three groups had different experiences in certifying the EUS provided by non-State end users or dealers seeking to import arms and ammunition. The emphasis in these cases was on the need for a robust import authorization system in order to ensure that the importing entity did not import arms and ammunition without the knowledge of the competent authorities.

Participants in the Asian consultative meeting considered the shift from paper to online applications for authorizations to export conventional arms in their national system. In this regard, the group discussed the different approaches that are used for the submission of an EUC as part of an online export authorization application. In one case, the entire application is conducted online using digital signatures, while in other cases the application can be made online but hard copies of end use/r documentation are still required. The group raised the issue of moving the entire application process online and how this would affect the provision of end use/r documentation and efforts to ensure authenticity. The discussion, therefore, corresponded with similar considerations by States in the Euro-Atlantic region on this issue. It is to be expected that this issue also merits consideration in an international format.

Participants in the African consultative meeting considered the benefits of common guidelines at the regional and international levels, building upon existing guidance developed by the United Nations (e.g. ISACS) and regional organizations (e.g. the European Union). At the same time, the group stressed the need for such guidance to be flexible to accommodate different national needs and interests and expressed a particular interest in the development of regional guidance that could be "domesticated" for use by African States. The Caribbean consultative meeting also highlighted the need for guidance to be tailored to fit sub/regional circumstances. Participants considered that this sub/regional guidance could be useful for implementing provisions in the ATT and PoA as well as the CARICOM security strategy. There were also calls for the guidance to be customized to the ways in which specific national agencies—customs, intelligence, law enforcement—can mitigate the risk of, and successfully combat, diversion. Participants considered the possible benefits of working on guidelines for transit and trans-shipment for Small Island Developing States. The participants also stressed the need for national authorities to develop their own written standards and guidance for which regional or international guidance could be useful as a starting point as this would help to establish institutional systems rather than rely on the personal knowledge and experience of particular members of staff.

The issue of the role and function of end use/r documentation, and for different ministries and agencies involved in end use/r control systems, resulted in different focus areas among

the three groups. Annex 1, section 2, highlights some of the challenges identified in responses to the UNIDIR survey that could be explored in an international or sub/regional process to strengthen end use/r control systems to prevent diversion. More information on sub/regional specificities can be found in chapter 4 and on international processes in chapter 5.

3.5. Exchange of information and indicators for risk assessment

UNIDIR research found that some States benefit from information provided by other States, the United Nations or other external sources to help in conducting a thorough risk assessment before authorizing an arms transfer and seeking to mitigate the risk of diversion. Therefore, one of the areas of interest in UNIDIR's 2015 study regarded the potential for States to exchange various materials to support risk assessment, including end use/r documentation templates, contact details for relevant officials, risk assessment indicators and guidance on sources of information.

All three groups considered the exchange of national templates or checklists of end use/r documentation and contact details for relevant officials involved in end use/r control systems to be both desirable and feasible, and corresponds with UNIDIR survey data that 90 per cent of respondents indicated a willingness to exchange information or share existing templates or checklists with other States (see annex 1, section 6). The intergovernmental exchange of end use/r documentation conducted by the Organization for Security and Co-operation in Europe (OSCE) was considered a potentially useful model to follow. All three groups were also made aware of the practice by a number of Wassenaar Arrangement participating States to make national templates available on its web site. The Asian consultative meeting participants agreed that exchanging information to authenticate and verify end use/r documentation and their contents at the global level is useful for building trust and informing national risk assessment processes.

The groups noted that it could be more challenging to exchange information on contact points to support the authentication and verification of end use/r documentation contents. As noted in annex 1, section 6, 74 per cent of UNIDIR survey respondents were willing to provide other States with information on entities authorized to certify and authenticate end use/r documentation to facilitate the process of authenticating end use/r documentation. The Asian group noted the challenge posed by providing contact details for individuals since personnel can be rotated and there can be restrictions on providing information on specific individuals and their contact details. The Caribbean group considered whether CARICOM IMPACS could maintain a database of importing agencies and points of contact in the Caribbean for the use of exporting States seeking information and assurances on declared authorities. Some in the group mentioned that the points of contact for the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA) could be another option for seeking assistance in authentication and verification of documentation in the subregion. Therefore, existing mechanisms were considered as one option for helping to facilitate these exchanges.

Participants in the Asian consultative meeting expressed the view that each State is responsible for conducting a risk assessment before authorizing an export or import of

conventional arms and that each State has distinct national policy interests that will lead to the development of risk indicators and red flags that might not be shared internationally. Therefore, the group emphasized the benefits of establishing mechanisms to exchange information between relevant agencies within a State. The group considered it feasible to exchange generic factors to take into account as part of a risk assessment (e.g. the proliferation record of the end user, the internal situation in the recipient State) and further noted that sources of information exist that can be used to inform risk assessment to prevent diversion. Since the United Nations Security Council sanctions committees provide frameworks that could be used as a starting point for deliberations on how to develop risk assessments for the international community, the group thought they could be developed and used on a voluntary basis. All three groups expressed the view that guidance on risk indicators developed at the international level could be too broad and superficial to assist with operational measures to address the risk of diversion, but supporting efforts to find ways to make available information to help better inform and strengthen risk assessment to prevent diversion and strengthen national end use/r control systems would be welcomed.

3.6. Post-delivery cooperation

Post-delivery cooperation was regarded as the most sensitive of the six key issues raised in UNIDIR's 2015 study. It noted that "best practice guidelines developed by international and regional organizations and export control regimes refer to post-delivery cooperation measures as worth considering for particularly sensitive items, destinations and/or end users".³¹ Yet, the study also found evidence that there was interest in discussing ways in which exporting and importing States could work together to mitigate the risk of diversion and provide reassurance regarding end use to increase confidence and ensure that follow-on deliveries are possible. Annex 1, section 5, indicates that the UNIDIR survey and analysis of national PoA reports demonstrate some of the existing ways in which States currently undertake post-delivery cooperation, in particular regarding confirmation of delivery of SALW to the authorized consignee/importer. The study flagged the potential benefits of the development and use of measures to facilitate cooperation and information sharing, such as:

- Confirmation of receipt of items (e.g. DVCs);
- Record-keeping by recipients of controlled items;
- 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 through cooperation between the relevant authorities in the importing and exporting States.

All three groups were open to discussion at the international level on mechanisms to confirm delivery of arms to the declared consignee or end user. All groups noted that importing States are only sometimes requested to provide written confirmation of delivery via a DVC or comparable documentation. The groups did not identify a particular pattern for such requests (i.e. for particularly sensitive items). Participants in the Asian consultative meeting

³¹ P. Holtom et al., *op. cit.*, p. 100.

noted that States are not always cooperative when asked to provide confirmation of delivery. One proposal raised in the group related to the examination of initiatives undertaken by the World Customs Organization for electronic forms of verification that shipments had been delivered to the intended importer/consignee. Therefore, despite a willingness on the part of participants to comply with requests from exporting State authorities to provide confirmation of delivery upon request, there was also recognition that many national systems do not appear to be willing or able to comply. If confirmation of delivery is regarded as a useful measure to address diversion risks, then more attention should be paid towards this issue.

Participants in all three consultative meetings stressed the importance of good inter-agency cooperation in the importing State to ensure that assurances made to the exporting State on use, user, re-export and diversion prevention could be fulfilled. Participants in the African consultative meeting considered centralized record-keeping and regular audits of the national stockpile, including military and police storage facilities located throughout the State, as good examples of national oversight and cooperation to prevent diversion after delivery and reassure exporting States. Several participants in the Asian and Caribbean consultative meetings seek to limit diversion from arms dealers and non-State entities by insisting that imported arms and ammunition are stored in designated government-controlled warehouses before being distributed to private security company and civilian end users. Participants in the Asian meeting also made proposals to promise to mark arms on import and share the serial numbers between the exporting and importing States, for the test firing of imported small arms in order to record ballistics information and on the linking of PSSM assurances with export authorizations.

All three groups recognized the sensitivity of framing post-delivery cooperation between exporting and importing States as “post-delivery controls” or consideration of assurances as “conditionalities”. Yet, all groups were willing to propose measures to help build trust between exporting and importing States and undertake cooperative measures to ensure compliance with assurances made by end users in importing States. For example, participants in the African meeting noted that compliance with assurances provided in end use/r documentation can help demonstrate that a State is a responsible end user and provide confidence regarding post-delivery cooperation. Conversely, cases of unauthorized re-export or leakage from national stockpiles can have a detrimental impact on post-delivery cooperation and might result in exporting States requesting additional measures to prevent diversion, potentially including post-delivery inspections. Participants in the Caribbean meeting noted that post-delivery follow-up helps to promote due diligence and encourages more dialogue between relevant parties to the transfer.

In sum, the three consultative meetings revealed several potentially positive avenues for further exploration of the issue of post-delivery cooperation. The first focuses on how to ensure confirmation of delivery to the authorized consignee/end user. Related measures are aimed at mitigating the risk of diversion during the shipment of arms. Second, the need for effective mechanisms for post-delivery cooperation within the importing State to ensure that assurances can be met to prevent diversion and unauthorized re-export. Third, ensuring post-delivery cooperation between the exporting and importing States to support compliance with assurances to prevent misuse, diversion and unauthorized re-exports.

4. Assessing the utility of existing sub/regional frameworks, institutions and understandings

Most of the instruments and best practice guidelines for establishing an effective end use/r control system, particularly the key elements of end use/r documentation, have been undertaken by organizations in which participating States are European and North American. The impetus has, therefore, primarily been from an exporting State perspective in terms of identifying essential elements of such a system. The guidance contained in these instruments and best practice guidelines is directed towards States that have an established and well-developed arms industry and export control system. The African and Caribbean consultative meetings provided the most interest in exploring opportunities to strengthen end use/r control systems via sub/regional approaches, in connection with the implementation of related and relevant international instruments. The Asian consultative meeting focused on international instruments and initiatives to strengthen end use/r control systems, although several participants expressed interest in examining the utility of ASEAN as a framework for subregional initiatives to address diversion.

4.1. Opportunities for a regional and/or subregional approach in Africa

The African consultative meeting considered subregional and regional approaches for strengthening end use/r control, noting there are several subregional small arms control instruments in Africa that provide potential avenues for strengthening end use/r control systems. This section examines the potential for utilizing existing subregional instruments to strengthen end use/r control systems, several of which explicitly mention the harmonization of end use/r documentation and processes to verify and authenticate such documentation. The four relevant subregional small arms control instruments are described in table 2, in alphabetical order.

Table 2. Relevant African subregional arms control initiatives or instruments for strengthening end use/r control systems

Relevant African arms control initiatives or instruments	Organization	States Parties (ratified)	Signatories
Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components That Can be Used for Their Manufacture, Repair and Assembly ("Kinshasa Convention", 2010)	Economic Community of Central African States	Angola, Cameroon, Central African Republic, Chad, Congo, Gabon, Sao Tome and Principe (7)	Burundi, Democratic Republic of the Congo, Equatorial Guinea, Rwanda (4)
Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition	Economic Community of West African States	Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Ghana, Guinea, Guinea Bissau, Mali, Niger,	Gambia, Liberia (2)

Relevant African arms control initiatives or instruments	Organization	States Parties (ratified)	Signatories
and Other Related Materials (ECOWAS Convention, 2006)		Nigeria, Senegal, Sierra Leone, Togo (13)	
Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and Horn of Africa (Nairobi Protocol, 2004)	Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States	Burundi, Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Uganda (9)	Central African Republic, Congo, Seychelles, Somalia, South Sudan, United Republic of Tanzania (6)
South African Development Community Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC Protocol, 2001)	Southern African Development Community	Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, United Republic of Tanzania, Zambia (9)	Democratic Republic of the Congo, Seychelles, ^a Swaziland, ^b Zimbabwe ^b (4)

Notes:

^a Seychelles signed the protocol in 2001, but did not ratify it before withdrawing from SADC in 2004. It rejoined in 2008.

^b Swaziland and Zimbabwe reportedly ratified the protocol in 2006, but did not deposit instruments of ratification.

Source: I. Davis, "Annex A. Arms Control and Disarmament Agreements", *SIPRI Yearbook 2015: Armaments, Disarmament and International Security*, Oxford University Press, 2015, pp. 651–681.

The Kinshasa Convention entered into force on 8 March 2017 and contains several provisions of relevance for strengthening end use/r documentation, most of which are comparable to elements in other subregional small arms control instruments in sub-Saharan Africa. For example, the Kinshasa Convention is intended to "strengthen control" over small arms production, transfer and possession in order to "prevent, combat and eradicate" the illicit small arms trade and trafficking in order to "combat armed violence and ease human suffering".³² The Kinshasa Convention requires that an EUC be provided by either a public institution or private individual when seeking an authorization to transfer SALW as well as information on the weapons, supplier, companies and brokers involved in the transaction, information on the shipping route and shippers, and description of end use.³³ In contrast to the instruments discussed below, the Kinshasa Convention provides a definition of an EUC: a "document used to identify, monitor and certify the end user and the intended end use before the competent authorities issue an import or export licence".³⁴ The Kinshasa Convention obliges "States Parties (...) to harmonize, at the subregional level, administrative

³² Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and all Parts and Components that can be used for their Manufacture, Repair and Assembly, signed in Kinshasa on 30 April 2010, entered into force on 8 March 2017, article 1.

³³ Ibid., article 5(3).

³⁴ Ibid., article 2(r).

procedures and supporting documents for authorizations for the transfer” of SALW, ammunition, parts and components.³⁵ States Parties shall “harmonize the contents of the end user certificates at the subregional level” and “a certificate shall be issued for each import shipment and shall be contingent upon the applicant’s having obtained an import authorization issued by the competent authorities”.³⁶ It also contains references for information exchanges to support its implementation and address the illicit trade more generally.³⁷ Finally, the Kinshasa Convention explicitly obliges the Economic Community of Central African States (ECCAS) Secretary-General to prepare a guide for harmonization of legislative provisions.³⁸ This represents an opportunity for a dialogue to define key terms, documentation contents and procedures to authenticate and verify documentation for this subregion. None of the States in the subregion covered by the Kinshasa Convention participated in the UNIDIR survey. Burundi and the Democratic Republic of the Congo are the only signatory States that have provided information in their national PoA reports during 2012–2016 regarding their national requirements for EUC. Therefore, if Kinshasa Convention States Parties are to develop a harmonized EUC template or checklist, it is a subregion that would benefit greatly from an exchange of existing end use/r documentation requirements in the near future. These issues could be considered by a Conference of States Parties, establishing conditions for an exchange of documentation and practices and potentially the establishment of a working group to prepare a checklist or template for end use/r documentation and guidance on practices for effective end use/r control systems.

