

A background image showing a large pile of various types of firearms and ammunition, including rifles and handguns, some with their magazines inserted. The items are scattered on a blue surface, and the lighting is somewhat dim, creating a somber atmosphere.

STRENGTHENING SHARED UNDERSTANDING ON THE IMPACT OF THE ATT IN ADDRESSING RISKS OF DIVERSION IN ARMS TRANSFERS

A COMPENDIUM OF KEY RESOURCES AND TOOLS

ABOUT THE RESEARCH

'Strengthening shared understanding on the impact of the Arms Trade Treaty (ATT) in addressing risks of diversion in arms transfers' is a joint research initiative by the United Nations Institute for Disarmament Research (UNIDIR), Conflict Armament Research, and the Stimson Center (jointly referred to as the Consortium). Through a series of Issue Briefs and dialogue events, the objective of the initiative is to enhance knowledge and facilitate dialogue among States to strengthen shared understanding on the impact of the ATT in addressing risks of diversion in arms transfers, and to identify options and avenues for more effective policies and practices under the Treaty moving forward. The Consortium highlights challenges for preventing diversion and generates ideas to strengthen counter-diversion measures. It seeks to contribute to efforts to tackle diversion risks associated with poorly regulated arms transfers at the national, regional and multilateral levels. Our research is intended to inform the development of good policies and practices to counter diversion within the framework of the ATT and other relevant multilateral and regional instruments. The research is funded by the Governments of France and Germany.

THE COMPENDIUM

During 2020–22, the Consortium, produced three Issue Briefs. In addition, at the Eighth Conference of States Parties to the ATT (ATT CSP8), the Consortium launched a new **Counter-Diversion Assessment Tool**¹ that can assist States Parties in examining the existence and efficacy of an enabling environment to counter diversion, as well as a report containing the findings of an initial assessment of the ATT's impact on progress made by States Parties in implementing appropriate measures to address diversion risks.

This Compendium presents key findings, recommendations, resources and tools from the 4 publications mentioned above. Video recordings of the nine virtual dialogue events and three diversion case studies produced by the Consortium as of August 2022 can also be found on the partner organisations' websites.²

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Cover Image: Weapons Seized from Rebels in DR Congo, 2012. UN Photo/Sylvain Liechti. **Design and Layout:** Ribale Sleiman Haidar.

¹ Brian Wood, 'The Arms Trade Treaty: Assessing its Impact on Countering Diversion', United Nations Institute for Disarmament Research with Conflict Armament Research and Stimson Center, 2022.

² See <https://www.stimson.org/2021/addressing-diversion-risk-arms-transfers/> and <https://storymaps.arcgis.com/collections/175f3dff24be4a2086a04f860a59f0ed>.

³ Brian Wood, 'The Arms Trade Treaty: Obligations to Prevent the Diversion of Conventional Arms', Issue Brief no. 1, United Nations Institute for Disarmament Research with Conflict Armament Research, Small Arms Survey and Stimson Center, 2020. The Small Arms Survey contributed as a research partner until June 2021.

⁴ Brian Wood and Paul Holtom, 'The Arms Trade Treaty: Measures to Prevent, Detect, Address and Eradicate the Diversion of Conventional Arms', Issue Brief no. 2, United Nations Institute for Disarmament Research with Conflict Armament Research, Small Arms Survey and Stimson Center, 2020.

⁵ Alfredo Malaret Baldo, Manuel Martinez Miralles, Erica Mumford and Natalie Briggs, 'The Arms Trade Treaty: Diversion Analysis Framework', Issue Brief no. 3, United Nations Institute for Disarmament Research with Conflict Armament Research, Small Arms Survey and Stimson Center, 2021.

⁶ Brian Wood, 'The Arms Trade Treaty: Assessing its Impact on Countering Diversion', United Nations Institute for Disarmament Research with Conflict Armament Research and Stimson Center, 2022.

EXTRACTS FROM ISSUE BRIEF #1

THE ARMS TRADE TREATY: OBLIGATIONS TO PREVENT THE DIVERSION OF CONVENTIONAL ARMS

PURPOSE OF THE FIRST ISSUE BRIEF

The first ATT Issue Brief examines the legal obligations of States Parties under the ATT to prevent, detect and eradicate the diversion of conventional arms transfers, including arms already transferred. This Issue Brief does not explore in detail the examples of practical measures to address diversion included in the provision of the Treaty as these are addressed in a related paper.

The ATT does not define diversion, nor does it specifically define any of the other key terms used in its provisions. Nevertheless, the interlocking provisions of the Treaty do provide indications of how States Parties can interpret their international legal responsibilities regarding diversion in order to implement them at the national level. It is argued in this Issue Brief that such analysis by States Parties requires consideration not only of the ATT's core provision on diversion, namely Article 11, but also the Treaty's object and purpose, its scope and other key provisions, especially its prohibitions. Additionally, the analysis should take into account the relevant obligations in various international agreements that ATT States Parties have each entered into, in particular those relating to the transfer and illicit trafficking of conventional arms. In doing so, States Parties can address the shortcomings of basing a definition of 'diversion' entirely on the notion of 'authorisation' by one or more States involved in the transfer. Using these relevant international legal frameworks, States can also consider elements for a definition of an act of 'diversion' to develop in their national legislation, regulations and administrative procedures.

BOX 1. A DESCRIPTION OF DIVERSION

The ATT does not contain formal definitions of its key terms and therefore the precise meaning of diversion has to be derived from established international and national law and practice. To support the efforts of States Parties to implement the ATT provisions regarding the diversion of conventional arms, the first Issue Brief reviewed relevant international standards to elaborate key elements for a description of diversion as follows.⁷

For the purposes of the ATT, 'diversion' is the rerouting and/or the appropriation of a transfer or of already transferred conventional arms or related items contrary to relevant national and/or international law leading to a potential change in the effective control or ownership of the arms and items.

Instances of such diversion can take various forms:

- a** An incident of diversion can occur when the items enter an illicit market, or when redirected to an unauthorised or unlawful end user or for an unauthorised or unlawful end use.
- b** The rerouting and misappropriation of the items can take place at any point in the transfer chain, including the export, import, transit, trans-shipment, storage, assembly, reactivation or retransfer of the items.
- c** The transaction chain facilitating a change of effective ownership and/or control can involve various forms of exchange, whether directly negotiated or brokered – grant, credit, lease, barter, and cash – at any time during the life cycle of the items.

BOX 2. THE SCOPE OF ARTICLE 11

The obligations and measures to tackle diversion under the ATT apply to conventional arms covered by Article 2(1) of the Treaty. Ammunition/munitions and parts and components are not explicitly mentioned, but the largest arms exporting States Parties already apply their national control lists to the broadest range of conventional arms, ammunition, and other technologies with military applications.⁸ This is encouraged under Article 5(3) of the ATT. Moreover, under international agreements to which they are also party, most State Parties have accepted obligations to prevent the diversion of such items.

National legislation and regulations to address diversion must also define which activities of the international trade are subject to the national arms control system. ATT Article 2(2) states that "for the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as 'transfer'". Excluded from the activities constituting a 'transfer' are the movement of conventional arms beyond the borders of a State Party to its armed forces or law-enforcement authorities operating outside national borders, provided the arms remained in the ownership of that State Party, as provided for in Article 2(3).

⁷ Brian Wood, 'The Arms Trade Treaty: Obligations to Prevent the Diversion of Conventional Arms', Issue Brief no. 1, United Nations Institute for Disarmament Research with Conflict Armament Research, Small Arms Survey, Stimson, 2020, p. 33, <https://unidir.org/publication/arms-trade-treaty-obligations-prevent-diversion-conventional-arms>.

⁸ Control lists for the most significant conventional arms export states have been developed in the Wassenaar Arrangement. These are updated regularly and can be found at <https://www.wassenaar.org/control-lists/>.

TABLE 1. UNPACKING ATT ARTICLE 11 AND CLOSELY RELATED ATT ARTICLES

Article 11 (paragraphs)	Examples of closely related ATT Articles	What type of action to take? (obligation or encouraged practice)	Transfer stage	Which States Parties are obliged or encouraged to act?	What type of systemic and practical measures are listed in Article 11?
11(1) Each State Party involved in the transfer of conventional arms covered under Article 2(1) shall take measures to prevent their diversion.	5, 6, 7, 8, 9, 10, 12, 14	Prevent (obligation)	All	All States Parties	Type of measures not specified
11(2) The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms covered under Article 2(1) through its national control system, established in accordance with Article 5(2), by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States. Other prevention measures may include, where appropriate: examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorising the export or other appropriate measures.	5(2), 7(1), 7(5), 7(7), 8(1), 10, 15(4)	Prevent, including by considering risk mitigation (obligation) Consider specific measures to prevent, including mitigation (encouraged practice)	Before	Exporting and importing States Parties involved in the transfer chain	Systemic risk assessment measures; practical measures for prevention and risk mitigation; practical measures for bilateral cooperation and information exchanges
11(3) Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2(1).	7(6), 7(7), 8(3), 9, 15(4)	Cooperate with other States involved in the transfer to mitigate diversion risk (obligation)	Before; during	Exporting, importing, transit/trans-shipment States Parties involved in the transfer chain	Systemic risk assessment measures and practical risk mitigation measures; practical measures for bilateral cooperation and information exchange
11(4) If a State Party detects a diversion of transferred conventional arms covered under Article 2(1), the State Party shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include alerting potentially affected States Parties, examining diverted shipments of such conventional arms covered under Article 2(1), and taking follow-up measures through investigation and law enforcement.	14, 15(5)	Detect and address (obligation) Consider specific measures to detect and address (encouraged practice)	All	All States Parties	Systemic and practical measures for detection, investigation, and prosecution; systemic and practical measures for bilateral cooperation and information exchange
11(5) In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2(1), States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organised groups engaged in diversion.	7(1), 8(1), 8(3), 9, 10, 13(2), 15(4), 15(6)	Comprehend and prevent (encouraged practice)	All	All States Parties	Practical measures for bilateral cooperation and information exchanges; systemic measures for multilateral cooperation and information exchange
11(6) States Parties are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2(1).	13(2)	Report (encouraged practice)	All	All States Parties	Practical measures for bilateral cooperation and information exchange; systemic measures for multilateral cooperation and information exchange

Note: In column 3, the distinction between an 'obligation' and 'encouraged practice' is based on treaty language. This table uses 'obligation' when the Treaty declares that States Parties 'shall' take measures and 'encouraged practice' where it 'encourages States Parties' to take or consider measures.