The objectives of the ECOWAS Convention are to “prevent and combat the excessive and destabilising accumulation” of SALW as well as to promote trust, information exchange and cooperation between Member States and build “institutional and operational capacities”.³⁹ It calls for Member States to establish and maintain “an effective system of export and import licensing or authorization” and take measures to ensure that “the authenticity of licensing or authorization documents can be verified and validated”.⁴⁰ Member States shall not authorize a transfer “if it is likely to be diverted, within the transit or importing country or be re-exported, to unauthorized uses or users or into the illicit trade”.⁴¹ The ECOWAS Executive Secretariat provides the exemption certificate, which grants permission for the Member State to import SALW, and calls for the exemption certificate and an EUC to be provided in support of an application for an export licence.⁴² The exemption procedure requires information to be provided to the ECOWAS Secretariat on the SALW being transferred as well as on the supplier, shipment process, final end user and details of end use (i.e. the type of information that is expected to be contained in end use/r documentation).⁴³ The ECOWAS Convention also contains provisions for a strong legislative

³⁵ Ibid., article 5(6).

³⁶ Ibid., article 6.

³⁷ Ibid., chapter VI: Transparency and Exchange of Information. Articles 20–24 are of particular relevance.

³⁸ Ibid., article 25.

³⁹ ECOWAS Convention, Abuja, Nigeria, 14 June 2006, article 1.

⁴⁰ Ibid., article 4(2) and 4(3).

⁴¹ Ibid., article 5(2–6).

⁴² Ibid., article 5(3).

⁴³ Ibid., article 5(1).

basis for national transfer control systems and cooperation between Member States to build national capacities to combat the illicit trade.⁴⁴

The ECOWAS Convention contains key provisions for Member States to put in place effective end use/r control systems. Nevertheless, ECOWAS Member States have not yet complied with Security Council resolution 1467 of 2003, which called for the introduction of a standardized EUC.⁴⁵ However, several ECOWAS Member States have identified essential elements of end use/r documentation and/or developed national templates and checklists. For example, in their views on the feasibility, scope and parameters of the ATT, Mali and Togo included lists of provisions to be contained in the EUC or “certificate of final destination”.⁴⁶ The UNIDIR survey and research indicate that Burkina Faso and two other ECOWAS member States have developed national end user documentation. Furthermore, the national PoA relates that four ECOWAS member States list identical elements to be contained in an EUC.⁴⁷ Therefore, ECOWAS member States have unilaterally undertaken measures to implement the ECOWAS Convention’s end use/r control provisions, especially with regard to documentation. This experience could be exchanged during the annual meeting of ECOWAS National Commissions with a view to preparing the way for harmonizing end use/r documentation and establishing guidelines and mechanisms for information exchange. In addition, seven of the 11 ECOWAS member States that have provided at least one national PoA report during 2012–2016 grant the right to the exporting State to conduct a physical check at the point of delivery.⁴⁸ Four of these States also place restrictions on the re-export of SALW and permit re-export only with their prior approval and notification.⁴⁹ This subregional experience could be shared and utilized in a subregional dialogue on key definitions, a checklist or standardized EUC, on guidance for developing and maintaining a national system, information exchange and post-delivery cooperation mechanisms. Although not explicitly mentioned in the ECOWAS Convention, these elements could support effective implementation.

ECOWAS Member States could also draw upon the experiences of other African subregional small arms control instruments. For example, the Nairobi Protocol also calls for “legal uniformity and minimum standards” regarding transfer control legislation.⁵⁰ Additionally, it calls for the verification of licences and authorizations to ensure authenticity as well as outlining minimum information for licences, authorizations and accompanying documentation.⁵¹ Nairobi Protocol States Parties are also to undertake the establishment of “a sub-regional system to harmonize relevant import, export and transfer documents and end user certificates”.⁵² The Nairobi Protocol contains a provision for post-delivery

⁴⁴ Ibid., article 22.

⁴⁵ Security Council, UN document S/RES/1467 (2003), 18 March 2003.

⁴⁶ General Assembly, *Report of the Secretary-General: Towards An Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms*, UN document A/62/278 (Part II), 17 August 2007, pp. 127, 214.

⁴⁷ Niger, Nigeria, Sierra Leone and Togo.

⁴⁸ Côte d’Ivoire, Liberia, Mali, Niger, Senegal, Sierra Leone and Togo.

⁴⁹ Benin, Niger, Nigeria and Togo.

⁵⁰ Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, signed in Nairobi on 21 April 2004, article 3(c).

⁵¹ Ibid., article 10(c) and 10(e).

⁵² Ibid., article 16(g).

cooperation, under which the “importing State Party shall inform the exporting State Party of the receipt of the dispatched shipment of small arms and light weapons”.⁵³ Four of the eight Nairobi Protocol States Parties that submitted national PoA reports between 2012 and 2016 require end use/r documentation, which contain all of the elements listed in the PoA national report template, prior to authorizing an export of SALW to another country.⁵⁴ These four States verify or seek to authenticate EUCs or other types of end use/r documentation provided, and five report that they have measures in place aimed at preventing the forgery and misuse of end use/r documentation.⁵⁵ Seven of these States reported on the use of post-delivery cooperation measures, either in relation to the use of DVC or permission for the exporting State to conduct a physical check at the point of delivery.⁵⁶

RECSA developed Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons, which interpreted article 10 of the Nairobi Protocol to contain a requirement for an EUC for the import, export and transit of SALW.⁵⁷ The RECSA guidelines call for the development of a “standardised EUC” in the region, based on the call in article 16 (g) that should contain the following elements:

- Detailed description of the goods;
- Quantity of the goods;
- Value of the goods;
- Names and physical addresses of all parties involved in the transaction;
- A description of the end use;
- The location where the goods will be used;
- Assurances that the goods will only be used by the end user and for the stated end use; and
- Procedures to be followed in the event of re-export including:
 - A prohibition on transfer, diversion, export, re-export of the goods, without previous approval from the original exporting country; and
 - If arms are being re-exported, then the original exporting State will be notified, before the re-export/re-transfer of the weapons.⁵⁸

Moreover, the document should contain features to prevent abuse and fraud and States should develop processes and procedures to verify the EUC’s authenticity.⁵⁹ The guidelines also recommend the standardization of all relevant documents for transfers and sharing legislation and relevant information within the region between licensing and customs authorities. It could provide the basis for further consultative meetings in East Africa on definitions of key terms that are not defined in the guidance, which also could be of interest

⁵³ Ibid., article 10(d).

⁵⁴ Kenya, South Sudan, Uganda and the United Republic of Tanzania.

⁵⁵ Eritrea, Kenya, South Sudan, Uganda and the United Republic of Tanzania.

⁵⁶ Burundi, Democratic Republic of the Congo, Eritrea, Kenya, South Sudan, Uganda and the United Republic of Tanzania.

⁵⁷ Regional Centre on Small Arms and Light Weapons (RECSA), *Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons*, 2005, p. 22.

⁵⁸ Ibid.

⁵⁹ Ibid., p. 23.

to other African States. RECSA is well placed to facilitate a pan-African dialogue on the issue given its experience on the issue and role in the African Peace and Security Architecture.

The SADC Protocol seeks to prevent the excessive and destabilizing accumulation and trafficking in firearms, “promoting cooperation at the regional and international level” and information exchange as ways to address this challenge.⁶⁰ The SADC Protocol obliges States Parties to coordinate procedures for transfers and ensure that “proper controls” are in place along with “legal uniformity and minimum standards” for transfer controls.⁶¹ In particular, the SADC Protocol instructs States Parties to “harmonise relevant import, export and transfer documents and end-user control certificates” as well as establish systems to verify the validity and authenticity of such documents.⁶² In order to effectively implement such provisions, the SADC Protocol requires improved capacity for relevant stakeholders via coordinated training and the establishment and further development of relevant databases, communication systems and inter-agency cooperation.⁶³ An Action Plan was drawn up and workshops were held regarding several of the provisions contained in the SADC Protocol during 2002–2003, but not for the harmonization of documents and EUCs or support for systems to authenticate and verify such documents.⁶⁴ Five of the eight States that submitted national PoA reports during 2012–2016 require an EUC prior to authorizing an export of SALW to another country.⁶⁵ Three of these States abide by restrictions on re-export.⁶⁶ Six States verify or seek to authenticate end use/r documentation, and have measures in place to prevent the forgery and misuse.⁶⁷ Therefore, several States in another African subregion have reported experience that could be useful for a sub/regional and international process to strengthen end use/r control systems.

The African group recognized the validity of working via subregional instruments to strengthen end use/r control systems, but also called for a regional process to examine the synergies between the various subregional small arms control instruments in Africa. Furthermore, the existing subregional commitments on information exchange and harmonization of legislative measures relevant to transfer controls could also benefit from inclusion in this pan-African discussion. The existing subregional arms control instruments provide definitions for a number of key terms that could be considered in a pan-African dialogue. Key terms that are not defined in these instruments could draw upon international, regional and other multilateral good practice guidelines as a basis for deliberations. The group did not express a preference for a particular process or entity to undertake such an exercise, although the African Union was mentioned as a potential forum in which to bring together all relevant and interested African stakeholders. The African

⁶⁰ South African Development Community (SADC), Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community, Blantyre, 14 August 2011, article 3.

⁶¹ Ibid., article 5.

⁶² Ibid., article 5.

⁶³ Ibid., article 6.

⁶⁴ N. Stott, *Implementing the Southern Africa Firearms Protocol: Identifying Challenges and Priorities*, Institute for Security Studies (ISS), Paper 83, November 2003, <https://issafrica.s3.amazonaws.com/site/uploads/PAPER83.PDF>.

⁶⁵ Botswana, Mozambique, Namibia, South Africa and the United Republic of Tanzania.

⁶⁶ Botswana, South Africa and the United Republic of Tanzania.

⁶⁷ Botswana, Mozambique, Namibia, South Africa, Swaziland and the United Republic of Tanzania.

Union Strategy on the Control of Illicit Proliferation, Circulation and trafficking of Small Arms and Light Weapons of 2011 and the fact that addressing the illicit flow of SALW is one of the strategic priorities of the African Peace and Security Architecture Roadmap for 2016–2020 provide a useful basis on which to undertake a pan-African dialogue on end use/r control systems to prevent diversion.⁶⁸ Therefore, the African Union-Regions Steering Committee on SALW and DDR could consider this proposal, establishing a working group of experts to take the issue forward or consider the issue as part of a broader discussion on strengthening transfer controls by drawing upon subregional experiences.

The ECOWAS Convention, Kinshasa Convention, Nairobi Protocol and SADC Protocol all explicitly call for harmonization of end use/r documentation and related practices and procedures. The African group considered the benefits of undertaking an African-level exchange of end use/r documentation and good practices for authentication and verification of documentation in addition to risk assessment and identification. Although the Nairobi Protocol does not contain such an explicit recommendation, RECSA's guidance for its implementation has provided recommended elements of end use/r documentation. The group also noted the challenge of domesticating international guidance for national legal and enforcement frameworks. Therefore, the development of guidance on effective end use/r control systems, including roles and responsibilities, at the African regional or subregional level, could usefully reflect and address specific challenges faced by African States.

Taking into account the resource challenge, the African consultative meeting stressed the importance of examining opportunities to utilize international assistance and cooperation programmes to support implementation of sub/regional instruments along with the PoA and ATT. In particular, sustainable capacity-building at the operational level is needed to institutionalize knowledge, practice and inter-agency cooperation within a State rather than relying on personal knowledge and networks. Several African States have established inter-agency commissions on small arms that could be utilized to support institutionalization as well as to facilitate the exchange of information and actionable intelligence.

4.2. Opportunities for a regional approach in Asia

The Asian region does not have the same network of subregional small arms control instruments as Africa, but there are subregional initiatives or framework agreements that explicitly recognize the need to strengthen end use/r control systems to prevent diversion. For example, Central Asian States have participated in OSCE initiatives to strengthen end use/r control systems. The Asia-Pacific Economic Cooperation (APEC) 2004 Guidelines on Controls and Security of Man-Portable Air Defense Systems (MANPADS) contain several relevant provisions on strict export controls for MANPADS, the regulation of transfers and brokering, secure transportation and a prohibition on authorizations for non-State

⁶⁸ African Union, "African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons of 2011", adopted by the *Meeting of Member States Experts*, Lome, Togo, 26–29 September 2011; African Union Commission, *African Peace and Security Architecture (APSA) Roadmap for 2016–2020*, Ethiopia, December 2015, pp. 46–47.

recipients.⁶⁹ Moreover, the annual Asian Export Control Seminar in Japan provides a regional platform for exchanging information and learning about good practices for effective national end use/r control systems to prevent diversion.⁷⁰

During the Asian consultative meeting, participants discussed the potential for greater cooperation between ASEAN member States to prevent diversion. Also discussed was the potential for a subregional information mechanism for information sharing for ASEAN member States, potentially via the Association of Southeast Asian Nations Chiefs of Police:

- Exchange of end use/r documentation;
- Exchange of national experience and practices on end use/r control systems and measures to address diversion; and
- Sharing of national points of contacts to assist with authentication and verification of end use/r documentation.

Thus, it is worth noting ASEAN's plans for the development of a convention against arms smuggling.⁷¹ Although ASEAN's work has not yet focused on end use/r controls, if a convention is developed that is comparable to other sub/regional arrangements to combat the illicit small arms trade around the world, then it is to be expected that it contains provisions on end use/r controls.

Overall, the Asian consultative meeting focused attention on the potential for international frameworks, instruments and approaches to strengthen end use/r controls to prevent diversion. There was an emphasis on utilizing "any platform that allows for maximum participation of States"⁷² for an international dialogue to strengthen end use/r controls and prevent diversion. Examples included the regular meetings on implementation of the PoA in addition to platforms provided by the International Criminal Police Organization (INTERPOL) or the World Customs Organization. Participants explained that the rationale for utilizing a global rather than regional platform for dialogue is because the arms trade is not just confined to the Asian region, thus many of the proposals for strengthening end use/r control systems raised in the Asian meeting are directed towards the international rather than the sub/regional level.

4.3. Opportunities for a subregional approach in the Caribbean

The Caribbean group noted the benefits and challenges of pursuing a subregional approach to strengthen end use/r control systems in the Caribbean. In particular, the group considered subregional consultative meetings and initiatives as a useful means for

⁶⁹ Asia-Pacific Economic Cooperation (APEC), *Guidelines on Controls and Security of Man-Portable Air Defense Systems*, 2004, 2004/AMM/035, <http://www.smallarmssurvey.org/fileadmin/docs/N-Instruments/2004-APEC-Controls-Security-of-MANPADS.pdf>.