EXTRACTS FROM ISSUE BRIEF #2

THE ARMS TRADE TREATY: MEASURES TO PREVENT, DETECT, ADDRESS AND ERADICATE THE DIVERSION OF CONVENTIONAL ARMS

PURPOSE OF THE SECOND ISSUE BRIEF

The second Issue Brief is intended to support the efforts of ATT States Parties to implement treaty provisions to tackle diversion and help to achieve one of the main objectives of the Treaty, which is to "prevent and eradicate the illicit trade in conventional arms and prevent their diversion".

In order to achieve the objective, this Issue Brief approaches the issue of identifying effective measures to deal with diversion, consistent with the ATT's provisions, in two broad inter-connected ways:

- Systemic Measures: mechanisms or comprehensive arrangements that are established and maintained for national control systems and international cooperation to prevent, detect, address, and eradicate diversion; and
- Practical Measures: specific actions taken to prevent, detect, address, and eradicate diversion before, during, and after an international arms transfer has taken place.

This Issue Brief examines treaty provisions and materials developed by ATT States Parties to support the implementation of Article 11 and related provisions, including the paper from the ATT Working Group on Effective Treaty Implementation (WGETI) on 'Possible Measures to Prevent and Address Diversion' [Paper on Possible Measures], in order to achieve two main objectives. First, the Brief provides detailed information and guidance on systemic and practical measures to prevent and address diversion that are already undertaken by ATT States Parties, which others may adopt, be required to adopt, or could develop further. Second, the Brief presents a potential analytical framework for examining/assessing the application by ATT States Parties of various systemic and practical measures designed to prevent, detect, address, and eradicate diversion. This framework can help to determine the direct and indirect impact of applying these measures to achieve the object and purpose of the Treaty.

DIVERSION RISK INDICATORS

There is no internationally agreed upon common list of indicators to assess the risk of diversion of a potential arms export in any particular case. Since the 1990s, several multilateral export risk assessment guidelines to prevent proliferation have been developed that include diversion risk indicators. For example, in 1998 the participating States of the Wassenaar Arrangement adopted the Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons, which presents a series of questions to be addressed by national arms export licensing authorities when confronted with an application for an authorisation to export conventional arms. The Elements, which were updated in 2004 and again in 2011, call on States to consider a range of factors when determining whether there is a risk of diversion to unauthorised end use or end users, or to the illicit trade. Recommended key questions are posed for a more comprehensive assessment of whether the export would contribute to a potentially destabilising accumulation of conventional weapons, taking into account regional stability, the political, economic, and military status of the prospective importing State, and its record of compliance with transfer controls, among other issues.

In addition, the European Union's User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment provides recommended questions to help EU member States conduct export risk assessments, including assessing the risk of diversion. The latest version of the User's Guide notes that the risk of diversion needs to be considered as part of a holistic risk assessment of an arms export. It provides a list of questions that national export control authorities should ask in order to assess the risk of diversion when considering an application to export conventional arms and military equipment.

Building on these multilateral efforts, the box below in this Issue Brief proposes a series of diversion risk indicators and questions in four main areas that national authorities of ATT States Parties can incorporate into their diversion risk assessments for a potential export. The four main areas are:

- The importing State's requirements and its capacity to control transferred conventional arms;
- Risks associated with the type of conventional arms and related items;
- Legitimacy and reliability of the intended end user/end use of the export; and
- Legitimacy and reliability of the other entities involved in the transfer of the proposed export.

These four areas and a list of suggested questions to ask in regard to these risk indicators are further elaborated in the box below. The references to conventional arms may also apply to other items included in a national control list, such as ammunition/munitions fired, launched or delivered by the conventional arms, and to parts and components where the items to be exported are covered by the State's national control list. The list does not imply a fixed order of priority among the questions and answers to be taken into account because priorities may change depending on the specific case under consideration. Nevertheless, the predictability and reliability of the importing State, the ultimate end-user and the other actors involved with regard to their record of diversion and ability to manage the particular conventional arms and related items proposed for export should form a basic starting point for any diversion risk analysis.

BOX 3. EXAMPLES OF DIVERSION RISK INDICATORS AND QUESTIONS TO ASK

(a) The Importing State's Requirements and its Capacity to Control Transferred Conventional Arms

The quantities involved in the State's accumulation of conventional arms may be inconsistent with its likely requirements, signaling a heightened danger of diversion. Moreover, if a potential importing State has a history of conventional arms diversion or it has inadequate regulation of arms transfers due to lack of capacity or corrupt practices, then the risk of diversion will be high and comprehensive prevention and mitigation measures will need to be put in place before authorising an export. The diversion of transferred conventional arms after delivery within the importing State can be distinguished from when imported conventional arms are re-exported in breach of re-export restrictions imposed by the exporting State or by relevant international legal obligations such as those in Article 6 of the ATT. Either form of diversion may take place as soon as an item has reached the point of import, but could also occur years after the initial entry of the conventional arms into the importing State. Diversion of transferred conventional arms after their delivery within the importing State can include cases where the imported arms are sold or given to another unauthorised entity in the importing State, or cases of theft or loss of the imported conventional arms, possibly leading to illicit circulation and also to cross-border trafficking of the conventional arms. Either way, the diverted conventional arms end up in the hands of unauthorised or illicit end users. Assessing such risks of diversion within or from the importing State may require consideration of a broad range of factors.

- | Are the quantities of conventional arms involved in the proposed transfer inconsistent with the importing State's likely requirements?
- | Is the importing State's accumulation of conventional arms greater than that required by its legitimate defense and security interests?
- | Are similar conventional arms already in service in the importing State? Are they well maintained?
- | Are imported arms effectively managed in accordance with physical security and stockpile management standards such as those in the Modular Small-arms-control Implementation Compendium (MOSAIC) and the International Ammunition Technical Guidelines? Are there known cases of problems with the diversion of conventional arms and ammunition from national stockpiles in the importing State?
- | Will the imported conventional arms create or contribute to a surplus? If yes, how and when will the surplus be safely disposed of in line with existing end-user commitments?
- | Is the technological level of the equipment requested proportionate to the needs expressed by the importing State and to its operational capacity?
- | Does the importing State have any history of diversion of conventional arms, including the non-authorised re-export of surplus equipment to States of concern?
- | Is the importing State bordering or affected by a State subject to multilateral sanctions including arms embargoes or experiencing armed conflict, internal tensions, terrorism, organised crime, or corrupt practices that could give rise to diversion?
- | Is there an adequate system of laws and administrative procedures in place in the importing State to effectively regulate the movement, storage, possession and use of the exported conventional arms?
- | Does the importing State apply effective transfer controls encompassing dedicated control legislation and licensing arrangements that conform to international norms and relevant international arms control frameworks?
- | Does the importing State provide valid and credible end-use/end-user or retransfer assurances?

Has the importing State agreed to include a provision in end-use/r documentation to grant the exporting State's national authorities the right to conduct on-site inspections of transferred conventional arms after delivery as a confidence-building measure?

Are there sufficient trained personnel and infrastructural capacity in the importing State to effectively manage the quantity of transferred arms at points of delivery and storage?

Does the importing State assist other States in conformity with its responsibilities under international law by providing them with early warnings and by exchanging information regarding acts of arms trafficking, terrorism, organised crime, and other serious crime?

Are the conventional arms intended for use in United Nations or other international peacekeeping activity and, if so, what will be the destination of the conventional arms after participation in peacekeeping activity has ended?

(b) Risks Associated with the Type of Conventional Arms and Related Items

Different types of conventional arms pose higher or lower risks of diversion. For example, the risk of diversion would be higher if the proposed transfer appears to be of a type of conventional weapon inconsistent with the declared end use or the inventory of the potential recipient. Risks of diversion may also be higher if the conventional arms can be used by non-military persons or easily concealed and used for criminal activities, such as the use of firearms and their ammunition, as well as parts and components. Therefore, consideration could also be given to the risk of diversion for deactivated conventional arms that are not rendered inoperable and can be reactivated, or readily convertible weapons, such as acoustic expansion weapons and alarm pistols, which can be converted from blank to live fire and thus adapted for an unintended end use. Other items, like man-portable air-defense systems (MANPADS), weapons with night vision equipment, and high explosives, have been identified by various States as types of materiel that are highly sought after by terrorist networks, armed opposition groups and organised criminals and thus subject to higher risks of diversion.