⁷⁰ For information on the 24th Asian Export Control Seminar, see: http://www.meti.go.jp/english/press/2017/0302_003.html.

⁷¹ M. Afra, "ASEAN to Prioritize Eradication of illegal Arms Trade", *The Jakarta Post*, 22 October 2015, <http://www.thejakartapost.com/news/2015/10/22/asean-prioritize-eradication-illegal-arms-trade.html>.

⁷² 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, op. cit., p. 17.

supporting the implementation of international agreements and instruments such as the ATT and PoA as well as for addressing the particular arms diversion challenges for Small Island Developing States in the Caribbean subregion. There is a willingness to work with partners in the subregion to strengthen end use/r control systems to prevent diversion. Potential sub/regional frameworks that Caribbean States noted could be utilized included CARICOM IMPACS, CIFTA and UNLIREC.

CARICOM IMPACS was highlighted as a useful mechanism for facilitating work to strengthen end use/r control systems. For example, CARICOM IMPACS was working on a model law for implementation of the ATT when the consultative meeting took place in September 2016, and work on an end use/r documentation template or checklist could be connected to such efforts. The group noted the need for resources to be provided to enable efforts to be undertaken subregionally to develop guidelines, templates, checklists and information collection and sharing mechanism to strengthen end use/r controls and address diversion in the subregion.

In 2002, the CARICOM Regional Task Force on Crime and Security had already identified ways in which subregional efforts could be undertaken with exporting States to mitigate the risk of diversion. For example, the task force noted that information exchange arrangements could be concluded with partners in Europe and North and South America regarding the delivery to and transit through the subregion of SALW and ammunition.⁷³ The consultative meeting was also interested in exploring opportunities at the subregional level to strengthen risk assessment to prevent diversion at the operational level, such as:

- Development of risk assessment indicators at the national level;
- Establishing and maintaining a knowledge management database on diversion routes, actors and practices in the subregion; and
- Facilitating the sharing of information between operational points of contact.

The Caribbean group was particularly interested in work at the subregional level to strengthen control over transfer to non-State end users. In this regard, there was specific interest in the development of a checklist of elements to be provided in end use/r control documentation for non-State end users along with practices and procedures for verifying and authenticating information contained in such documentation. At the same time, not all participants supported the certification of end use/r control documentation for non-State end users; several participants considered the provision of an import authorization as a sufficient “guarantee” by an importing State. Despite the willingness to explore subregional initiatives to strengthen end use/r control systems, the group singled out two challenges for advancing the issue among the Caribbean States:

- Harmonization processes in the subregion can take years to complete, delaying the development of guidelines or operational tools; and
- Each Caribbean State has its own unique characteristics that might pose a challenge to obtaining agreement on key definitions or guidelines that could be developed within the subregion.

⁷³ CARICOM, *Report of the CARICOM Regional Task Force on Crime and Security*, Georgetown, Guyana, September 2002, p. 28.

These obstacles are not insurmountable. For example, the group reflected on the positive experience of reaching agreement at the subregional level on key issues during the ATT negotiations. Therefore, at a minimum, there was a desire for subregional consultative meetings to identify common ground in advance of an international dialogue regarding end use/r control systems.

5. Next steps for a comprehensive international approach

Participants in the three consultative meetings expressed support for an international process to examine possibilities for international cooperation to strengthen end use/r control systems. All three groups explained that the rationale for the process to take place at the international level was linked to the fact that the arms trade is international and exporting and importing States are located in different regions around the world. This will help to ensure that States that approach the issue of end use/r controls from different perspectives can exchange their understandings and practices in order to strengthen efforts to prevent diversion via enhanced international cooperation and the implementation of robust end use/r control systems. This chapter considers steps that could be taken via the United Nations and ATT frameworks to strengthen end use/r control systems.

5.1. United Nations

The United Nations Secretary-General's biennial reports on small arms have emphasized the importance of adequate legislation and effective transfer and end use/r controls to prevent the diversion of SALW and to combat and eradicate the illicit arms trade. From 2002 to 2008, these reports included recommendations for States to use authenticated EUCs and other measures to ensure effective controls over SALW transfers in addition to a recommendation for the development of "an international framework for the authentication, reconciliation and standardization of end user certificates".⁷⁴ This recommendation has not appeared in subsequent reports. However, developments regarding diversion and the illicit arms trade as well as UNIDIR's research and consultative meetings indicate that there is merit in the Secretary-General considering the issue of calling upon United Nations Member States to examine measures to strengthen end use/r controls at the national level and enhanced international cooperation to build trust and capacity to prevent diversion. The first part of this chapter provides potential input/recommendations for an international process to strengthen end use/r controls for inclusion in the Secretary-General's 2017 report on small arms and for consideration in advance of the 2018 PoA United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (RevCon).

5.1.1. Security Council: small arms, sanctions and peacekeeping

The United Nations Security Council has considered the issue of the illicit trade in SALW alongside sanctions and peacekeeping in dedicated sessions on "small arms" for almost two decades. These meetings have addressed the issue of strengthening end use/r control systems, including consideration of proposals by the Secretary-General and United Nations panels and groups of experts to develop a standardized EUC, establish an international framework or mechanism to enhance the authentication and verification of EUCs, and

⁷⁴ General Assembly, *Report of the Secretary-General: Small Arms*, UN document A/54/404, 24 September 1999, para. 36, p. 9; Security Council, *Report of the Secretary-General: Small Arms*, UN document S/2002/1053, 20 September 2002, p. 9. The 2003 report contained the same recommendation, see: Security Council, *Report of the Secretary-General: Small Arms*, UN document S/2003/1217, 31 December 2003, para. 26, p. 6; Security Council, *Report of the Secretary-General: Small Arms*, UN document S/2008/258, 17 April 2008, recommendation 11, p. 19.

create a database of entities that violate end use and re-export assurances.⁷⁵ The Security Council presidential statements of 2002 and 2005 made recommendations for steps that States can take at the national level to strengthen end use/r controls to prevent diversion and a call to “study the feasibility as appropriate of developing an EUC system at the regional and global levels, as well as an information exchange and verification mechanism”.⁷⁶ The issue is not explicitly contained in either Security Council resolution 2117 of 26 September 2013 or resolution 2220 of 22 May 2015 on small arms,⁷⁷ although the issue was discussed by a number of Security Council members in both meetings.⁷⁸ Relevant provisions are contained in both resolutions that provide a basis for further work to strengthen end use/r control systems, international cooperation and information sharing to prevent diversion. The findings of the UNIDIR 2015 study and the consultative meetings on end use/r control systems undertaken during 2016–2017 indicate that the issue once again merits consideration by the Security Council during its deliberations in 2017 on the issue of small arms.

First, the Security Council resolutions 2117 (2013) and 2220 (2015) recognized the need for effective national controls over transfers to prevent diversion to unauthorized recipients along with cooperation and information sharing to prevent diversion and violations of United Nations arms embargoes.⁷⁹ UNIDIR’s research and consultative meetings demonstrate that United Nations Member States are willing and able to undertake measures at the national level to strengthen end use/r control systems and undertake a dialogue at the sub/regional and global level to enhance cooperation for effective end use/r control systems to prevent diversion. In particular, the Security Council’s next resolution could consider a reference on the need for States to certify, authenticate and verify end use/r documentation, and ensure end users comply with assurances on end use and re-export, as part of a comprehensive end use/r control system. Such a resolution could also echo the calls made in previous Secretary-General reports and presidential statements on the establishment of an international framework to examine the “essential elements” for end use/r documentation and measures to enhance the authentication and verification of such documentation as well as post-delivery cooperation regarding assurances made prior to the delivery of SALW.

Second, the Security Council could consider connecting the assurances made in end use/r documentation on recipient’s putting in place provisions for adequate PSSM, marking and record-keeping with post-delivery cooperation. For example, resolutions that permit the transfer of SALW to entities in States subject to United Nations sanctions through an exemption process, subject to notification and/or authorization by the Security Council

⁷⁵ P. Holtom et al., *op. cit.*, pp. 24–37.

⁷⁶ Security Council, *Statement by the President of the Security Council*, UN document S/PRST/2002/30, 31 October 2002, pp. 1–2; Security Council, *Statement by the President of the Security Council*, UN document S/PRST/2005/7, 17 February 2005, p. 2.

⁷⁷ Security Council, UN document S/RES/2117 (2013), 26 September 2013; Security Council, UN document S/RES/2220 (2015), 22 May 2015.

⁷⁸ P. Holtom et al., *op. cit.*, p. 27.

⁷⁹ Security Council, UN document S/RES/2117 (2013), 26 September 2013, para. 2–3, 9–10; Security Council, UN document S/RES/2220 (2015), 22 May 2015, para. 10–11 and 20.

sanctions committees, could require that such transfers will only be permitted if the importing State provides assurances in end use/r documentation to:

- Mark SALW on import;
- Maintain records of holdings and imported SALW; and
- Put in place and maintain adequate PSSM measures.

The relevant panel and/or mandated peacekeeping operation would inform the sanctions committee that such measures are in place before a requested transfer is authorized by the Security Council committee. Such measures could be considered in connection with the provisions contained in Security Council resolution 2220 (2015).⁸⁰ Monitoring post-delivery by the panel and/or mandated peacekeeping operation could also support provisions contained in Security Council resolution 2117 (2013).⁸¹

Third, the African consultative meeting heard concerns expressed by one participant that security forces involved in a multinational peacekeeping mission are providing arms and ammunition to subnational security forces, and that such transfers are not communicated to the relevant Security Council sanctions committee in connection with provisions contained in relevant Security Council resolutions, nor to the central government of the host State.⁸² Therefore, one of the issues that could be considered by the next Security Council meeting on small arms when discussing the “desirability of aligning objectives of Council-mandated arms embargoes with the overall objectives of other efforts”⁸³ is to ensure clarity in the mandate of peacekeeping missions so that SALW and ammunition provided by troop contributing countries to all security forces and militia in the State in which the mission is operating are provided in compliance with Security Council resolutions. This will reinforce the provisions contained in Security Council resolutions 2117 (2013) and 2220 (2015) that consider the role of United Nations peacekeepers and sanctions in addressing diversion and the illicit trade in SALW.

5.1.2. General Assembly: PoA and beyond

Participants in all three consultative meetings recommended an inclusive international dialogue on end use/r control systems. UNIDIR’s 2015 study considered a United Nations process as the best option for pursuing such a dialogue, enabling involvement by exporting and importing States from around the world.⁸⁴ Several related options also were considered.

The first option considered in UNIDIR’s 2015 study under the heading of General Assembly was the inclusion of an explicit request for United Nations Member States to exchange information on the contents of national end use/r documentation by providing samples of templates or checklists via the United Nations Office for Disarmament Affairs in the General Assembly resolution on the national legislation on the transfer of arms, military equipment

⁸⁰ Security Council, UN document S/RES/2220 (2015), 22 May 2015, para. 13–14.

⁸¹ Security Council, UN document S/RES/2117 (2013), 26 September 2013, para. 3.

⁸² 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, p. 13.

⁸³ Security Council, UN document S/RES/2220 (2015), 22 May 2015, para. 4–5.

⁸⁴ P. Holtom et al., *op. cit.* pp. 105–106.

and dual-use goods and technology. This resolution was adopted biennially during 2003–2013⁸⁵ but was not put forward in 2015 and it is unclear if it will be put forward in 2017.

The PoA is the most appropriate General Assembly initiative for further dialogue on end use/r controls. Although this instrument focuses on SALW, these conventional arms have been recognized as of particular interest due to their susceptibility to diversion. UNIDIR's 2015 study noted that a proposal had been put before the 2006 RevCon "to request the Secretary-General of the United Nations to undertake a United Nations study aimed at developing common understandings on basic issues and options related to the establishment of common standards and reliable systems for end user certification".⁸⁶ The proposal was reportedly broadly accepted, but a formal request was not made for such a study to be undertaken.⁸⁷ The 2011 United Nations Office for Disarmament Affairs Occasional Paper⁸⁸ considered several of these issues, and alongside UNIDIR's research and consultative meetings, provides strong foundations for an international dialogue on an international framework for effective end use/r control systems and enhanced international cooperation to prevent the diversion of SALW.

This study considers the 2018 PoA RevCon to represent an opportune moment to revisit the proposal of the 2006 RevCon president and the 2008 Secretary-General's report on small arms to convene a group of governmental experts (GGE) on the harmonization of end use/r control documentation and an international framework or mechanism to enhance the authentication and verification of EUCs. The process could draw upon the experience of the 2007 GGE on illicit brokering, which also encouraged information sharing and cooperation to authenticate EUCs supplied by brokers in order to identify forgeries and falsifications, thus preventing diversion.⁸⁹ The GGE on illicit brokering was established after the PoA Second Biennial Meeting of States, with its mandate established by General Assembly resolution 60/81 on illicit trade in small arms and light weapons in all its aspects.⁹⁰ If a similar approach is considered suitable for consideration at the 2018 RevCon, then the General Assembly resolution on the illicit trade in small arms and light weapons in all its aspects could request the establishment of a GGE to consider the adoption of a checklist of "essential

⁸⁵ General Assembly resolutions 57/66 of 22 November 2002; 58/42 of 8 December 2003; 59/66 of 3 December 2004; 60/69 of 8 December 2005; 62/26 of 5 December 2007; 64/40 of 2 December 2009; 66/41 of 2 December 2011; and 68/44 of 5 December 2013.

⁸⁶ General Assembly, Working Paper submitted by the President, *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects: A Strategy for Further Implementation*, United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 26 June–7 July 2006, UN document A/CONF.192/2006/RC/WP.4, 29 June 2006, Section II, para. 31, p. 6.

⁸⁷ G. McDonald, S. Hasan and C. Stevenson, "Back to Basics: Transfer Controls in Global Perspective", in *Small Arms Survey 2007: Guns and the City*, Cambridge University Press, 2007, p. 123.

⁸⁸ Wood and Danssaert, op. cit.

⁸⁹ General Assembly, *Report of the Group of Governmental Experts Established Pursuant to General Assembly Resolution 60/81 to Consider Further Steps to Enhance International Cooperation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons*, UN document A/62/163, 30 August 2007, para. 55, p. 16.