Would the exported conventional arms include sensitive technologies or parts and components that could be analysed and diverted to develop similar equipment?

Are the proposed types of conventional arms consistent with the importing State's existing inventory? If not, is the proposed acquisition consistent with new procurement and/or mission plans for the end user?

Are the conventional arms of a type that can be easily used by non military agents or non-State actors?

Can the conventional arms be incorporated into other weapon or munitions systems?

Are the conventional arms easy to conceal, carry, and use in serious crime and therefore require enhanced risk assessment and mitigation measures?

Are the conventional arms deactivated and, if so, is it permanent and irreversible so the item is rendered inoperable, or can the deactivation be reversed?

Does the potential transfer include sensitive technology or machines and materials for production that, if diverted, would have a major impact on uncontrolled proliferation of such materiel?

If ammunition/munitions are being requested, can the importing State safely handle, store, and use that type of material?

If components or spares are being requested, is the importing State known to operate the relevant system that incorporates these items?

(c) Legitimacy and Reliability of the intended End User/End Use of the Export

The competent authorities of the exporting and importing States should verify in advance of any final authorisation whether the intended end use is lawful, and if the ultimate end user of the exported conventional arms or related items is legitimate and reliable. States should take particular care when considering exports to recipients that are neither governments nor their authorised agents. Even if the end user is a State agency and/or company whose arms-related activities are authorised and closely regulated by the authorities of the importing State, indications of unreliability may include a previous record of not honouring certified end-use/user documents. Reliability is also dependent on whether the end user or receiving entity is known to have safe storage facilities and to keep comprehensive records. A previous involvement by the end user in criminal activity related to international trade, such as fraud or organised crime, or verifiable information from a United Nations or other credible authority demonstrating that the end user has deliberately diverted arms or related material, should be a strong signal that the risk is too high to authorize the export.

- Are the conventional arms intended for use by a government agency or an individual company, and what is the role of the government agency or the company?
- Does the importing State provide clear, comprehensive, and verifiable end-use/end-user or retransfer assurances and clearly identify the ultimate end-user entity?
- Is the documentation provided by the end user 'authentic' (i.e. the document has been checked to ensure it is not a forgery or an unauthorised copy, or subject to corrupt practices)?
- Have the contents of the end-user documentation been 'verified' to establish the legitimacy and credibility of the stated end-use/r?
- Have checks been conducted through diplomatic channels or consultations between the national contact point in the competent authorities in the exporting and importing States to authenticate the end-user documentation and verify its contents?

If the end user is a government entity:

- Is there any reason to suspect that the government or the specific government entity is not a reliable end user, including any past track record of committing or facilitating acts of diversion?
- Has the government and the end user honoured previous end-user certificates or other provisions regarding the authorisation of re-export, particularly relevant non-retransfer clauses?
- Would the export go to a military or police unit, or another branch of the security forces, accused in credible reports of criminal acts?
- Is there a risk that the procurement is driven by other factors than legitimate defense and domestic security interests?

If the end user is a company:

- Will the company be the final end user of the conventional arms or is it intending to trade the conventional arms?
- If intending to trade the conventional arms, what onward restrictions are in place regarding purchasers, such as effective background checks and robust authorisation requirements?
- Is the company registered and authorised to carry out such activities by the national authorities in the importing State?
- Are the company's activities and beneficiaries known to the national authorities in the importing State?

- Has the company or any of its directors or owners previously been involved in undesirable transactions, negligent conduct, or been convicted for illicit arms trafficking?
- Does the company keep comprehensive records of all stocks and transactions, and engage in transparent financial and banking practices?
- Does the company maintain safe storage facilities and robust security procedures that are inspected by the national authorities?

(d) Legitimacy and Reliability of the Other Entities Involved in the Proposed Export

Arms transfers may not only involve the officials of national authorities and the intended end users in an exporting and importing State, but also involve a range of intermediaries located within and outside those two States, including brokers and various individuals and companies who 'make the deal' and arrange the delivery. If it is the case that the ultimate end user is not the same as the importer or intermediate consignee, then the exporting and importing State authorities should obtain the necessary details of those actors as well as check their reliability to handle and deliver the consignment(s). Checking the bona fides of these various businesses and individuals can help to determine if a transfer is legitimate or at risk of being diverted to an unauthorised end user or use. Unfortunately, the exact role of such entities in a proposed transfer may not always be known by the national authorities when conducting a risk assessment before authorising or denying the proposed export. Therefore, wherever possible such information should be sought out prior to any authorisation of a transfer. Evidence of the role of some intermediaries in corrupt business practices with State entities dealing with conventional arms is an important indicator.

- Where known at the pre-authorisation/transfer stage, do any of the contractual or financial arrangements raise concerns, for example the use of 'shell' companies whose beneficiaries are unknown?
- Are the details of the exporter, brokers, shipping agent, freight forwarder, intermediate consignee, distributor or other actors involved in the commercial arrangements all sufficiently identified and are their authorisations and/or registration documents as operators all authenticated?
- Has the importing authority/applicant been reluctant to provide details identifying any intermediaries involved in the transfer?
- Where known at the pre-authorisation/transfer stage, does the proposed physical routing of the shipment raise concerns, for example because of unreliable controls in the transit, trans-shipment or importing locations or means of transport?
- Has any actor involved in the commercial arrangements for the transaction or physical routing of the shipment, including in previous companies linked to their ownership/directorships, been formerly convicted or accused on the basis of credible evidence for participating in conventional arms or other illicit trafficking, or for violations of arms export legislation (including the violation of multilateral arms embargoes), or for other closely related crimes such as corruption and money laundering?

SOURCES OF INFORMATION FOR DIVERSION RISK ASSESSMENT

The primary source of information and analysis for diversion risk assessments remains government agencies dealing with curbing the illicit trade and diversion. These include customs, law enforcement, justice, intelligence, financial intelligence units, defence, and trade ministries. Intelligence agencies are a critical resource for information on individuals and companies believed to be involved in illicit arms trafficking, international trends in illicit markets, foreign corrupt practices, and information about controlled commodities sought by embargoed States, terrorist organisations and criminal networks. Diplomatic missions and other governmental institutions such as customs, police and other law enforcement services also conduct checks on entities involved in the transfer and documentation provided in support of an application for an export or other transfer authorisation. In addition to government sources, officials also use credible open source information, generated via multilateral organisations (for example, the reports of United Nations panels of experts that monitor and investigate the implementation of United Nations arms embargoes) and reputable NGOs; as well as, reliable information contained in commercial directories and specialised online resources can provide accurate, timely and objective information on diversion risks. The diversion reference documents prepared by the sub-working group on Article 11 indicate some of the sources of information that could be used to inform an export authority's assessment of diversion risks.

An important source of information for a diversion risk assessment is the documentation provided in support of an export authorisation application. This can include the export application form, the import authorisation, the end-use/r documentation, the contractual information plus any other supporting documents. As part of the export authorisation application process in the majority of significant exporting States, government procurement agents and companies are normally required to formally submit information on the end use/r, the intermediate and final consignee, the type, characteristics, value and quantities of the arms to be exported, reference to the contract or order number concluded with the end user, and a relevant import authorisation from the country of final destination. Other documentation and types of information from the parties involved in the potential transfer, including brokers and other intermediaries, also need to be considered in the risk assessment and may have to be cross-checked with other States.

End-use/r documentation "comprises documents whose purpose is to identify, authorize, commit to certain undertakings and verify delivery". Conflict Armament Research, the Small Arms Survey, UNIDIR and the United Nations Office for Disarmament Affairs have extensively reviewed the misuse of such documentation to divert conventional arms and ammunition to unauthorised end users and uses. Therefore, while such documentation can be useful for risk assessment purposes, the receipt of such documents on their own is insufficient for reassuring a national export licensing authority that diversion risks have been prevented or sufficiently mitigated to not pose a realistic danger.

BOX 4. LIMITATIONS OF RELYING ON END-USE/R DOCUMENTATION AND ASSURANCES TO PREVENT DIVERSION

Research into the diversion of conventional arms and ammunition has repeatedly shown that relying only on end-use/r documentation with an official stamp and a signed assurance not to re-export the imported items to prevent diversion is insufficient for preventing diversion. Documents that have been used as a basis for issuing export licenses have been incomplete and did not even fulfil the recommended 'essential' elements of best practice guidelines, or can include vague or imprecise re-export commitments.⁹ Unfortunately, undertakings and assurances on re-export are not always fully understood or adhered to by end users in importing States.¹⁰ Due to negligence, ignorance, or willful disregard, such undertakings and assurances all too often prove an ineffective measure for preventing diversion. As a result, more States Parties are including clauses in end-use/r documentation to provide for post-delivery cooperation between the competent authorities in the exporting and importing States. As discussed below, this post-delivery measure is being developed by several major arms exporters to ensure that end-use/r assurances by the end user are respected, thus preventing diversion and ensuring the security of further supply.

⁹ Conflict Armament Research, 'Diversion Digest Issue 02: End-User Documentation', 2019, p. 17.

¹⁰ Paul Holtom, Irene Pavesi, and Christelle Rigual, 'Trade Update: Transfers, Retransfers, and the ATT', Small Arms Survey 2014: Women and Guns, Oxford University Press, 2014, pp. 117-28.

EXTRACTS FROM ISSUE BRIEF #3

THE ARMS TRADE TREATY: DIVERSION ANALYSIS FRAMEWORK

PURPOSE OF THE THIRD ISSUE BRIEF

The third Issue Brief from UNIDIR, Conflict Armament Research and the Stimson Center,¹¹ presents the Diversion Analysis Framework (DAF). The Framework has been designed as an analytical tool for interested States and relevant stakeholders to enhance their ongoing efforts to prevent, detect, eradicate, and address diversion. The goal of the Framework is to unpack the problem to facilitate its analysis, to identify weaknesses in the various stages of the life cycle of arms and ammunition, and to help prioritize efforts to address the issue in each context. It is hoped that by gaining a better understanding of the problem, appropriate measures can be taken by each State to create an enabling environment to counter, not facilitate, diversion. The Framework has been envisioned with whole-of-government applicability, since addressing diversion requires coordinated action across ministries, government departments, and agencies.

The DAF has been designed to analyse the diversion of items contained in Articles 2(1), 3, and 4 of the Arms Trade Treaty (ATT) – that is, conventional arms, ammunition, and parts and components thereof (hereinafter referred to as 'arms and related items'). At the same time, ATT Article 5(3) encourages each State Party to "apply the provisions of this Treaty to the broadest range of conventional arms". Each State Party indicates the scope of items to be subject to transfer controls in its national control list.¹² The Framework can be used to analyse the diversion of items covered by national control lists, including those that go beyond the minimum requirements of ATT Articles 2(1), 3, and 4. It has also been designed to catalogue the broad array of factors that contribute not only to the diversion of international transfers of arms and related items, but at all stages in the transfer chain and life cycle of the arms and related items.

¹¹ The Small Arms Survey was a partner in this joint research endeavor for the first two Issue Briefs.

¹² Brian Wood and Paul Holtom, 'The Arms Trade Treaty: Measures to Prevent, Detect, Address and Eradicate the Diversion of Conventional Arms', Issue Brief no. 2, UNIDIR with Conflict Armament Research, Small Arms Survey, and Stimson, 2020, <https://unidir.org/publication/arms-trade-treaty-measures-prevent-detect-address-and-eradicate-diversion-conventional>.

THE INTERPLAY OF THE KEY ELEMENTS OF THE DIVERSION ANALYSIS FRAMEWORK

The DAF is composed of the interplay between four elements and **their subcategories**. **These elements and subcategories should not be understood as mutually exclusive because diversion incidents can incorporate, and usually do, a combination of several elements in one event.** These four key elements can be described in more detail as follows:

Diversion-enabling factors are circumstances that create an environment that is conducive to diversion. These factors facilitate or exacerbate diversion. These factors are interwoven throughout the transfer chain and the life cycle of arms and related items and can accumulate to aggravate existing risks. The diversion-enabling factors are *what* facilitates diversion.

The diversion-enabling factors include aspects of the environment such as dysfunctional systems and institutions, as well as devious and opportunistic tactics. The diversion-enabling factors include systemic conditions and practical tactics that can be present throughout all stages in the transfer chain and the life cycle of arms and related items. The diversion-enabling factors aid the methods used at the points of diversion by unauthorised actors to divert arms and related items.

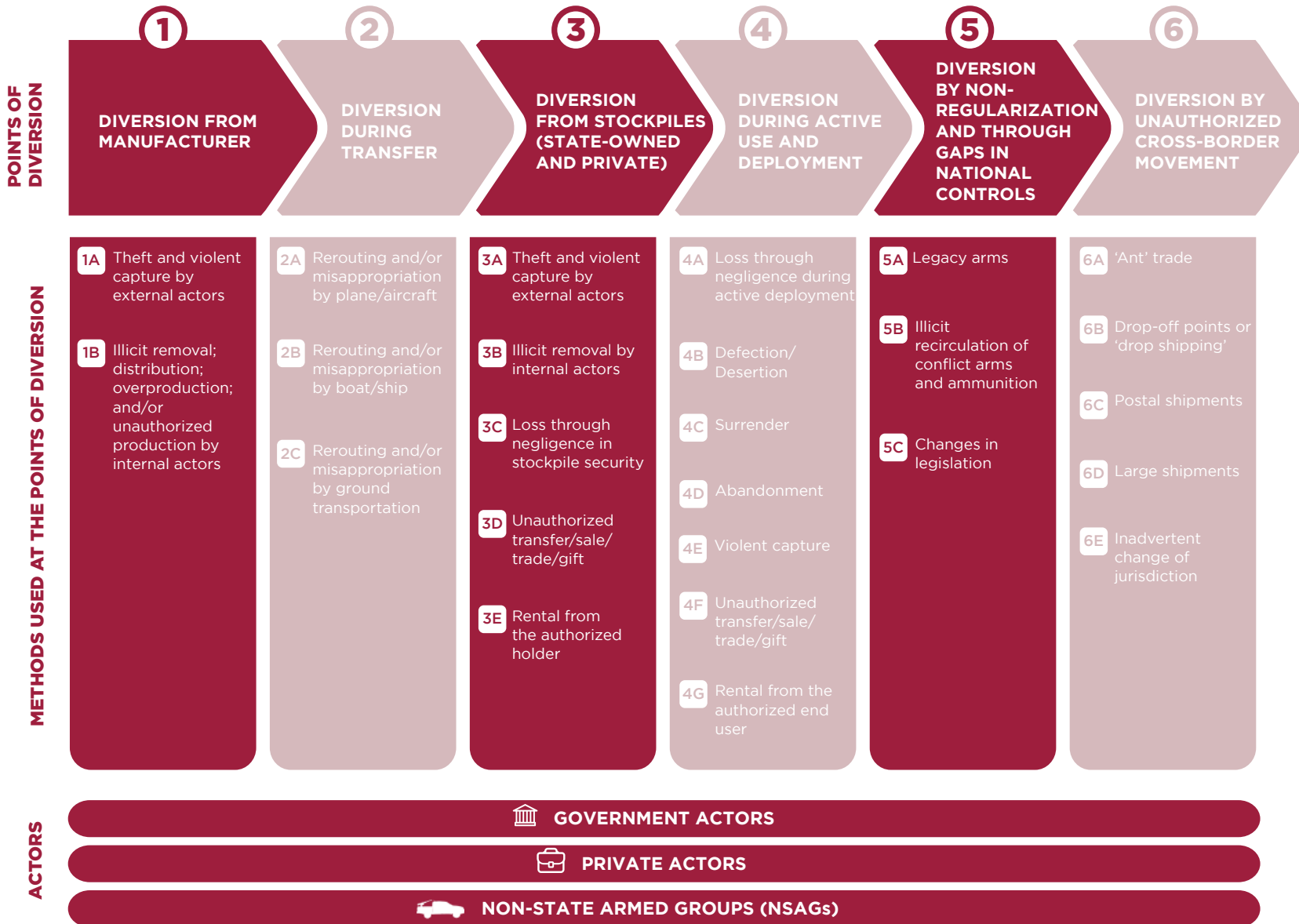
Points of diversion refer to the stages throughout the transfer chain and the life cycle of arms and related items at which diversion can happen. These can also be understood as points of susceptibility *where* diversion happens.

Methods used at the points of diversion are the means by which acts of diversion are carried out, given the presence of certain diversion-enabling factors. These actions refer to specific methods of *how* diversion takes place at the points of diversion. Some methods only apply to one point of diversion, whereas others can be used at different points of diversion.

Actors refer to the natural or legal persons that play a role in planning and/or carrying out a diversion of arms and related items. The actors exercise agency in the process of diversion and represent the *who* behind such incidents.

The complete DAF is presented in the following table. Diversion is a complex phenomenon, and the Framework underlines this complexity – even while trying to unpack the interplay between these elements to make it easier to understand.

LIFECYCLE OF ARMS AND RELATED ITEMS



TECHNOLOGIES

ILLCIT TRAFFICKING

INSTITUTIONAL WEAKNESSES AND FAILURE

DECEPTION

DIVERSION ENABLING FACTORS

GUIDANCE ON HOW TO USE THE DIVERSION ANALYSIS FRAMEWORK

The DAF can be used to monitor and to analyse the complex dynamics that underpin the diversion of international transfers of conventional arms, including those already transferred, to support implementation of ATT Article 11. It can also support efforts to understand better the diversion of ammunition and other items contained in national control lists. It is intended as a resource to find tailored solutions to prevent, detect, eradicate, and address diversion of arms and related items, both in conflict and in non-conflict settings. Finally, the Framework can also serve as a vehicle to promote dialogue on the lessons learned on diversion monitoring and prevention at the national, regional, and international levels. Suggestions for utilising the DAF include:

FOR ATT STATES PARTIES

States Parties to the ATT and other relevant multilateral processes and bodies could discuss the adaptation, adoption, or use of the DAF, or certain elements thereof, to enhance diversion monitoring and diagnostics, as well as to promote multilateral dialogue on the problem of diversion.