⁹⁰ General Assembly, *The Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, UN Document A/RES/60/81, 11 January 2006. Resolution adopted by the General Assembly on the report of the First Committee (A/60/463), Agenda item 97(t), 8 December 2005.

elements” for end use/r documentation (possibly as an annex), and a framework for supporting international cooperation to support the authentication and verification/reconciliation of the contents of such documentation. The GGE could also facilitate the development of common understandings of key terms, concepts and processes as a means of seeking to strengthen end use/r controls. Of particular merit, based on UNIDIR’s research,⁹¹ is consideration of the means for supporting compliance with assurances on end use and re-export in order to prevent diversion and build trust between exporting and importing States.

5.2. Arms Trade Treaty

Participants in all three consultative meetings considered the utility of the ATT as providing a framework for a multilateral dialogue on end use/r control systems between importing and exporting States. It was recognized that the ATT does not currently benefit from universal participation. Nevertheless, the establishment and maintenance of an effective national end use/r control system can contribute towards the fulfilment of the objective and purpose of the ATT, which also promotes international cooperation and assistance as a means to enhance national systems and prevent diversion. This section outlines issues that could be considered at the Third Conference of States Parties (CSP3) and beyond in connection with activities of the “working group on transparency and reporting” and the “ad hoc working group on effective implementation”.

Articles 11 and 13 of the ATT emphasize the importance of sharing information on effective measures to address diversion. During the second session of the working group on transparency and reporting in April 2017, Mexico presented a working paper on Information Exchange Mechanism to Prevent Diversion of Conventional Arms to the Illicit Market that outlined a proposal for “the establishment of a mechanism for exchanging comprehensive and detailed information on conventional arms transfers (co-partnership) to avoid the risk of diversion and to implement mitigation measures”.⁹² The proposed mechanism could help foster a partnership and information exchange before authorization, during the transfer and after delivery to the end user. The working paper was intended to promote discussion in response to the encouragement in articles 11 (5–6) and 13 (2) of the ATT. Participants in the African and the Caribbean consultative meetings expressed interest that the ATT provide a mechanism for facilitating the exchange of information that can help to address diversion to unauthorized end users and end uses. Participants in the African consultative meeting considered whether the ATT could provide a forum to facilitate an exchange of actionable intelligence to address diversion. Such an exchange could be covered by the Mexican proposal.

The working group flagged considerations on the role of the designated ATT contact point for facilitating the sharing of such information.⁹³ At the same time, the appropriateness of

⁹¹ See chapter 3.3 and Annex 1 section 1.1. See also P. Holtom et al., *op. cit.*, pp. 96–97.

⁹² ATT Secretariat, Working Paper submitted by Mexico on “Information Exchange Mechanism to Prevent Diversion of Conventional Arms to the Illicit Market”, *Second Meeting of the ATT Working Group on Transparency and Reporting*, 6 April 2017.

⁹³ ATT Secretariat, “Issues Paper for Group’s Second Meeting”, *Working Group on Transparency and Reporting*, 15 February 2017.

identifying points of contact for particular issues could be considered. For example, just as United Nations Member States are invited to provide details for one point of contact for implementation of the PoA and another for implementation of the international tracing instrument, it should be considered whether it could be useful to identify a point of contact for supporting the authentication and verification of end use/r documentation within the ATT framework.

Consideration of the merits of exchanging sample templates or national checklists for the minimum elements to be contained in end use/r documentation could be undertaken by either the working group on transparency and reporting or the ad hoc working group on effective implementation. The issue could cut across the mandate of both working groups, providing an issue on which an exchange of documentation and contents could be utilized as the basis for the development of guidance for common understanding or a checklist of contents that could be used by States for their national end use/r documentation. This issue could be considered by a subgroup of a working group on effective implementation, in addition to identifying the common minimum elements that an importing entity or end user could provide to the competent authorities in an exporting State to undertake a risk assessment regarding the potential for diversion or misuse in accordance with the provisions contained in articles 6 and 7 of the ATT, as well as in Article 1. An international dialogue in this framework could also consider a recommendation for end users in ATT States Parties to provide an explicit assurance to exporting States to ensure that conventional arms are not used on contravention of the provisions contained in articles 6 and 7, and that efforts have been undertaken to mitigate the risk of diversion including unauthorized re-export.

If CSP3 decides to establish a working group on effective implementation to bring together technical experts to share experiences, challenges and best practices on the national implementation of the ATT, then it could be an appropriate forum for further work to strengthen end use/r controls. Participants in the Caribbean consultative meeting expressed interest in sharing developments throughout the Caribbean via an ATT working group on implementation to support the development of good practice guidelines on end use/r controls that would include aspects of importing State and transit/trans-shipment State perspectives and practices. The Caribbean region has already demonstrated the benefits of sharing practices from one sub/region to another. The development of a CARICOM Model Law for ATT implementation draws upon the Model Law to assist Pacific States to implement the ATT,⁹⁴ demonstrating the positive benefits of such exchanges. An international working group could consolidate shared best practices, experiences and challenges into a set of common guidelines for an effective end use/r control system. The guidelines would outline common understandings with regard to key terms and roles and functions of end use/r documentation in effective national systems. The working group could benefit from inputs from sub/regional instruments, but also inspire further work at sub/regional levels.

⁹⁴ New Zealand and Small Arms Survey, *Arms Trade Treaty: Model Law to Assist Pacific States to Implement the Arms Trade Treaty*, 1 January 2014.

6. Concluding remarks

This study presents the key findings of Phase II of the project to strengthen end use/r control systems to prevent the diversion of conventional arms, drawing upon the discussions conducted during the two regional and one subregional consultative meetings in Africa, Asia and the Caribbean along with the results of the UNIDIR survey and desk research. The three consultative meetings had several connected objectives:

- Review efforts, initiatives and international and sub/regional frameworks and instruments that strengthen cooperation and align end use/r control systems;
- Identify the key areas that would enhance cooperation and strengthen end use/r control systems;
- Explore the feasibility and desirability of different options for a sub/regional or global approach to strengthening end use/r control systems; and
- Consider challenges and opportunities for a sub/regional or global framework for strengthening end use/r control systems.

Participants in the three consultative meetings supported an international dialogue to identify common understandings of key terms and assurances, determine essential elements of end use/r documentation and facilitate exchanges of such documentation and contact point details as part of an international mechanism to support the authentication and verification of end use/r documentation. These issues were highlighted in UNIDIR's 2015 study as potential activities for a United Nations, ATT or sub/regional process to strengthen end use/r controls. Table 3 summarizes the main types of activities to be conducted multilaterally to strengthen end use/r control systems that were considered during the consultative meetings. It identifies the most appropriate format in which to undertake these activities. For several activities, work can take place in the United Nations, ATT and sub/regional processes that can complement each other. This chapter presents each activity and the most appropriate process to pursue multilateral efforts to strengthen end use/r control systems.

The research and consultative meetings conducted for this study indicate that a **dialogue to foster understandings of key terms for end use/r control systems** should ideally take place in a format that enables diverse participation by a wide range of States and key stakeholders. For this reason, the PoA framework is regarded as a useful existing process to conduct this dialogue. Chapter 5 noted that an international dialogue could feed into the work of a GGE to codify the common understandings into potential definitions. At the same time, such deliberations could also benefit from work on end use/r controls undertaken in an ATT framework, and draw upon definitions established at the sub/regional level. The meetings also indicated that there could be interest in developing common understandings on key terms within Africa to support implementation of various subregional small arms controls. The potential for common positions for both African and Caribbean States were also considered.

There is currently limited appetite for establishing a global template for end use/r documentation for use in all international arms transfers. By contrast, there is interest in a multilateral process to **develop a checklist of “essential elements” for end use/r documentation** (i.e. details of items, end use and end use/r to be provided to export control

authorities). Participants in the consultative meetings recognized that considerable related work has already been undertaken by the participating States of the Wassenaar Arrangement, the OSCE, UNLIREC and ISACS. The willingness of States to exchange samples of end use/r documentation and national checklists, as evidenced by the UNIDIR survey, indicates that an international exchange could be a good starting point for such a process at the international level. Due to the nature of the international arms trade, United Nations or ATT formats were highlighted as preferred venues for an international expert group to examine end use/r documentation provided by States to develop a checklist of “essential elements”. Additionally, several African subregional small arms instruments contain provisions calling for the harmonization of end use/r documentation. African States could develop a checklist of essential elements of end use/r control documentation in advance of an international process and contribute such material to the international deliberations. Alternatively, an African checklist could be developed following an international process on this issue. Irrespective of which option is chosen for African States, it is recommended that deliberations address whether different types of information are considered “essential elements” for SALW as distinct from other conventional arms. For example, the inclusion of information on serial numbers and marking could be included in end use/r documentation specifically for SALW, but not necessarily for other conventional arms.

UNIDIR’s research for the project indicates that a checklist of essential elements of end use/r documentation is likely to include end user assurances on end use and re-export or re-transfer. States currently use a variety of options in this regard, and it appears that there is general acceptance and understanding for when a particular option is utilized. It is not expected that standardized language will be developed for end use or re-export assurances during a global process. The consultative meetings revealed three areas that merit additional consideration for the **further development of assurances to prevent diversion**. First, ATT States Parties could examine the potential for including assurances relating to ATT articles 6 and 7, securing promises from end users not to transfer conventional arms to entities subject to United Nations arms embargoes, to commit or facilitate a serious violation of international humanitarian law or international human rights law, or to commit or facilitate an act constituting an offence under international conventions relating to terrorism or transnational organized crime. Second, States could consider the inclusion of assurances that adequate measures are in place to mitigate the risk of diversion, including appropriate marking, record-keeping, PSSM and disposal. As noted above, this is an issue that could be considered in connection with Security Council resolutions on arms embargoes in particular, but could also be considered more generally in the PoA or ATT framework. Third, as discussed below, it now appears to be an opportune moment to consider the linkages of assurances and post-delivery cooperation.

A key finding of Phase II of the project is that **guidelines on the role and functions of end use/r documentation**, including authentication, verification and certification, should be developed at the sub/regional level or via other multilateral forums, rather than be considered as a priority for a global process, such as a GGE. It was noted that the ISACS modules on *National Controls over the International Transfer of Small Arms and Light Weapons* and *National Controls over the End-user and End-use of Internationally Transferred Small Arms and Light Weapons* already represent United Nations guidance on this issue for

SALW.⁹⁵ Participants in the African and the Caribbean consultative meetings expressed interest in the development of guidance on the role and function of end use/r documentation, and for effective end use/r control systems more generally, that is tailored to the needs and resources of the sub/regional level, with further interest in ensuring that such guidance identifies the roles and responsibilities for each government agency and/or ministry involved in national end use/r control systems.

UNIDIR's 2015 study indicated that an exchange of information and indicators for risk assessment could be considered as part of an international process to strengthen end use/r control systems. This recommendation has been separated into two separate issues as a result of the consultative meetings. First, the consultative meetings identified the potential for particular activities that could be considered as part of an **international mechanism to facilitate the authentication and verification of end/user documentation**. An exchange between States via a PoA and/or ATT framework of sample end use/r documentation or national checklists of essential elements could be considered as part of such a mechanism. The provision of national contact points for supporting the authentication and/or verification of end use/r documentation can also be considered part of this mechanism. It was also noted that African subregional small arms control instruments call for the exchange of such relevant information at the subregional level. Participants in the Caribbean consultative meeting discussed similar activities that could be undertaken at the subregional level, for example, the idea of promoting CARICOM IMPACS as a subregional hub that maintains an up-to-date list of national contact points that can be contacted to support authentication and verification efforts.

Second, participants in the three consultative meetings expressed interest in finding a way to **exchange information that could be used to address diversion, including indicators for risk assessment**. As noted above, there is potential interest in using the ATT and sub/regional mechanisms for such exchanges. However, per UNIDIR's 2015 study, there are challenges for establishing an international mechanism to facilitate such exchanges. It remains a sensitive issue. Currently, a compilation of sources of open source intelligence could be useful if tailored for particular agencies and ministries for particular sub/regions. It was during such deliberations that participants also raised the potential for more work to be carried out within States to strengthen inter-agency cooperation and information sharing to prevent diversion. Therefore, this issue could be addressed as part of the sub/regional work to develop guidelines on effective end use/r control systems.

The issue of **post-delivery cooperation** developed in two different directions during the consultative meetings. First, the issue of inter-agency cooperation within a State after the delivery of conventional arms was raised in the African and Caribbean consultative meetings. Participants emphasized the need for information sharing and good record-keeping to ensure that there was an understanding of commitments towards the exporting State regarding imported conventional arms. Therefore, this is an issue that merits further consideration at the sub/regional level, again in connection with sub/regional work to

⁹⁵ United Nations Coordinating Action on Small Arms (UN CASA), *International Small Arms Control Standard (ISACS) 03.20: National Controls over the International Transfer of Small Arms and Light Weapons*, United Nations, 17 June 2014; op. cit., *03.21: National Controls over the End User and End Use of Internationally Transferred Small Arms and Light Weapons*.

develop guidelines on effective end use/r control systems. Second, the international dimension of post-delivery cooperation could be explored further via the Security Council, PoA or ATT framework. The Security Council framework relates to arms embargoes and the possibility of enhanced post-delivery cooperation and monitoring for entities that are subject to exemption procedures as part of a United Nations sanctions regime. The PoA framework at present relates to cooperation regarding confirmation of delivery, but could also be utilized for exploring options such as “old for new” and cooperation for strengthening PSSM in connection with SALW deliveries. The ATT provides a number of options for exploring post-delivery cooperation via the working group on transparency and reporting or effective implementation. International post-delivery cooperation is an area ripe for further creative thinking to prevent diversion after delivery of conventional arms.

Table 3. Summary of multilateral process and activities to strengthen end use/r control systems

Activity	Multilateral process		
	United Nations	ATT	Sub/regional
Dialogue on understandings of key terms	A	B	B
Checklist for the “essential elements” for end use/r documentation (i.e. details of items, end use and end use/r to be provided to export control authorities, assurances)	A	A	B/C
Dialogue on assurances to be provided by the end user/importer (i.e. end use, re-export or re-transfer, security)	B	B	B/C
Guidance on the role and functions of end use/r documentation	B	B	A
International mechanism to facilitate the verification and authentication of end/user documentation (i.e. exchange documentation and contact point details)	A	A	N/A
Exchange of operational information to address diversion	N/A	B	A
Exchange of indicators for risk assessment	N/A ^a	N/A	A
Measures to facilitate post-delivery cooperation	B	B	N/A

Notes:

A = appropriate option

B = considered useful

C = regional obligation

N/A = not applicable

^a Already takes place to some extent within the framework of UN Security Council sanctions.