States Parties to the ATT could use the DAF to structure reporting and to standardize the data shared on the Diversion Information Exchange Forum. Sharing standardised data on detected cases of diversion will facilitate reporting, analysis, and the generation of lessons learned.

FOR ALL MEMBER STATES

States may adapt the DAF to their national context and use it as the basis for a national checklist to systematically document diversion cases. The Framework can provide a useful starting point for States to monitor context-specific dynamics observed at the local, national, or regional levels. This can provide a quantitative overview of the more recurrent elements behind documented cases of diversion and facilitate a context-sensitive analysis.

States could consider using the DAF to analyse and to disaggregate documented diversion cases and to observe which counter-diversion measures could be more effective based on the recurrence of diversion-enabling factors, points of diversion, methods used at the points of diversion, and actors identified. Specific counter-diversion strategies could be targeted according to a national analysis of findings. The dynamic nature of diversion underscores the importance of a whole-of-government prevention strategy to combat diversion and the need for consistent monitoring and established feedback loops.

Further, as the DAF can help catalogue diversion incidents into various categories, States could consider sharing, when appropriate and necessary, the counter-diversion measures that seem most effective in mitigating identified risks.

All States may use the DAF to assist in information-gathering and data collection to inform future transfer risk assessments.

States could also use the DAF to structure the provision of information to sanctions committees and panels of experts on United Nations arms embargo violations. The use of a standardised approach for sharing material on such cases could facilitate the preparation of Implementation Assistance Notices that provide guidance on diversion and embargo evasion patterns and risk indicators.

FOR ALL INTERESTED ORGANISATIONS

All interested organisations could use the classification in the Framework to unpack systematically the documented cases of diversion and to determine the most recurrent points of diversion and weak points for each stage in the transfer chain and life cycle of arms and related items. The classification in the Framework provides a structure to document the specific dynamics that lead to diverted arms and related items. An analysis of documented cases could produce quantitative results indicating the more common ways in which diversion occurs in a particular setting.

United Nations agencies, regional organisations, research institutions, and specialised organisations could consider using the DAF as the basis for case studies to clearly map the scale and scope of diversion and vulnerabilities in specific contexts. In particular, bodies responsible for sanctions monitoring, as well as entities working on weapons and ammunition management across the transfer chain and during the full life cycle of arms and related items, could benefit from the common language and framework of analysis that this document provides and undertake targeted analysis on diversion to support States.

Interested parties are encouraged to contact UNIDIR to discuss ways to use the DAF, share results after using it, and suggest updates, edits, or corrections, on a voluntary basis, at the following email address: cap-unidir@un.org.



EXTRACTS FROM THE IMPACT REPORT

THE ARMS TRADE TREATY: ASSESSING ITS IMPACT ON COUNTERING DIVERSION

Unloading weaponry cargo—Israel Defense Forces

EXECUTIVE SUMMARY

Under Article 11 of the Arms Trade Treaty (ATT), States Parties have an obligation to prevent diversion in conventional arms transfers. This report presents findings from the testing of a new voluntary Tool developed to assist interested States Parties in analysing their enabling environment for preventing diversion, covering measures across all stages of the arms transfer chain. Therefore, this report provides an initial assessment of the impact of the ATT on measures taken by a sample of eight ATT States Parties. The report makes two contributions: First, it highlights the impact of the ATT on the implementation of counter-diversion measures across the arms transfer chain, showing an overall significant strengthening of States Parties' enabling environments. Second, it validates the Counter-Diversion Assessment Tool and demonstrates its usefulness for identifying gaps and effective measures for preventing diversion in a comprehensive manner.

ATT Article 11 requires every State Party involved in the international transfer of conventional arms to take measures to prevent, detect, and address the diversion of conventional arms at every stage in the transfer chain. Previous research has identified a comprehensive list of diversion risk factors. The Counter-Diversion Assessment Tool developed for this study compiles a list of indicative measures corresponding to these risk factors that have a direct relationship to ATT provisions for the prevention of diversion, encompassing unilateral, bilateral, and multilateral systemic and practical measures. Each set of measures is accompanied by a list of questions facilitating the assessment of the existence and efficacy of an enabling environment for preventing diversion in each State Party using the Tool.

BOX 3. SUMMARY OF SYSTEMIC AND PRACTICAL MEASURES TO COUNTER DIVERSION

Systemic Measures Related to National Control Systems

- | National legislation, regulations, administrative procedures on all aspects of the arms transfer chain
- | National inter-agency cooperation and communication
- | National licensing system
- | Systems for information-sharing with other States bilaterally and through multilateral organisations
- | End-use/user and delivery notification systems and elements
- | Criminalisation and penalties applicable to deliberate and reckless acts of diversion
- | Detection and prosecution systems
- | Outreach and training systems for key stakeholders
- | Corporate auditing and internal compliance programmes
- | Public awareness programmes

Practical Measures

For Pre-Transfer Stage

- | Prevention measures including risk mitigation measures
- | Use of diversion risk indicators in licence approvals
- | Inter-agency and inter-State information sharing
- | Pre-shipment physical inspections
- | Consultations with industry

For In-Transfer Stage

- | Prevention and risk mitigation measures for transit and trans-shipment
- | Customs notifications and clearance procedures
- | Additional safeguards such as security escorts, satellite tracking

For Delivery and Post-Delivery Stage

- | Arrival inspections and delivery notifications systems
- | Safe and secure storage systems
- | Post-delivery cooperation

ANNEX 1. THE COUNTER-DIVERSION ASSESSMENT TOOL



ALL STAGES OF TRANSFER

DIVERSION RISK	KEY QUESTIONS	
<p style="text-align: center; margin: 0;">USE OF DECEPTIVE METHODS</p> <ul style="list-style-type: none"> ▮ Fraudulent use of documentation ▮ Use of front companies ▮ Illicit brokering activity ▮ Physical alteration of items ▮ Participation in organized crime ▮ Smuggling, including by postal and courier deliveries ▮ Illegal acquisition and sales, including by Internet transaction 	<p>Q1. Is theft or the use of fraud, deception, corruption, violence or any other method of rerouting or misappropriation of arms listed as an aggravated criminal offence subject to severe criminal sanctions? If so, what sanctions are applicable?</p> <p>Q2. Is it also a criminal offence to engage in arms exports, imports or brokering activities without a licence or official authorization, or to do so in a manner that is in contradiction to the terms of a licence or authorization? If so, what sanctions?</p> <p>Q3. Does your national system provide for mutual legal assistance in regard to investigations, prosecutions, and judicial proceedings for the activities mentioned in questions 1 and 2? (If yes, what / how?)</p> <p>Q4. Are bilateral and multilateral information-sharing approaches used to prevent the use of deceptive methods? (If yes, what / how)</p>	<p>Q5. Does your State allow for sharing with other States such information as the disbarment of traders and brokers and the revocation of their registration?</p> <p>Q6. Does your State allow for sharing with other States information on illicit activities including, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion?</p> <p>Q7. Does your State require any of the following actors to be registered and/or screened on a regular basis before they can engage in the international arms trade?</p> <ol style="list-style-type: none"> a. Manufacturers and assemblers b. Dealers and wholesalers c. Brokers and agents d. Transport service providers e. Legal advisors
<p>References: ATT Articles 5, 6, 7, 8, 9, 10 11, 12, 13, 14, 15(4), 15(5); UN Firearms Protocol Articles 5, 6, 10, 11, 12; ITI in particular, paragraphs 14 to 21, 24, 25, 31, 33 and 35.</p>		

		→ UNILATERAL	↔ BILATERAL	⊗ MULTILATERAL
PREVENTION MEASURES*	SYSTEMIC	<p>The State has established in law criminal offences and penalties applicable to deliberate and reckless acts of diversion, including the reactivation and conversion of firearms and other arms.</p> <p>National control systems to detect, trace and prosecute illicit arms trade activities and illicit arms have been established.</p>	<p>The State has established bilateral arrangements for information exchanges on export, import, transit and brokering to prevent deception.</p> <p>Mutual legal assistance agreements have been established.</p>	<p>The State is a party to relevant international and regional agreements on arms transfers including transnational crime and corruption conventions.</p> <p>The State has adopted legislation and established administrative systems to implement the above relevant multilateral agreements and standards.</p>
	PRACTICAL	<p>Law enforcement agencies and the national licensing authority conduct monitoring, detection, tracing and prosecution.</p> <p>The State has examined diverted shipments of such conventional arms and taken follow-up measures through investigation and law enforcement.</p> <p>The State has organized outreach and provides training systems for key stakeholders involved in arms transfers to prevent incidents of diversion.</p>	<p>Bilateral checks have been made with the transferring State to verify arms transfer documents.</p> <p>If a diversion has been detected the State has alerted potentially affected States and endeavoured to jointly trace the arms to discover points of diversion and take corrective action.</p>	<p>The State has actively participated in the ATT CSP and working groups, as well as other international and regional standard-setting processes on arms transfers to prevent diversion.</p> <p>The State has reported in such forums on the measures it has taken to prevent diversion.</p>

* These prevention and other indicative measures include risk mitigation, monitoring, detection, reporting and information-sharing measures are contained in Article 11 and related provisions of the Arms Trade Treaty

DIVERSION RISK	KEY QUESTIONS	
DIVERSION FROM INSTITUTIONAL WEAKNESSES <ul style="list-style-type: none"> █ Grey areas and ineffective regulation of financial systems █ Downsizing/dissolution/re-organization of security forces █ Government-sponsored unauthorized transfer or re-transfer █ Widespread and systematic corruption █ Fragmentation of State institutions 	<p>Q8. What types of conventional arms, if any, are not included in your national control list?</p> <p>Q9. Are any of the activities listed below not regulated under national legislation?</p> <ol style="list-style-type: none"> a. Manufacture and assembly b. Brokering of transactions c. Pre-export preparation of cargo d. Shipment, transit and trans-shipment e. Import delivery unloading, warehousing and local transport f. End-use/user operations and stockpiles 	<p>Q10. Does the national authority have a system to assess the nature of any institutional risks of diversion such as corrupt practices, organized crime and lack of parliamentary oversight of procurement, and, if applicable, does the authority consider what available mitigation measures may help to reduce those risks to an absolute minimum?</p>
<p>References: ATT Preambular Principles and Articles 5, 6, 7, 8, 9, 10, 12, 14, 15 and 16, especially 5(2), 6(1), 6(2), 6(3), 7(1), 7(5), 7(6), 7(7), 8(1), 8(3), 9, 10, 15(4) and 16(2); UN Firearms Protocol Articles 5, 6, 7, 10, 11, 12, 13, and 14.</p>		

		→ UNILATERAL	↔ BILATERAL	⊕ MULTILATERAL
PREVENTION MEASURES	SYSTEMIC	<p>The government has taken active measures to uphold the rule of law and democratic accountability according to the constitution and is accountable to parliament.</p> <p>National legislation, regulations and administrative procedures have been established and maintained on all aspects of the arms transfer chain—import, export, transit, trans-shipment, brokering and stockpiles/holdings.</p>	<p>When the State considers a potential transfer of arms the national authority has a system of licensing to first assess the nature of any institutional risks of diversion and, if applicable, the authority considers what available mitigation measures may help to reduce those risks to an absolute minimum, e.g. confidence-building measures or jointly developed and agreed programmes by the exporting and importing States; requiring additional documentation, certificates, or assurances; or not authorizing the transfer.</p>	<p>The State is a party to the ATT and other relevant international and regional agreements on arms transfers.</p> <p>The State's agreements on arms transfers include transnational crime, corruption and counter-terrorism conventions.</p> <p>The State adopts legislation and establishes administrative systems to implement the above relevant multilateral agreements and standards.</p>
	PRACTICAL	<p>The legislature is kept informed of national arms procurement and the procedures to ensure the rule of law.</p> <p>National inter-agency cooperation and communication on arms transfer policies and standards have been discussed in parliament.</p> <p>Public awareness programmes on the dangers of illicit arms trafficking and dealing have been conducted.</p>	<p>The State engages in bilateral information sharing on arms control.</p> <p>The State has cooperated bilaterally in anti-corruption, anti-money laundering and security sector reforms according to international standards.</p>	<p>The State actively participates in the ATT CSP process and other relevant international and regional standards to prevent the diversion of arms.</p> <p>The State engages in, or supports, multilateral assistance programmes with United Nations and other multilateral and regional organizations to strengthen arms transfer controls and management, e.g. security sector reforms, which reduce the risks of diversion.</p>



PRE-TRANSFER STAGE

DIVERSION RISK	KEY QUESTIONS	
DIVERSION FROM MANUFACTURING OR ASSEMBLING FIRM	<p>Q11. Does your State require manufacturing and assembling companies to mark each item (whether a military weapon, other armament or munition) when it is manufactured? Are all manufacturers required to keep records of the unique markings when each item is sold, moved or otherwise transferred from the plant site?</p> <p>Q12. Does your State enforce measures to prevent the manufacture, stockpiling, transfer and possession of any unmarked or inadequately marked arms, in particular SALW?</p>	<p>Q13. Does your State require any of the following actors to be registered and/or screened on a regular basis before they can engage in the international arms trade?</p> <ol style="list-style-type: none"> Directors of all such companies Senior managers Technicians On-site supervisors and dispatchers On-site loaders and guards? <p>Q14. Does your State license the export and/or import of parts and components in a form capable of assembly into a conventional arm?</p>
<ul style="list-style-type: none"> ■ Illicit removal ■ Unauthorized distribution ■ Deliberate overproduction and/or unauthorized production by internal actors ■ Theft and violent capture by external actors 	<p>References: ATT Articles 5, 9, 10, 12, 13, 14, 15(4), 15(5); UN Firearms Protocol Articles 6, 7, 8, 9, 11 and 12; ITI paragraphs 7 to 13.</p>	

		→ UNILATERAL	↔ BILATERAL	↻ MULTILATERAL
PREVENTION MEASURES	SYSTEMIC	Establish in national regulations and maintain specific registration, record-keeping, reporting and inspection requirements for all arms manufacturing and assembly companies, plants and sites.	Bilaterally encourage States to establish national regulations.	Encourage the affected State to implement relevant standards devised by the Wassenaar Arrangement and in the MOSAIC modules.
	PRACTICAL	<p>Carry out official inspections of record-keeping and inventories.</p> <p>Actively encourage corporate auditing and internal compliance programmes.</p> <p>Establish regular outreach and consultations with industry.</p> <p>Encourage firms to screen for potential diversion risks relating to their customers, such as particular destinations, end users and end uses.</p>	Promote the sharing of information regarding illicit activities and actors in order to prevent and eradicate diversion.	Report to other States Parties, through the Secretariat, information on measures taken that have been proven effective in addressing the diversion of transferred conventional arms.

DIVERSION RISK

INADEQUATE TRANSFER RISK ASSESSMENT

- █ Gaps in diversion risk criteria
- █ End-use/users not verified

- █ Export risks not considered
- █ Suspicious brokering not checked

- █ Documents not authenticated

KEY QUESTIONS

Q15. What risk factors do your national authority consider in order to prevent the diversion of an export or import before an export or import licence can be issued? Do the risk factors include the following?

- a. Known cases of diversion in the importing country or by its agents or dealers
- b. Transfers involving countries bordering or trading with a country whose State and/or armed groups are subject to United Nations or other international sanctions
- c. Excessive quantities being ordered
- d. Types of arms not in service with the importing or exporting country
- e. The arms transfer regulatory system is known to be inadequate or to lack capacity
- f. The proposed route for the transfer is circuitous or the shipping method is unusual
- g. A credible system of verifying end use/end user and re-transfer assurances
- h. The right to conduct on-site inspections and post-shipment verification for sensitive items
- i. Relevant information regarding acts of diversion has not been exchanged
- j. An effective policy and practice of disposing of surplus arms

Q16. Do transfer assessments take into account whether the transfer would contribute to a potentially destabilizing accumulation of conventional weapons, taking into account regional stability; the political, economic, and military status of the prospective importing State; and its record of compliance with transfer controls?

Q17. What steps are taken to check the reliability of proposed end users and entities involved in arms transfers and the authenticity of end-use/user documents? Are these procedures consistent with international good practice standards regarding certification and authentication of such documents, and verification of end use/users?

Q18. Are such authorizations in each case:

- a. Issued in standardized written form that minimizes opportunity for fraud?
- b. Having a limited date of expiry?
- c. Having a detailed description of the items to be transferred, their origin, quantity, weight and value?
- d. Having all the names and full addresses of the contract holders, the consignee, the consignor, any intermediaries or agents involved, and the proposed route and means of delivery?




Q19. Does your State require a licence or a specific written authorization, in each case:

- a. For all exports of arms and related items?
- b. For all imports of arms and related items?
- c. For all transits and/or trans-shipments of arms and related items?
- d. For all brokering activities?

References: ATT Articles 5, 6, 7, 11, 13(2), 15(4) and 15(6); UN Firearms Protocol Articles 10, 11, 12. (See also UNIDIR Issue Brief 2 – pp. 21-26 list of risk indicators which draw upon multilateral guidelines)

		→ UNILATERAL	↔ BILATERAL	↻ MULTILATERAL
PREVENTION MEASURES	SYSTEMIC	<p>National arms trade licensing systems are established with specific diversion risk indicators to assess licence approvals.</p> <p>Effective regulations on arms export, import, transit, trans-shipment and brokering are established according to relevant international standards.</p>	<p>Bilateral standards and procedures are agreed for authentication and verification of end-use/user documentation and monitoring.</p> <p>Bilateral procedures are established for the exchange of information on risks of diversion.</p> <p>In sensitive cases, or in the event of diversion, bilateral agreements allow for on-site inspections by the supplier State.</p>	<p>The State is a party to the ATT and other international and regional arms transfer control regimes that require diversion risk assessments and risk mitigation measures for exports and other transfers, as well as the submission of regular reports to multilateral bodies on its arms transfer and trade activities.</p> <p>Standards for the authorization of arms transfers are consistent with the ATT or similar multilateral agreements and arrangements.</p>
	PRACTICAL	<p>Inter-agency risk assessments are carried out routinely by specialized officials before all decisions on arms transfers are made using sources of reliable information.</p> <p>Diversion risk checks are made on the effectiveness of:</p> <ul style="list-style-type: none"> █ End-user and end-use controls in the importing State; █ The reliability of agents, businesses, intermediaries and service providers involved in the transfer; █ The security of the shipping arrangements; and █ The procedures for stockpile management and security in the importing State. <p>Extra diversion risk checks are made if the end-user's country is not the same as the buyer or initial importer's country.</p> <p>Cases of diversion are analyzed and where possible are prosecuted by the national authorities.</p>	<p>Bilateral information-sharing on diversion may include information on:</p> <ul style="list-style-type: none"> █ Illicit activities including corruption; █ International trafficking routes; █ Illicit brokers and sources of illicit supply; █ Methods of concealment; and █ Common points of dispatch, and destinations used by organized groups engaged in diversion. 	<p>The State actively participates in the ATT and other international and regional control regimes, including the PoA, Organized Crime Convention, Convention against Corruption and counter-terrorism treaties, and cooperates in sharing relevant information with other States on effective measures to reduce the risks of diversion.</p>