Annex 1. Review of national end use/r control practices and UNIDIR survey results, 2015–2017 results

Annex 1 provides an update of chapter 3 of the United Nations Institute for Disarmament Research (UNIDIR) 2015 comprehensive study *Examining Options to Enhance Common Understanding and Strengthen End Use and End User Control Systems to Address Conventional Arms Diversion* (hereinafter referred to as UNIDIR's 2015 study), in particular the results of the UNIDIR survey on national end use/r control practices and systems. The survey sought information on the form, content and practices for utilizing end use/r documentation along with the potential for enhanced post-delivery cooperation, international cooperation and information exchange. It was first circulated in summer 2015 to United Nations Member States during the first phase of the UNIDIR project Tackling Diversion (Phase I): Examining Options and Models for Harmonization of End Use/r Control Systems, and recirculated in 2016 and early 2017 to States in areas where the subregional (Caribbean) and the two regional (Africa and Asia) consultative meetings were organized as part of Phase II of the project. The meetings were held in Port of Spain, Trinidad and Tobago, on 21–22 September 2016, in Nairobi, Kenya, on 6–7 October 2016 and in Bangkok, Thailand, on 1–2 March 2017. As of 2 March 2017, 50 completed surveys had been received. Table A.1 lists the respondent States by region: Africa (8); Americas (11), Asia (11), Europe (18) and Oceania (2);¹ 22 of these States are participating States of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). Annex 1 presents the aggregated data from the surveys and, where relevant and data allows, a sub/regional breakdown as well as some anonymized examples of national practice and survey responses. This updated survey annex, therefore, relies on information provided by States; it does not draw conclusions on the effectiveness of the implementation of these measures.

¹ For the purpose of this study, the regional classification of UN Member States according to the United Nations Statistics Division is used.

Table A.1. UNIDIR survey 2015–2017 respondents by region

Africa (8)	Americas (11)	Asia (11)	Europe (18)	Oceania (2)
Burkina Faso Mali Somalia South Africa Four participating States requested withholding the name of the country	Bahamas Barbados Dominican Republic Guyana Grenada Saint Kitts and Nevis Five participating States requested withholding the name of the country	India Japan Malaysia Philippines Qatar Republic of Korea Turkey Four participating States requested withholding the name of the country	Austria Croatia Czech Republic France Germany Hungary Montenegro Romania Russian Federation Serbia Spain Sweden Switzerland the former Yugoslav Republic of Macedonia Ukraine United Kingdom Two participating States requested withholding the name of the country	Australia New Zealand

In addition to the survey responses, UNIDIR has analysed information contained in:

- 104 national reports on United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) implementation concerning end user certificate (EUC) and post-delivery cooperation (2012–2016);²
- 24 national responses to the United Nations General Assembly resolutions on United Nations exchange of national legislation on the transfer of arms, military equipment and dual-use goods and technology (2012–2015); and
- 63 completed Arms Trade Treaty-Baseline Assessment Project (ATT-BAP) surveys (2014–2016).³

² UNIDIR analysed information contained in national PoA reports that were submitted using the PoA reporting template, specifically Section 3 on international transfers, including Questions 6.2–6.12 of PoA reports submitted between 2012 and 2015 and Questions 5.2–5.9 of PoA reports submitted in 2016.

³ General Assembly resolutions 57/66 of 22 November 2002; 58/42 of 8 December 2003; 59/66 of 3 December 2004; 60/69 of 8 December 2005; 62/26 of 5 December 2007; 64/40 of 2 December 2009; 66/41 of 2 December 2011; and 68/44 of 5 December 2013. For ATT-BAP surveys online, see: <<http://www.armstrade.info>>.

Samples of end use/r documentation have also been utilized, along with information contained in expert analyses, to inform this annex.⁴

1. End use/r documentation requested by export licensing authorities

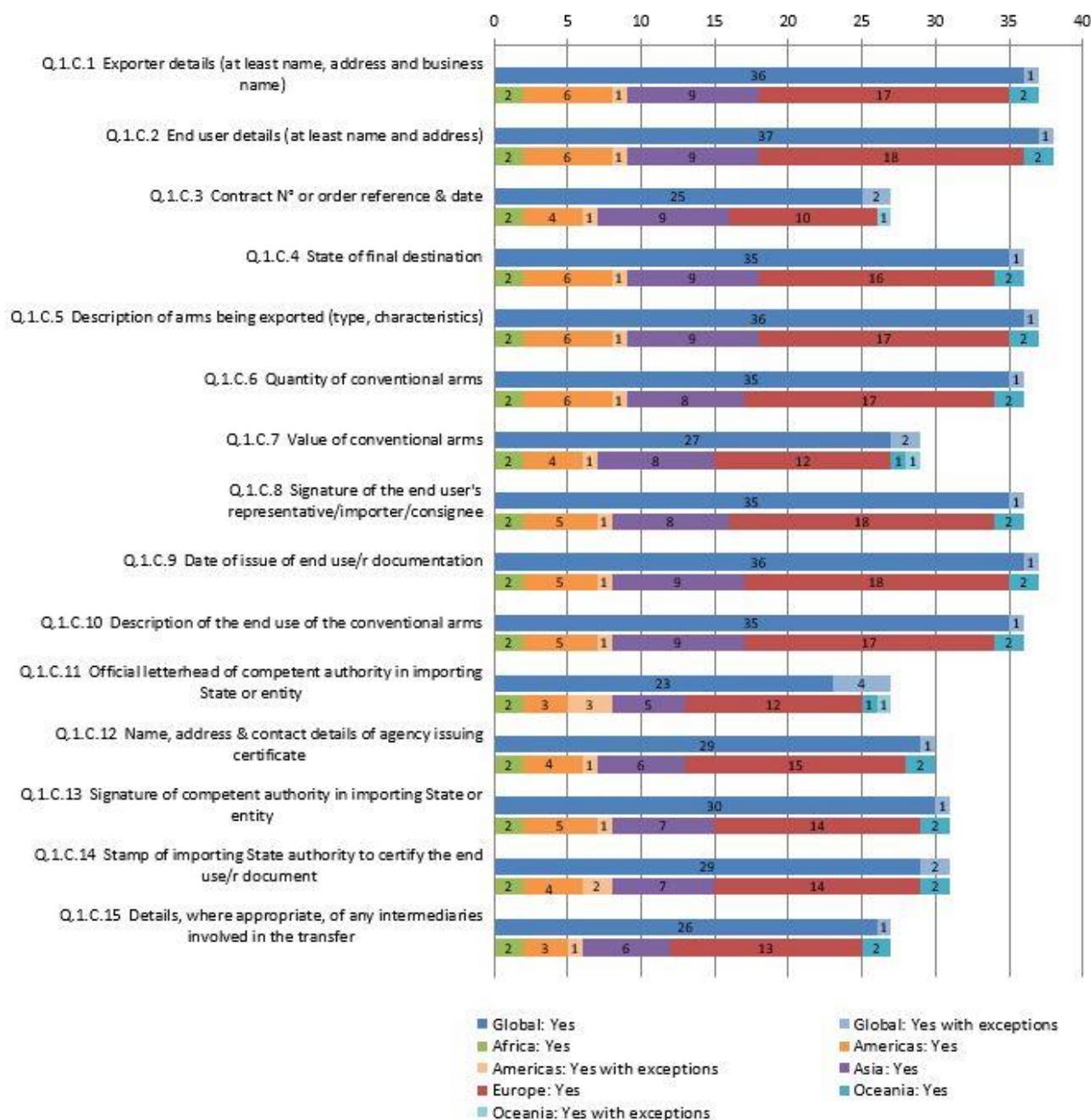
Twelve of the 50 respondents to the UNIDIR survey did not respond to questions regarding the information sought in end use/r documentation and the processes for authentication, verification and risk assessment before authorizing an export of conventional arms (six from Africa, four from the Americas, two from Asia). These respondents explained that their State did not export conventional arms and thus did not consider questions on the role of end use/r documentation in export authorization processes to be relevant.

According to the remaining 38 completed surveys, 36 States (72 per cent) require end use/r documentation to be submitted as part of an export licence process, with another three States reporting exceptions in this regard. Of this total of 39 respondents, four are from Africa, five from the Americas, 10 from Asia, 18 from Europe and two from Oceania. With regard to the exceptions, one European Union member State noted that an EUC is not required for exports to other EU Member States and “like-minded States and/or member States of multilateral export control regimes”. This corresponds largely with the results of UNIDIR’s analysis of national reports on implementation of the PoA during 2012–2016, which found that 75 of the 104 reporting States require an EUC from an importing State prior to authorizing a small arms and light weapons (SALW) export. Almost half of these States are from Europe (37), followed by 14 from Asia, 12 from Africa, nine from the Americas and three from Oceania. All 22 participating States of the Wassenaar Arrangement that responded to the survey require end use/r documentation before issuing an export licence.

Thirty-five respondents (83 per cent) stated that they provide an export licence applicant with a template or checklist for end use/r documentation, which contains the required details on end use/r, items, entities involved in the transfer, unique identifiers and assurances; four others do so with exceptions. Of the total of 39 respondents, three are from Africa, six from the Americas, 10 from Asia, 18 from Europe and two from Oceania. **Graph 1** provides an overview of the responses by States regarding end use/r documentation recommended details.

⁴ M. Bromley and H. Griffiths, “End User Certificates: Improving Standards to Prevent Diversion”, Stockholm International Peace Research Institute (SIPRI), *SIPRI Insights on Peace and Security*, March 2010; H. Griffiths and A. Wilkinson, “Guns, Planes and Ships: Identification and Disruption of Clandestine Arms Transfers”, *South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons*, August 2007; G. McDonald, “Who’s buying? End User Certification”, in *Small Arms Survey 2008: Risk and Resilience*, Cambridge University Press, 2008, pp. 154–181; Wood and Danssaert, op. cit.

Graph 1. UNIDIR survey results 2015–2017: requested details to be included in end use/r documentation

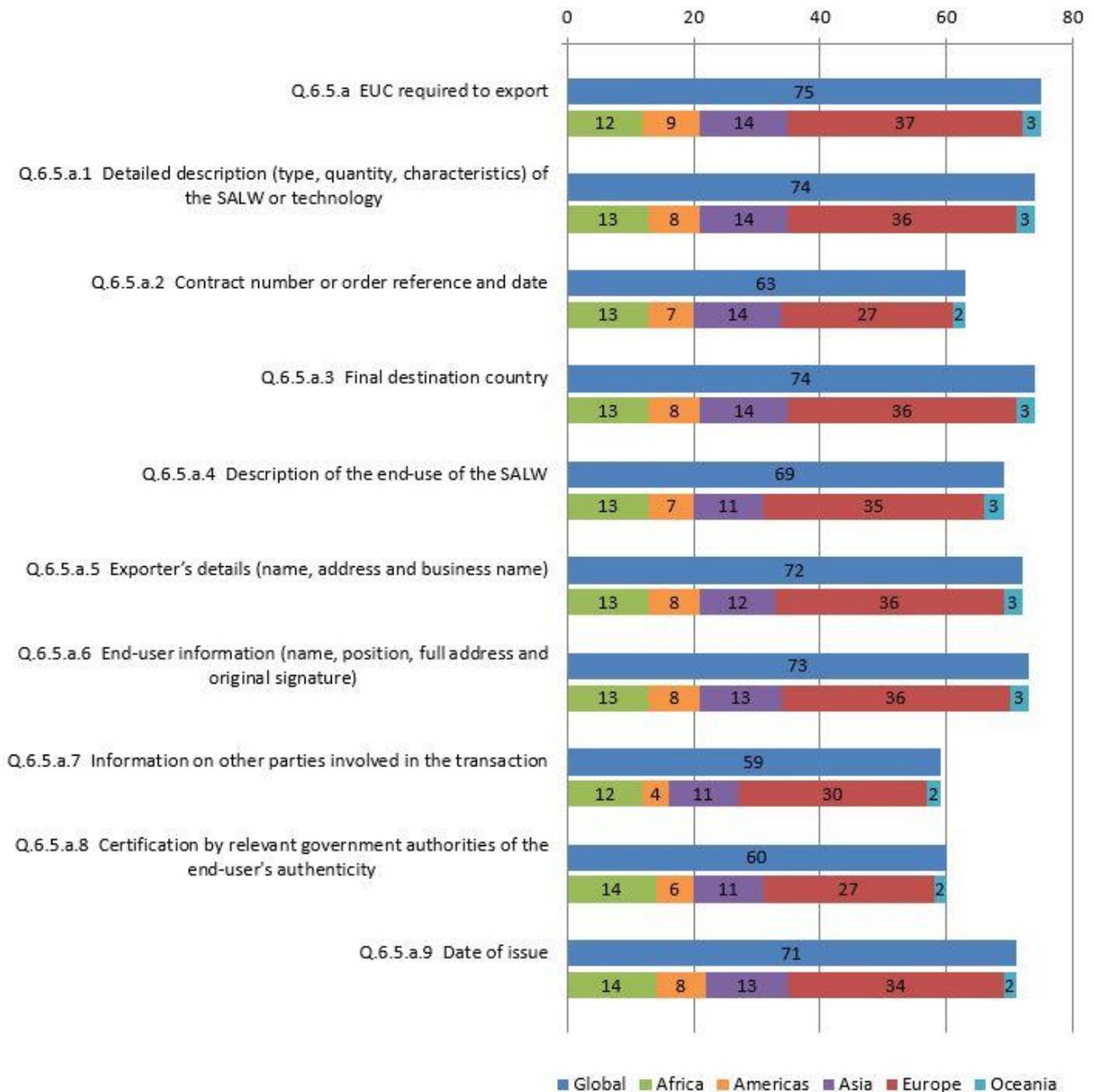


The results of the UNIDIR survey on details to be contained in end use/r documentation are, therefore, largely comparable with UNIDIR’s PoA national report analysis and earlier analysis of major exporting States’ end use/r documentation.⁵ **Graph 2** provides information from the 104 PoA national reports submitted by States during 2012–2016, of which 75 require end use/r documentation prior to authorizing an export of SALW and provided information on the contents of end use/r documentation. Analysis of the UNIDIR survey and PoA national

⁵ Wood and Danssaert, *op. cit.*, pp. 34–35.

reports reveals that there are no significant differences between world regions on the required details on the items, end user, exporter and date of issue.