DIVERSION RISK	KEY QUESTIONS	
FAILURE OF PRE-SHIPMENT CHECKS		
<ul style="list-style-type: none"> ■ Illegal delivery route ■ Arms cargo ready for shipment does not match documentation ■ Planned shipment route is unnecessarily circuitous ■ Concealed compartments in shipping containers or vehicles ■ Organisers of shipment include known traffickers on watch list 	<p>Q20. Has your State established inter-agency cooperation for the reciprocal authorization of arms and ammunition transfers between the respective licensing agencies and customs agencies?</p> <p>Q21. Does your national authority cooperate with national authorities engaged in the transfer of arms and ammunition and supply advanced notification to those authorities on the route of such transfers?</p> <p>Q22. Do your national authorities deploy technologies such as X-ray machinery at ports of departure for the prevention and detection of incidents of diversion?</p> <p>References: ATT Article 7(5), 7(6), 8, 9, 10, 11,14, 15, 16; UN Firearms Protocol Article 10; Organisation for Security Cooperation in Europe (OSCE) Handbook of Best Practices on Small Arms and Light Weapons, Chapter 5; WCO Safe Framework of Standards; UN Regulations for the Transport of Dangerous Goods by Sea, Air, Road and Waterways transport.</p>	<p>Q23. Does your State register businesses involved in the arms trade as "approved economic operators" (AEO) according to the World Customs Organization's best practice standards, and what safeguards are in place when AEOs are given permission to undertake certain customs clearance procedures?</p> <p>Q24. Do your customs and other law enforcement agencies conduct risk profiling for arms and ammunition shipments to help detect diversion and trafficking incidents?</p>

PREVENTION MEASURES		 UNILATERAL	 BILATERAL	 MULTILATERAL
		SYSTEMIC	<p>The State has established and maintained a customs agency and border police force with appropriate training and capacity to undertake physical inspections at points of export, transit and import, specifically to cross-check pre-shipment items with documentation and determine if any arms are unmarked, and to notify the receiving customs agency of sensitive consignments.</p> <p>National procedures are established so that the standard cargo manifest can be checked by customs, as a norm, against the relevant export licence and initial end-use/user certificate to which it refers, reporting to the relevant national licensing authorities.</p>	<p>The State has established procedures to check bilaterally:</p> <ul style="list-style-type: none"> ■ If any additional security measures are required and how this will be implemented; and ■ If simplified procedures for the temporary import and export and the transit apply, e.g.: for firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.
PRACTICAL	<p>The authorities have taken steps to ensure the security of international arms shipments in circumstances where routes and methods warrant additional measures and safeguards due to the increased risks of diversion and abuse of the arms, e.g.:</p> <ul style="list-style-type: none"> ■ Sensitive nature of arms and munitions; ■ Deliveries to private entities; ■ Danger of unauthorized onward shipment; ■ Deliveries by circuitous routes; and ■ Mediated by unregistered/unlicensed intermediaries. <p>The government has provided X-ray and other means to check that contents of consignments match shipping documents.</p>	<p>Bilateral sharing of information is conducted so the authorities at transit or trans-shipping ports and airports, including where there is a free-trade zone or bonded warehouse, are notified in advance to provide extra security for certain cargoes, and open the cargo if they receive such order by law enforcement authorities.</p>	<p>Customs administrations along the supply chain consider customs-to-customs data exchange, in particular for high-risk consignments, to support risk assessment and facilitate release; such an electronic messaging system could include the exchange of notifications about the export transaction, including the control results, as well as a corresponding arrival notification.</p>	



IN-TRANSFER STAGE

DIVERSION RISK	KEY QUESTIONS
DIVERSION DURING SHIPMENT	
<p>Rerouting and/or misappropriation of cargo in transit or trans-shipment by:</p> <ul style="list-style-type: none"> █ Plane/aircraft █ Boat/ship █ Ground transportation <p>Use of deceptive methods en route by:</p> <ul style="list-style-type: none"> █ Falsifying transport documentation █ Concealing actual flight plans, routes, and destinations █ Turning off transponders █ Falsifying aircraft registrations █ Quickly changing registration numbers and vessel names or national flag registries 	<p>Q25. What regulations and procedures does your State have to address arms diversion in road, air and maritime/waterways transport, in particular of SALW and related ammunition/munitions, to destinations or entities subject to United Nations arms embargoes?</p> <p>Q26. Do your authorities deploy armed guards or use satellite tracking systems for the shipment of sensitive arms consignments and how routine is this procedure?</p> <p>References: ATT Articles 5, 8, 9, 10, 11; UN Firearms Protocol Articles 11 and 12; UN Regulations for the Transport of Dangerous Goods by Sea, Air, Road and Waterways transport; WCO SAFE Framework.</p>

		UNILATERAL	BILATERAL	MULTILATERAL
PREVENTION MEASURES	SYSTEMIC	<p>Legislation and regulations for customs notifications and clearance procedures have been established.</p> <p>Prior registration is required for freight forwarders, shipping agents and transport companies that provide arms transfer services. The details of their registration are included along with other intermediaries in export application procedures.</p> <p>National regulations ensure that customs authorities have access to basic documents such as export and import licences, bills of lading, airway bills and cargo manifests, either electronically or in hard copy.</p>	<p>Bilateral arrangements for the transport of arms shipments have been made to prevent diversion en route, including to mitigate diversion during transit and trans-shipment involving more than one vessel for the consignment.</p>	<p>The State implements the regulations and provisions of the Convention on International Civil Aviation and the United Nations Convention on the Law of the Sea, as well as standards agreed by the World Customs Organization, the International Labour Organization, and the International Maritime Organization, including the International Convention for the Safety of Life at Sea, chapter VII on "Carriage of Dangerous Goods" and chapter XI-2 on "Special Measures to Enhance Maritime Security", the International Ship and Port Facility Security Code, and the IMO/ILO Code of Practice on Security in Ports.</p>
	PRACTICAL	<p>Initiate government-backed awareness programmes to encourage relevant private and public sector actors dealing with arms shipments to alert the authorities to possible diversion of consignments.</p>	<p>The national authorities have agreed additional safeguards bilaterally such as special vehicles, security escorts, satellite tracking and physical checks in transit, especially for more sensitive cargoes and potentially vulnerable routes and ports.</p>	<p>The State participates regularly in deliberations of the World Customs Organization's SAFE Framework of Standards to Secure and Facilitate Global Trade, and its national officials participate in World Customs Organization training programmes.</p>

DIVERSION RISK	KEY QUESTIONS	
UNAUTHORISED CROSS-BORDER MOVEMENTS	<p>Q27. Does your State use the lists of risk indicators for border controls issued by the World Customs Organization and INTERPOL?</p> <p>Q28. Has your State made agreements with neighbouring States to cooperate on eradicating illicit cross-border movements of arms, including the apprehension and prosecution of offenders?</p> <p>References: ATT Articles 11, 14; UN Firearms Protocol Articles 5, 6, 8, 9, 10, 11 and 12; WCO list of border control risk indicators; INTERPOL guidance.</p>	
<ul style="list-style-type: none"> ■ Ant trade ■ Drop-off points ■ Postal shipments ■ Large shipments ■ Inadvertent change of jurisdiction 		

		→ UNILATERAL	↔ BILATERAL	⊕ MULTILATERAL
		PREVENTION MEASURES	SYSTEMIC	<p>National procedures are established for customs and other law enforcement agencies to address risks of arms, especially firearms and ammunition, illegally crossing an international border. The procedures address:</p> <ul style="list-style-type: none"> ■ Risk areas—those border control procedures and categories of international trade which present a risk; ■ Risk indicators—specific criteria which, when taken together, can be used to identify high-risk individuals, companies or transports and transporters; ■ Risk management—systematic application of management procedures to identify, analyse, assess and take enforcement action against risks; and ■ Risk profiling—identifying individuals, organizations, transporters and goods which match a profile that indicates the possibility of illegal activity.
PRACTICAL		Provide customs and other law enforcement officials with risk indicators and appropriate training, including for outreach work among key stakeholders.	Work bilaterally with neighbouring States to create awareness of the dangers among local communities along porous borders and ensure their cooperation	Use the lists of risk indicators for border controls issued by the World Customs Organization and INTERPOL.