Graph 2. UNIDIR analysis of PoA national reports (2012–2016): elements in an EUC



Several respondents to the UNIDIR survey highlighted that while certain details are not required in end use/r documentation, this information is supplied in support of an export licence application, but not in end use/r documentation. For example, two of the respondents that do not require the details of the contract number or order reference and date in the end use/r documentation, require copies of the contract to be provided as part of the application. Just over half of the respondents (27 States responding yes or with

exceptions) require an official letterhead of the competent authority to be included in the end use/r documentation (12 from Europe, two from Africa, six from the Americas, five from Asia, two from Oceania). A slightly higher number (31 States responding yes or with exceptions) require the name and contact details, signature or stamp of the competent authority in the importing State. However, even in cases where a respondent has indicated that such details are required, comments have been provided to indicate that this is not mandatory and that such end use/r documentation will still be accepted in support of an export licence application. Therefore, there is a gap between recommended details and what is accepted in practice. As previously noted in UNIDIR's 2015 study, this reflects the assumption of the Small Arms Survey that:

“On paper, it appears the norms, instruments and systems needed to combat diversion are in place among the world's leading exporting States. Yet, whether and how this framework translates into effective action remains unclear in the vast majority of cases.”⁶

1.1. Assurances contained in end use/r documentation

The other main types of information to be contained in end use/r documentation are positive or negative assurances provided by the end user/importer regarding the end use, end user and re-export of the items to be transferred. Thirty-four respondents (68 per cent) require a statement that the declared end user will be the ultimate recipient of the conventional arms being exported, while two require such a statement with exceptions. Thirty respondents (60 per cent) require a statement that the conventional arms will not be used for purposes other than the declared use, with one State doing so with exceptions. Two of the respondents that provided a negative answer to this question address the issue in a different manner, seeking a commitment to use the conventional arms only as indicated in the end use/r documentation. Twenty-three respondents also require a statement from the importer/end user not to divert or relocate the conventional arms covered by the end use/r documentation to another destination or location in the importing State; two others require such a statement with exceptions. There is no variation in patterns of positive and negative assurances across regions in UNIDIR survey data.

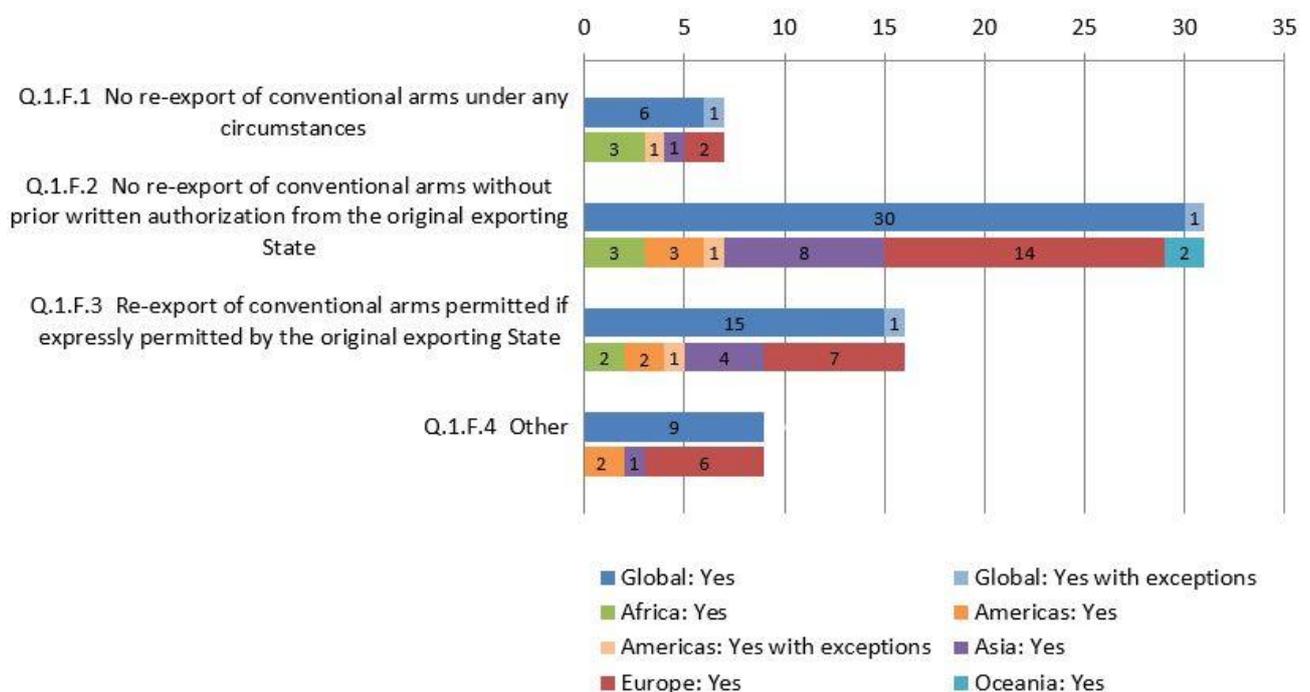
Thirty respondents (60 per cent) require a statement on re-export to be included in end use/r documentation, with one additional State doing so with exceptions. **Graph 3** shows the options most commonly utilized by States seeking assurances on re-export. There is a clear preference for re-export to be undertaken following authorization by the original exporting State. Six respondents indicated that they seek assurances that an end user will not re-export under any circumstances. One respondent indicated that it generally applies the “no re-export under any circumstances” clause to “exports of manufacturing technology for conventional arms, including SALW and ammunition”. Fifteen respondents also noted that re-export can be expressly permitted in the end use/r documentation by the original exporting State. This assurance is mostly utilized by States from Europe with seven of 18 respondents, followed by Asia with four of 11 respondents. Respondents indicated several

⁶ Glenn McDonald, “Who's buying? End User Certification”, in *Small Arms Survey 2008: Risk and Resilience*, Cambridge University Press, 2008, p. 174.

other clauses on re-export or re-transfer that are sometimes included in end use/r documentation:

- “If exports are destined to resellers, additional limitations could be imposed, such as an obligation to sell the goods exclusively in the internal market of the country of destination to end users that accept in writing the commitments of the EUCs signed by the reseller.”
- “The end user undertakes/commits to integrate the materials in its proper productions and not to sell or transfer to a third entity in the recipient State without the agreement of the [exporting State] Government (in this case, the signature of the Certificate does not pose an obstacle to re-export of productions in which the materials have been integrated).”
- “A statement is required that the goods will not be re-exported or otherwise re-sold or transferred if it is known or suspected that they are intended or likely to be used for weapon of mass destruction purposes; and that the goods will not be re-exported or otherwise re-sold or transferred to a destination subject to United Nations, European Union or the Organization for Security and Co-operation in Europe (OSCE) embargo where that act would be in breach of the terms of that embargo.”

**Graph 3. UNIDIR survey results 2015–2017:
requested assurances on re-export to be contained in end use/r documentation**



Fourteen respondent States indicated that they utilize additional assurances in end use/r documentation for exports of man-portable air defence systems (MANPADS) (two from Africa, one from the Americas, three from Asia, eight from Europe). Two respondents noted that exceptions can be made in some cases. Six respondents indicated that they would apply

provisions contained in the Wassenaar Arrangement Elements for Export Controls of MANPADS when exporting MANPADS. Additional assurances on secure storage, handling, transportation and use would not have to be included in the end use/r documentation, but would be assessed by the export authorities. Two respondents indicated that onsite verification could be requested, in line with the provisions contained in the Wassenaar Arrangement Elements for Export Controls of MANPADS. Another State reported that a separate document (e.g. note verbale) and procedure as part of the export licensing process is applied to MANPADS exports. Three States have special provisions for SALW exports. One State requires in its end use/r documentation for transfers of SALW, ammunition and hand grenades “the formulation that these goods will not be used in an offensive manner against the civilian population”.

UNIDIR’s analysis of information on re-export assurances contained in PoA national reports indicates that 60 of 92 (65 per cent) reporting States will only permit a re-export of SALW with prior approval; 21 permit re-export only with prior notification to the original exporting State from the re-exporting State.⁷ Nine of the 21 States that require only prior notification before re-export are from Africa, with six from Europe, three from the Americas and three from Asia.

The UNIDIR survey also sought information on the role that end use/r documentation plays in an effective end use/r control system and any challenges faced in using end use/r documentation in an export licensing risk assessment. As noted in chapters 1 and 2 of the UNIDIR’s 2015 study, it is recommended that export licensing authorities scrutinize end use/r documentation, authenticating the document and verifying its contents to prevent diversion. Nineteen respondents explicitly indicated that the provision of end use/r documentation is a necessary requirement for receiving an export licence. One respondent echoed the best practice guidelines discussed in chapter 2 of the study and stressed that “the thorough examination of end use/r is considered crucial for prevention of diversion”. Ten respondents indicated that diplomatic channels are utilized for the authentication of end use/r documentation. Its contents are verified as part of a comprehensive risk assessment; embassies and national intelligence services play a key role in this process in several States. Four States use online open source information to check the details contained in end use/r documentation. Another respondent indicated that it maintains a watch list of entities that are not considered reliable arms-trading entities or recipients, and checks the information contained in end use/r documentation against the watch list. Other indicators of concern could include:

- Unfamiliar end user;
- Incomplete or suspect supporting documentation;
- Scanty and/or questionable background information or end use description;
- Reticence or evasiveness by applicant or purchasing agent;
- Payment in cash or at above-market rates;
- Unfamiliarity of end users with the product or its use;
- End user declines customary associated services (e.g. installation, warranty, spares, repair);

⁷ Analysis of responses to Question 6.6 in the PoA reporting tool covering the period from 2012–2015, <<http://www.poa-iss.org/NationalReport/NationalReports.aspx>>.

- Commodity indicators: excessive or inconsistent with needs or inventory; in demand by embargoed countries; especially sensitive issues (e.g. night vision, unmanned aerial vehicles, missile-related, high calibre); and
- Geographic/shipment indicators: unfamiliar intermediary; unusual routing; trans-shipment through multiple countries or companies, countries, cities or ports of concern; free trade zones; vague or suspicious delivery locations (e.g. post office box); shipping/packaging instructions; designation of freight forwarders as foreign consignees or end users foreign intermediate consignees (e.g. trading companies, freight forwarders, export companies) with no apparent connection to the end user.

At the same time, several respondents echoed the following sentiments that end use/r documentation and scrutiny represents only one aspect of effective export controls:

“End user documentation plays an important role as part of the risk assessment process when deciding on export licence applications. Such documentation may give valuable information about the entities and persons involved in the transaction, as well as being a confirmation of their willingness to abide by export control rules and procedures. However, it must be emphasized that it is just one aspect of the risk assessment; no form or amount of documentation can prevent illicit activity.”

2. Use of end use/r documentation by competent authorities

Of the 50 States that responded to the UNIDIR survey, 39 (78 per cent) conduct some form of check on the information contained in end use/r documentation, and three additional States do so with exceptions. All respondents require the applicant for authorization to export conventional arms, including SALW, to submit end use/r documentation as part of an export licence process and thus conduct some form of checks on the information contained in the documentation. Twenty-two respondents reported challenges when checking information contained in end use/r documentation, including:

- Lack of reliable or verifiable information in the end use/r documentation;
- Changing circumstances in the country of import or changes regarding the declared end user;
- Complexity of supply chains;
- Lack of cooperation with the relevant authorities in the country of import;
- Cooperation with entities involved in the transfer;
- Difficulties in identifying the competent authorities and authorized signatories (e.g. in both recipient countries and third party/transit States);
- Lack of resources (e.g. diplomatic representations in recipient countries);
- Lack of familiarity with end use/r control procedures and requirements, misperceptions with regard to checks and compliance inquiries;
- Lack of a global mechanism to validate information contained in EUCs;
- Identifying the intended end use and the end user for proposed exports of parts and components that are to be assembled, and then re-exported or re-transferred;
- Checking information in end use/r documentation if not provided in the language of the exporting State or English;
- Delays in decision-making to conduct checks; and

- No direct mechanism to confirm delivery to the authorized end user in another country.

3. Record-keeping of end use/r documentation

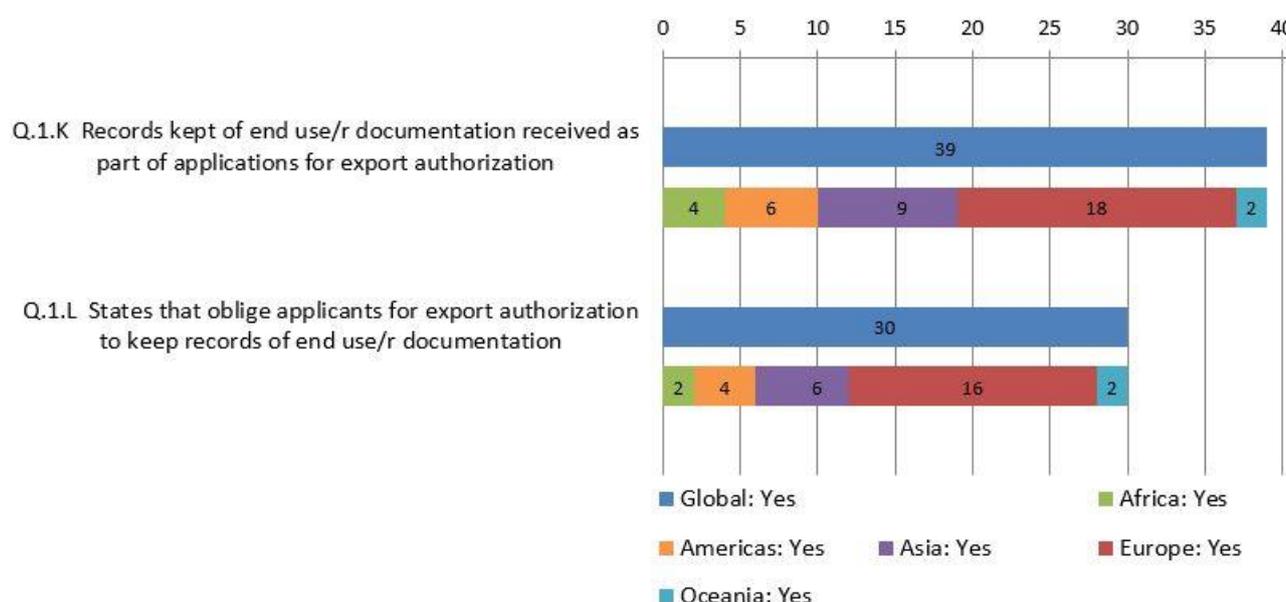
One option that can help with authentication and verification is to keep records of end use/r documentation received as part of an export licence application and check subsequent licence applications to the same end user or importing State against such documentation.

Graph 4 shows the results of the UNIDIR survey regarding record-keeping practices. All 39 respondents that require end use/r documentation to be submitted as part of an export licence application keep records of end use/r documentation received. Thirty of them require export licence applicants to keep records, although the time limit for respondents doing so varies:

- Six keep end use/r documentation records for 10 years;
- Two keep records for five years;⁸
- One keeps records for a minimum of seven years; and
- One keeps records for at least 15 years for conventional arms and 20 years for SALW.

Most respondents that provided such additional information on record-keeping practices noted that end use/r documentation is kept with all documents submitted in relation to an export licence application, with hard and electronic copies maintained. The time period that exporters are required to maintain records varies from five years to indefinitely, with some respondents noting that they undertake checks on exporter records.

Graph 4. UNIDIR survey results 2015–2017: end use/r documentation record-keeping



⁸ One State noted that it considers extending the record-keeping period.

Thirty-two of the 50 UNIDIR survey respondent States carry out various measures to prevent the forgery or misuse of end use/r documentation. Examples of measures to prevent forgery or misuse of end use/r documentation by States performing primarily exporting functions include:

- Authentication by embassies located in the importing State;
- Printing on “special paper (e.g. banknote paper) and numbered individually”;
- Requiring the provision of original end use/r documentation, certified/legalized by a public notary;
- Authentication or legalization using the Apostille of the Hague Convention; and
- Pre-shipment and post-shipment checks that are used to prevent the forgery or misuse of end use/r documents.

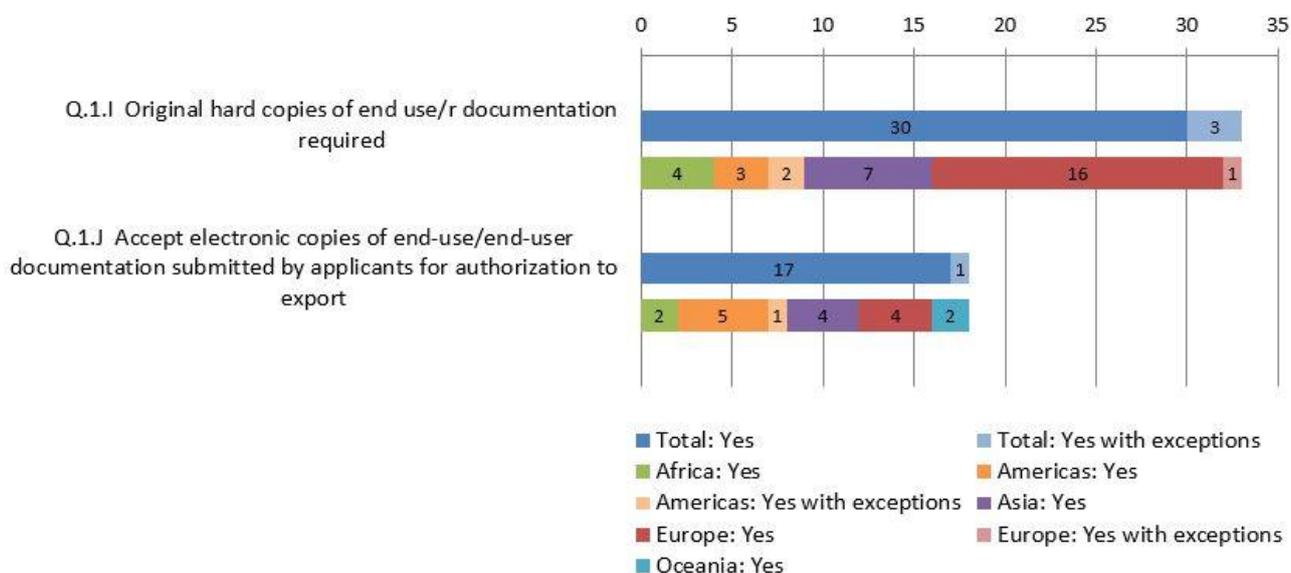
Examples of measures to prevent forgery or misuse of end use/r documentation by States performing primarily importing functions include:

- Investigation of all matters concerning end use/r documentation prior to any shipment being released by customs;
- Taking all shipments into police custody prior to any distribution to licence holders;
- Limiting the number of officials within the competent national authority authorized to sign end use/r documentation, perhaps having this authority delegated by a decree signed by the president;
- Use of documentation templates for certificates of final destination (“certificate de destination finale”, CDF) and EUC (“certificat d’utilisation finale”, CUF), which have been developed by the competent national authority; and
- Providing the specimen signature to foreign diplomatic missions in the country through diplomatic channels.

While best practice documents have long recommended that end use/r documentation submitted in support of an export licence application should be an original document, several States utilize electronic means for export licence applications. **Graph 5** shows that 30 respondents (60 per cent) require original copies of end use/r documentation to be submitted in support of an export licence application, while three additional States do so with exceptions; 17 States (34 per cent) are willing to accept electronic copies, with one additional State doing so with exceptions. One of these respondent States specified that applicants submitting end use/r documentation as part of an export licence application may do so electronically, but a hardcopy is required at the point of export. Another respondent specified that while it would accept electronic copies of end use/r documentation, its national licencing authority reserves the right to inspect the original hard copy.⁹ Seven respondents (23 per cent) accept electronic copies and do not require applicants to provide hard copies of end use/r documentation (two from the Americas, two from Asia, one from Europe, two from Oceania).

⁹ This State specified that the competent national authority was currently reviewing this requirement.

**Graph 5. UNIDIR survey results 2015–2017:
hard copy or electronic copy of end use/r documentation**

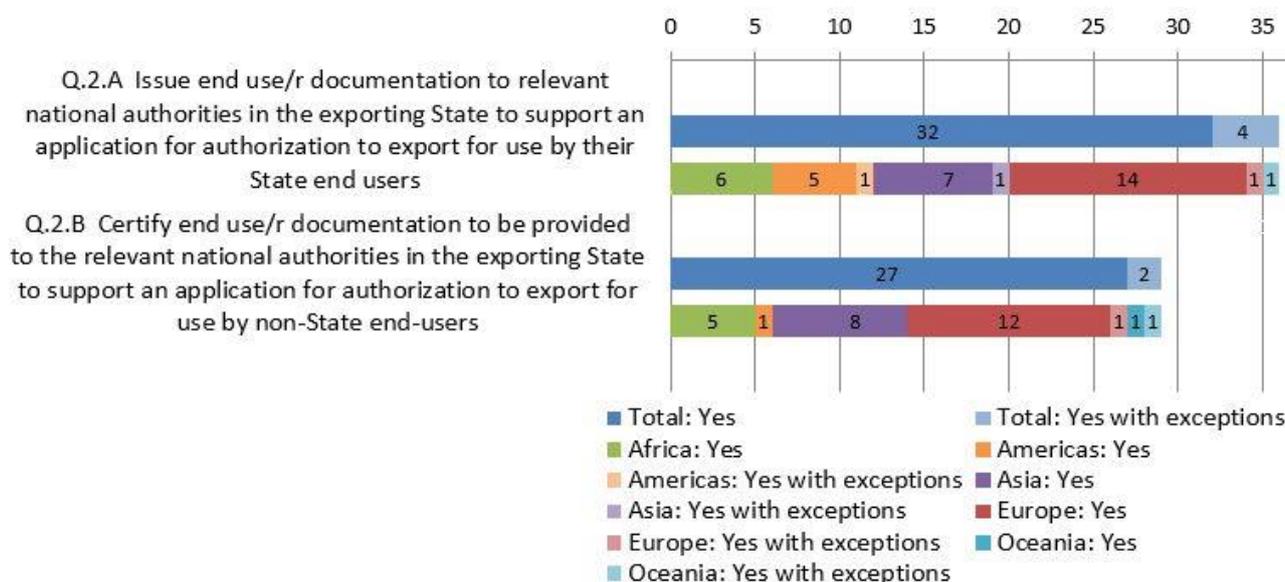


4. End use/r documentation provided by importer and end users

Graph 6 shows that 32 respondents (64 per cent) issue end use/r documentation for State end users, with different ministries usually responsible for issuing such documentation. Four respondents do so with exceptions; five respondents stated that they issue an International Import Certificate (IIC) in such cases. Twenty-seven respondents (54 per cent) certify end use/r documentation for non-State end users (e.g. arms producing companies, private security companies), while two additional respondents do so with exceptions. Five respondents indicate that IICs are utilized in such cases. Therefore, slightly fewer respondents certify end use/r documentation for non-State end users compared to the issuing of such documentation for State end users. The biggest difference is in the Americas, where five of the respondents issue end use/r documentation for State end users, and only one certifies end use/r documentation for non-State end users. The number of respondent States issuing end use/r documentation for State end users and certifying end use/r documentation for non-State end users is higher in the other regions.¹⁰

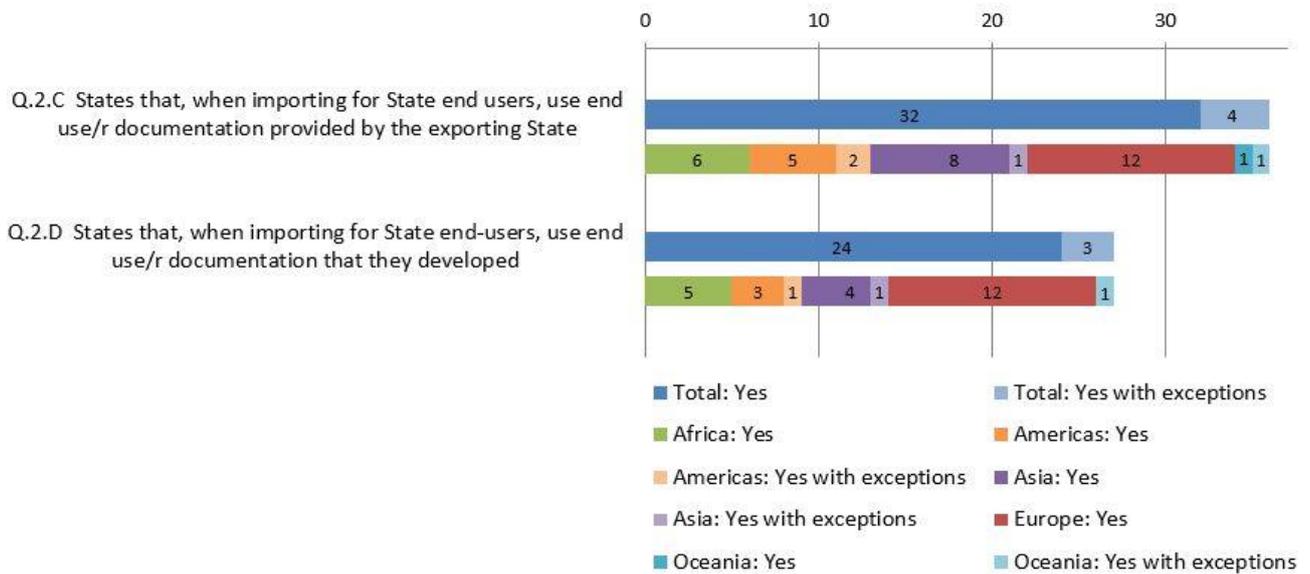
¹⁰ Among the eight respondents from Africa States, six issue end use/r documentation for State end users and five certify end use/r documentation for non-State end users. Among the 11 respondents from Asia, seven issue end use/r documentation for State end users, with one doing so with exceptions, while eight certify end use/r documentation for non-State end users. Among the 18 respondents from Europe, 14 issue end use/r documentation for State end users, with two doing so with exceptions, while 12 certify end use/r documentation for non-State end users and an additional respondent does so with exceptions.

**Graph 6. UNIDIR survey results 2015–2017:
importing State issuing and certifying end use/r documentation**



As demonstrated in chapter 3.1 of UNIDIR’s 2015 study, many exporting States have templates and checklists that outline the expected contents of end use/r documentation. **Graph 7** shows that 32 responding States (64 per cent) utilize a checklist or template provided by exporting States when importing conventional arms, with four additional States doing so with exceptions. Twenty-four respondents (48 per cent) utilize their own checklist or template, with three additional States indicating that they do so with exceptions. One respondent noted that in its experience “the end user certificates supplied by exporting States may differ from one-another in details, but the information contained is almost identical”. Several respondents noted that exporting States can insist on the use of an end use/r document format they provide. Few importing States that have developed their own end use/r documentation provided information specifying under which circumstances it is utilized. One respondent from Oceania specified that it uses end use/r documentation that it has developed or, upon request, end use/r documentation provided by the exporting State. In general, it appears to be a case-by-case decision on whether to use a template provided by the exporting State or end use/r documentation prepared in the importing State.

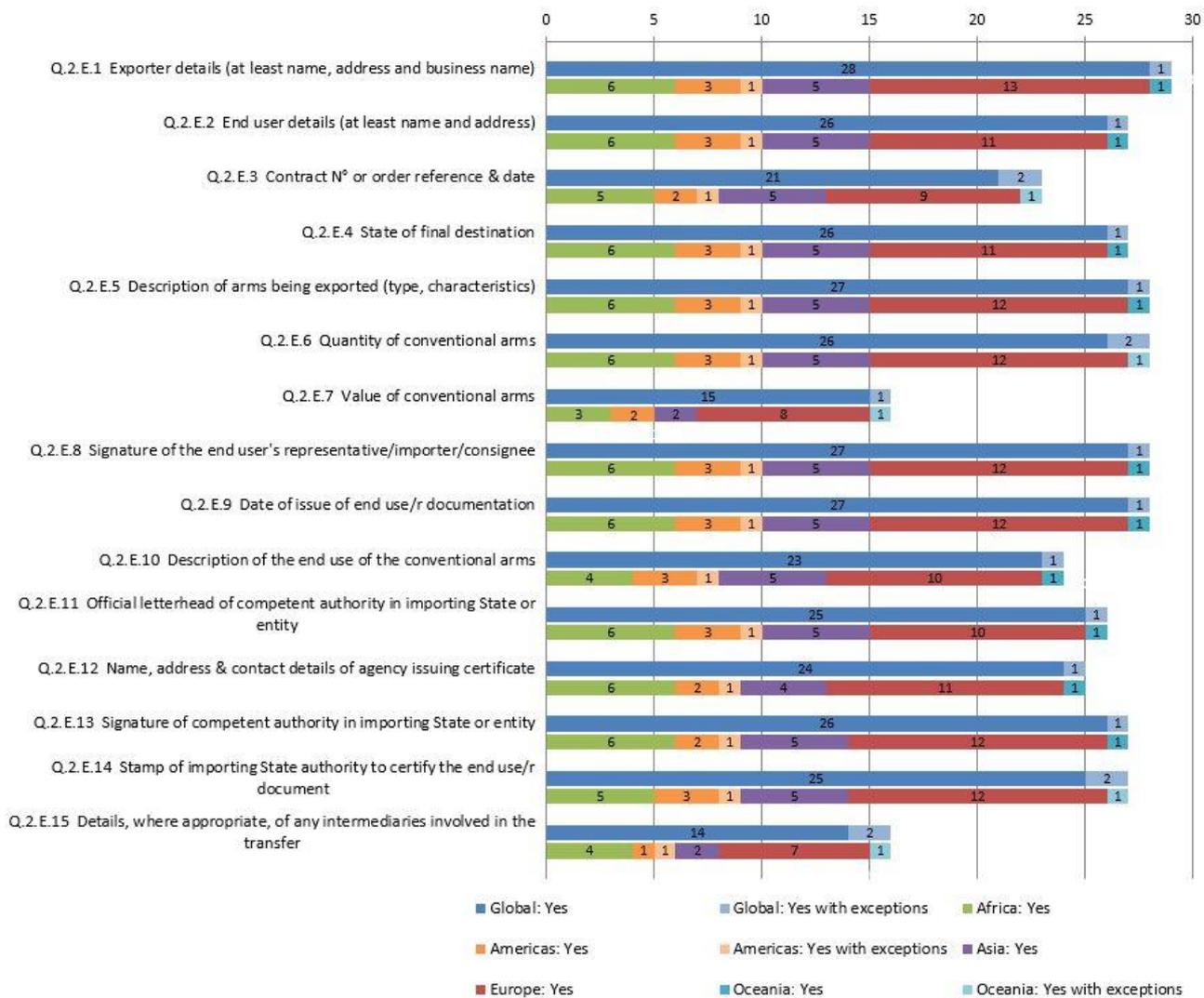
**Graph 7. UNDIIR survey results 2015–2017:
use of exporting or importing checklist or template**



Graph 8 shows that the pattern for details and assurances contained in end use/r documentation issued by importing States overlaps with the required details contained in end use/r documentation required by exporting States. Two respondents noted standards developed at the subregional level regarding the content of end use/r documentation. One African respondent indicated that the following additional assurances are contained in its end use/r documentation:

- Taking into account the international humanitarian and international human rights law record/engagement of the recipient country; and
- As part of the combat against illicit traffic in arms.