DELIVERY AND POST-DELIVERY STAGE

DIVERSION RISK	KEY QUESTIONS	
DIVERSION AT POINTS OF DELIVERY <ul style="list-style-type: none"> ■ Theft in unloading ■ Unexplained loss ■ Import becomes unauthorized transit or trans-shipment ■ Inadequate port authority and customs procedures ■ Insecure warehousing at port 	<p>Q29. Does your State's customs authorities have a sufficient presence at all ports of entry and exit, or at the designated ports of entry for consignments of arms and ammunition?</p> <p>Q30. Do your competent national authorities verify the end user and prepare and sign a delivery verification certificate (DVC) or comparable documentation which is shared with the national authorities of the country of origin or export of the arms and ammunition?</p> <p>References: ATT Articles 8, 11(3), 11(4), 11(5), 11(6), 12, 13, 14, 15; Firearms Protocol Articles 6, 7, 8, 9, 10, 11 and 12; UN Regulations for the Transport of Dangerous Goods by Sea, Air, Road and Waterways transport.</p>	<p>Q31. Are there safe and secure storage facilities at all places of arrival in ports and at the premises of the final end user in your country, including routine record-keeping, inventory management and accounting for the items stored and released?</p>

		→ UNILATERAL	↔ BILATERAL	↻ MULTILATERAL
PREVENTION MEASURES	SYSTEMIC	<p>The State has established national laws and regulations to ensure:</p> <ul style="list-style-type: none"> ■ On-arrival inspections at ports, border controls, transit and trans-shipment customs procedures and delivery verification notifications; ■ Safe and secure storage at arrival in ports and at the premises of the end user, including record-keeping as part of inventory management and accounting; and ■ The security of stockpiles that are in transit and trans-shipment. 	<p>The State has agreed bilaterally the arms transfer procedures for:</p> <ul style="list-style-type: none"> ■ Import certificates; ■ Shipment notifications to receiving and transit States; ■ Arrival unloading and inspection procedures; and ■ Delivery verification systems for consignees. <p>Bilateral arrangements are in place, such as prior notifications, profiling and spot checks, to give special attention to port procedures involving transits and trans-shipments in free-trade zones.</p>	<p>The State consults regional and other partner States about cross-border agreements and changes in legislation that will affect cross-border cooperation.</p> <p>The State participates in World Customs Organization and INTERPOL deliberations regarding standards for cross-border cooperation in law enforcement.</p>
	PRACTICAL	<p>The authorities routinely screen candidates and train customs and port officials.</p> <p>Sufficient numbers of staff are employed and closely supervised to cover all ports of entry and customs warehousing.</p>	<p>Undertake bilateral measures for:</p> <ul style="list-style-type: none"> ■ Post-delivery cooperation to ensure mitigation measures and assurances remain in place; and ■ Detecting and investigating diversion of transferred conventional arms. 	<p>The authorities exchange information according to the provisions in the ATT on national points of contact for end-user and end-use control, and according to the tracing provisions in the International Tracing Instrument and Firearms Protocol, and other relevant instruments.</p>

DIVERSION RISK	KEY QUESTIONS	
DIVERSION FROM NATIONAL STOCKPILES		
<ul style="list-style-type: none"> █ Theft and violent capture by external actors █ Illicit removal by internal actors █ Unexplained loss █ Unauthorized transfer █ Sale, trade or gift █ Rental by the authorized holder █ Failure to destroy or render permanently inoperable surplus arms 	<p>Q32. Does your State have designated national authorities responsible for overseeing and monitoring the application and the review of existing security regulations and procedures that apply to State-held weapons?</p> <p>Q33. Does your State have designated national authorities responsible for conducting risk and needs assessments of storage locations? Describe what elements are considered as part of this risk assessment.</p> <p>References: ATT Articles 11, 14, 16; UN Firearms Protocol Articles 7, 8, 11 and 12; International Ammunition Technical Guidelines (IATG); Wassenaar Arrangement; Modular Small Arms Implementation Compendium (MOSAIC) modules on stockpile security and regulation of civilian possession; UNIDIR Reference Methodology for national WAM Baseline Assessments.</p>	<p>Q34. Does your State have established measures for monitoring and diagnosing the diversion of weapons from stockpiles?</p> <p>Q35. Does your State have established procedures for reporting and investigating weapons diverted from stockpiles?</p>

PREVENTION MEASURES		 UNILATERAL	 BILATERAL	 MULTILATERAL
		SYSTEMIC <p>The State has established national regulations for safe and secure storage systems for transferred arms by State armed forces and law enforcement agencies, as well as private actors.</p> <p>The State has taken active steps to ensure that adequate marking, record-keeping, inventory management and accounting control measures are in place.</p>	<p>Bilateral arrangements with neighbouring States have been established to alert each other if arms or ammunition is diverted from national stockpiles, with provisions to cooperate on tracing the items, and conducting investigations and prosecutions.</p>	<p>The State actively contributes to the implementation of the international standards on stockpile safety and security, including the International Tracing Instrument, the International Ammunition Technical Guidelines and the MOSAIC modules.</p>
PRACTICAL <p>The national authorities regularly assess the State's security requirements for national stockpiles held by armed forces, police, or any other body authorized to hold arms; stocks that no longer meet operational needs are safely disposed of, preferably through destruction in accordance with international norms and standards.</p> <p>Other measures taken include:</p> <ul style="list-style-type: none"> █ Inventory management and accounting; █ Storing records of transactions made by all departments with a single, central authority; █ Controlling access to stockpiles including by physical means such as fencing and locking systems; and █ Strict screening and appropriate training of staff in safe and secure stockpile management procedures. 	<p>The authorities alert the State of origin of the arms and ammunition and, if applicable, the neighbouring States and States of transit or trans-shipment, concerning each instance of diversion from national stockpiles and where appropriate initiate a formal tracing request.</p>	<p>The State shares information and discusses tools and existing standards regarding the safe and effective disposal of surplus arms, with a view to identifying good practices, including certificates of irreversible deactivations which can supplement existing records and the requirement that deactivation is undertaken and verified by authorized entities only.</p>		

DIVERSION RISK	KEY QUESTIONS	
DIVERSION DURING ACTIVE USE AND DEPLOYMENT	<p>Q36. Is the management of arms by personnel in the armed forces and in the law enforcement agencies subject to strict legislation, administrative procedures and practical training consistent with international standards regarding official management and uses of arms, including under treaties on transnational crime and on international humanitarian and human rights treaty obligations?</p> <p>Q37. Do your national authorities share appropriate information about diversion during active use and deployment with the exporting State? Is such sharing done proactively or only when handling information related to arms as a result of your State's tracing request?</p> <p>References: ATT Articles 7(4), 11, 12, 14 and 15; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.</p>	<p>Q38. Which government agency is responsible for responding to a tracing request from another State?</p> <p>Q39. Does your State have procedures in place to ensure that the confidentiality of such information is guaranteed?</p>
<ul style="list-style-type: none"> █ Loss █ Defection █ Surrender █ Abandonment █ Violent capture █ Unauthorized transfer, sale, trade or gift █ Rental by the end user 		

		→ UNILATERAL	↔ BILATERAL	⊕ MULTILATERAL		
		PREVENTION MEASURES	SYSTEMIC	PRACTICAL		
SYSTEMIC	UNILATERAL	National legislation and regulations cover the handling and use of arms by: <ul style="list-style-type: none"> █ Government actors: armed forces; former State officials; internal security forces; customs licensing authority; intelligence agencies █ Private actors: individual holders of arms; arms dealers and traders; arms collectors; private security companies. 	BILATERAL	Bilateral arrangements with neighbouring States have been established to alert each other if arms or ammunition is diverted from national stockpiles, with provisions to cooperate on tracing the items, and conducting investigations and prosecutions.	MULTILATERAL	The State actively contributes to the implementation of the international standards on stockpile safety and security, including the International Tracing Instrument, the International Ammunition Technical Guidelines and the MOSAIC modules.
PRACTICAL	UNILATERAL	The government has taken steps to ensure rigorous training and monitoring in the management and use of arms consistent with international and professional standards.	BILATERAL	The national law enforcement authorities investigate incidents of diversion during active use and deployment by members of the armed forces and police.	MULTILATERAL	<p>The State participates in one or more multilateral efforts to improve the management of weapons and munitions, including through United Nations peacekeeping activities as well as other United Nations and multilateral assistance programmes for arms management in the security sector.</p> <p>The State participates in projects supported by the ATT voluntary trust fund and other multilateral assistance programmes that aim to strengthen arms and ammunition management by security forces.</p>



STRENGTHENING SHARED UNDERSTANDING ON THE IMPACT OF THE ARMS TRADE TREATY (ATT) IN ADDRESSING RISKS OF DIVERSION IN ARMS TRANSFERS

'Strengthening shared understanding on the impact of the Arms Trade Treaty (ATT) in addressing risks of diversion in arms transfers' is a joint research initiative by UNIDIR, Conflict Armament Research and the Stimson Center (jointly referred to as the Consortium). The objective of the initiative is to enhance knowledge and facilitate dialogue among States to strengthen shared understanding on the impact of the ATT in addressing risks of diversion in arms transfers, and to identify options and avenues for more effective policies and practices under the Treaty moving forward. The research aims to reflect on the challenges and generate ideas to strengthen counter-diversion measures within the Treaty's framework.

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