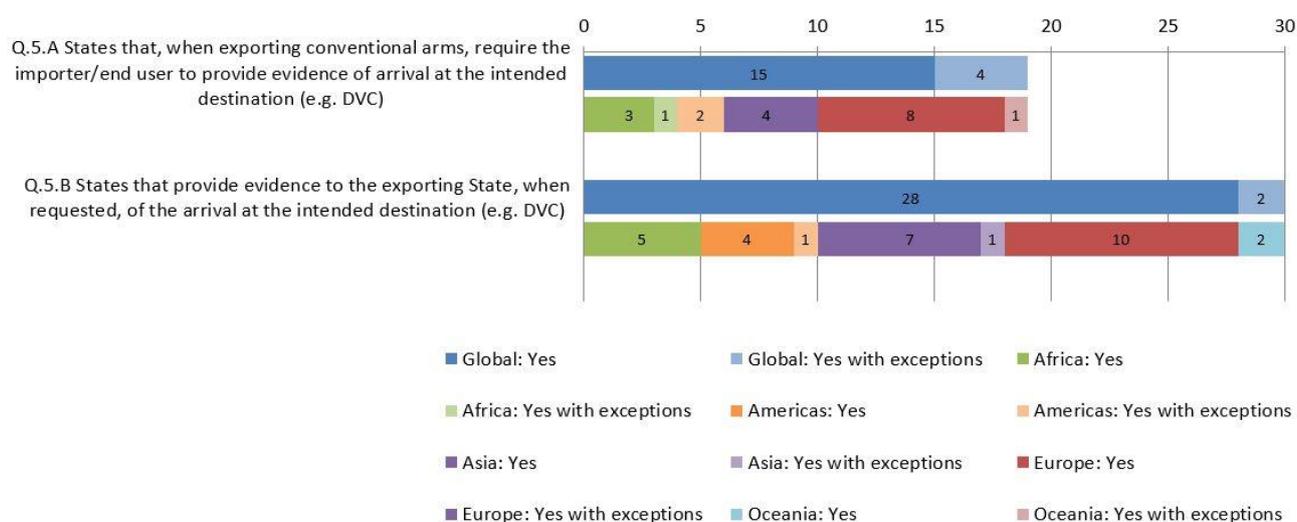
Graph 8. UNIDIR survey results 2015–2017: details and assurances contained in end use/r documentation issued by importing States



5. Post-delivery cooperation

Chapter 2 of UNIDIR’s 2015 study noted that best practice guidelines include post-delivery cooperation practices for end use/r control systems as an optional element, or a practice to be pursued only for particularly sensitive items, destinations and/or end users. The UNIDIR survey reflects the assumption that post-delivery cooperation is not a standard practice. **Graph 9** shows that 15 States (30 per cent) require the importer/consignee/end user to provide evidence that the conventional arms, including SALW, arrived at the intended destination (e.g. provide a delivery verification certificate, or DVC). Four other States generally do so, although with exceptions. Seven States noted that while this is not a usual practice, they do require such evidence under exceptional circumstances.

**Graph 9. UNIDIR survey results 2015–2017:
seeking and providing confirmation of delivery**



Of the 32 States that provide a template or checklist of elements that must be included in end use/r documentation to the applicant for export authorization, 17 include a statement from the importer/end user that it will provide the relevant authorities in the exporting State with confirmation of arrival at the intended final destination (e.g. DVC); one State does so with exceptions (three respondents from Africa, two from the Americas, five from Asia, eight from Europe). About half of the UNIDIR survey respondent States from Asia and Europe include such a statement, while none of the respondents from the Americas and Oceania do so. One Western European State noted that it usually does not include such a statement in an EUC, but that licencing authorities regularly request other types of customs documents (e.g. customs clearance documentation) to confirm that the items arrived in the country of destination. One European State specified that a DVC is only required when a significant amount of military material is to be authorized for export. A European Union member State specified that exporters are required to provide such evidence only when exporting to non-European Union Member States. Another European respondent specified that a separate document and procedure of verification of arrival at the intended destination exists, which is not linked to the EUC.

Eight respondents include an agreement by the importer and/or end user to allow onsite verification by the exporting State's competent authority in their template or checklist; two States do so under certain circumstances (three from Africa, two from the Americas, three from Asia, two from Europe). One of the two States that include such an agreement under certain circumstances noted that for States participating in all four international export control regimes,¹¹ such an agreement to allow onsite verification is not needed. Four other European respondents include provisions for onsite verification on an exceptional, ad hoc

¹¹ The regimes: Australia Group (AG), Nuclear Suppliers Group (NSG), Missile Technology Control Regime (MTCR) and the Wassenaar Arrangement (WA).

basis in agreements. One State specified that it is used in certain sensitive cases; another noted that the use of such an agreement depended on the reliability of the recipient State.

When importing conventional arms, 28 respondents (56 per cent) provide evidence to the relevant authorities of the exporting State, when requested, that the conventional arms, including SALW, arrived at the intended destination (e.g. provide a DVC). Two States generally do so, although with exceptions. UNIDIR survey data indicate that this practice is least common in the Americas, where four of 11 respondents (36 per cent) provide such evidence to the relevant authorities of the exporting State, when requested; respondents from other regions do so as follows:

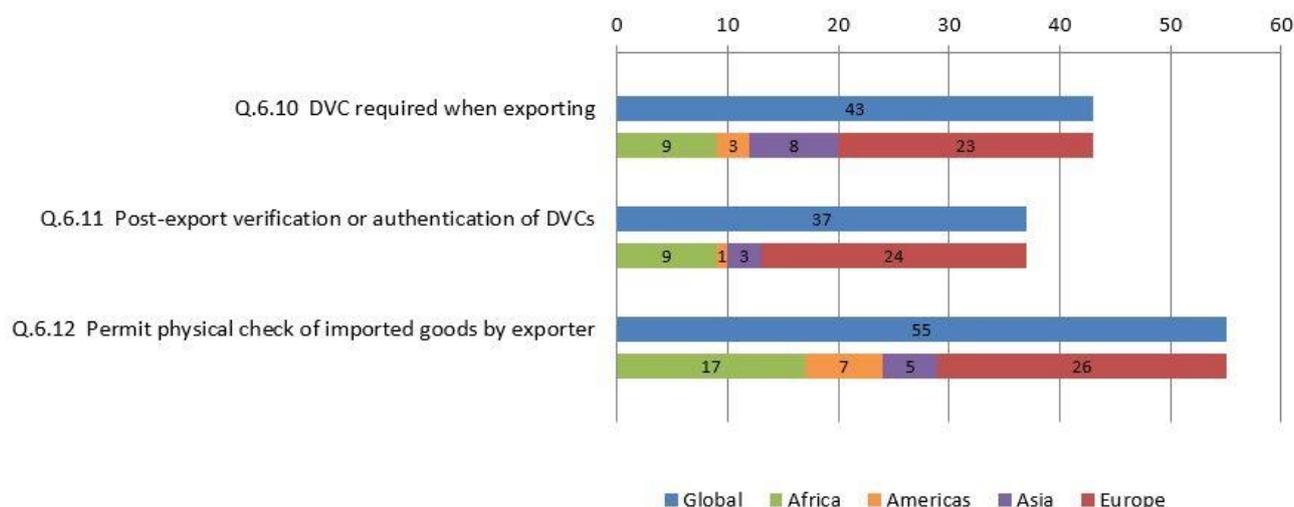
- Five of eight from Africa (63 per cent);
- Seven of 11 from Asia (64 per cent);
- 10 of 18 from Europe (56 per cent); and
- Both respondents from Oceania.

Fifteen of the 26 respondents that use end use/r documentation, which they developed, when importing conventional arms for government end users include a statement from the importer/end user to provide the relevant authorities in the exporting State with confirmation of arrival at the intended final destination (e.g. DVC) (two from Africa,¹² two from the Americas, three from Asia, eight from Europe). One African respondent noted that while such a statement is currently not expressly made, as an Arms Trade Treaty (ATT) State Party it understands that in implementing the ATT it is committed to provide such an agreement; and two European States specified that while such a statement is not included in an EUC, it is in the export licence or a standard IIC form. Seven of these 15 respondents also include an agreement by the importer/end user to allow onsite verification by the exporting State's competent authority and one importing Asian State specified that some exporting States inspect the situation of assembled products.

The UNIDIR analysis of PoA national reports indicates that States could be more open to pursuing post-delivery cooperation for SALW transfers compared to other conventional arms. **Graph 10** shows that 43 States (41 per cent) reporting under the PoA require a DVC when exporting SALW; 37 (40 per cent) verify or seek to authenticate DVCs; and 55 (53 per cent) are willing to grant the right to the exporting State to conduct a physical check at the point of delivery. African and European States appear to be most willing to grant the right to the exporting State to conduct a physical check at the point of delivery; States from the Americas and Asia appear to be less open to this option.

¹² One of the African States is under a partial United Nations arms embargo and a post-delivery notification to the Security Council sanctions committee is a requirement under the arms embargo regime.

**Graph 10. UNIDIR analysis of PoA national reports (2012–2016):
post-delivery cooperation**



6. International cooperation and information exchange

Forty-five of the 50 respondent States (90 per cent) would be willing to exchange information or share existing templates or checklists with other States, with no significant variation observed across regions.¹³ Fourteen respondents that are willing to share information already make their end use/r documentation templates publicly available online on an official web site and/or via the Wassenaar Arrangement web site,¹⁴ while two others are willing to provide templates and signatures on request.

All but four States provided information in their survey responses on the ministry or government agency that certifies, authenticates and issues end use/r documentation, where applicable. Of these four States, one from Africa indicated that reforms are under way and, therefore, did not respond to this question; two from the Americas and one from Europe did not answer this question, the latter explaining that it does not certify end use/r documentation provided by the importer.

Thirty-seven respondents (74 per cent) indicated a willingness to provide other States with information on entities authorized to certify and authenticate end use/r documentation to facilitate the process of authenticating end use/r documentation; one State would be willing to do so under certain circumstances. One European State recommended the production of “a publicly available list of competent authorities empowered to sign the end use/r

¹³ Of the remaining five respondents: one South American State would be willing to share such information, with exceptions; one African State, under a partial United Nations arms embargo, is not willing to share this information at this time. due to concerns about the security situation in the country; three States, one each from Europe, Northern Africa and South Eastern Asia, did not respond to this question.

¹⁴ The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, National Contacts, *Export Control Documentation*. <http://www.wassenaar.org/participating-states/>.

documentation". Data collected from survey respondents indicate a willingness to participate in such an exercise in each region:

- 82 per cent of respondents from Asia and Oceania;
- 72 per cent of European respondents;
- 63 per cent of African respondents; and
- 55 per cent of respondents from the Americas.

The last question asked respondents to list the existing international and regional organizations or instruments that their State utilizes to develop and maintain its end use/r control system. Of the 35 States that responded, the most commonly cited instruments were with the United Nations and/or the PoA (10 States) and the ATT (nine States). Fourteen of the 22 respondents that are part of the Wassenaar Arrangement mentioned this export control regime and its best practice guidelines in this regard. Eight respondents from Europe referred to the European Union Common Position User's Guide and/or the Working Party on Conventional Arms Exports (COARM); seven from Europe also mentioned the OSCE, including the OSCE EUC templates. Among the respondents from the African region, three of the four States from the Economic Community of West African States (ECOWAS) Member States referred to the Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (ECOWAS Convention). In the Americas, six of the 11 respondents mentioned the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA) as a regional instrument that is, or could be, utilized to develop and maintain end use/r control systems. No State from Asia and Oceania made an explicit reference to an existing regional instrument.



Strengthening End Use/r Control Systems to Prevent Arms Diversion: Examining Common Regional Understandings

This study presents the key findings of the second phase of the United Nations Institute for Disarmament Research (UNIDIR) project Tackling Diversion (Phase II): Promoting Regional Dialogue to Enhance Common Understanding and Cooperation to Strengthen End Use/r Control Systems, supporting the practical and effective implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) and the Arms Trade Treaty (ATT) as well as relevant regional and subregional instruments. It draws upon the discussions conducted during two regional and one subregional consultative meetings in Africa, Asia and the Caribbean during 2016–2017: Port of Spain, Trinidad and Tobago, 21–22 September 2016; Nairobi, Kenya, 6–7 October 2016; and Bangkok, Thailand, 1–2 March 2017. This study also draws upon the results of the UNIDIR survey, which was circulated to all United Nations Member States during the first phase of the project Tackling Diversion (Phase I): Examining Options and Models for Harmonization of End Use/r Control Systems in mid-2015, and re-circulated during project Phase II, as well as desk research.