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## Diversion and the Arms Trade Treaty:

IDENTIFYING GOOD PRACTICE AND  
OPPORTUNITIES FOR PROGRESS

February 2021





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# INTRODUCTION

**T**he diversion of conventional arms is a key international security concern, as unregulated weapons can perpetuate and exacerbate conflict and armed violence, facilitate serious violations of international human rights and humanitarian law — including gender-based violence — and contribute to insecurity and instability. A large proportion of diversions are related to international transfers of such arms. Thus, the prevention of diversion is a significant element of the Arms Trade Treaty (ATT). The ATT establishes common international standards to ensure greater responsibility and transparency in the global arms trade and help prevent diversion posed by irresponsible or poorly regulated transfer decisions. Under Article 11, States Parties are required to take measures to prevent the diversion of conventional arms through specific measures including the mitigation of risks and, if a diversion is detected, to address such diversion.

ATT States Parties, through the treaty regime processes, have undertaken several initiatives to address diversion, but much more needs to be done to ensure that effective prevention, risk mitigation, detection, and prosecution strategies are put into place. Because diversion can take a multitude of forms and can occur at any point throughout the arms transfer chain, understanding the evolving risks associated with, and impacts of, irresponsible or poorly regulated arms transfers is essential in developing effective laws, regulations, and administrative procedures to guide prevention and risk mitigation strategies.

Recognizing the importance of comprehensive arms transfer controls to minimize the risks in the conventional arms trade, including the risk of diversion, this paper offers a short good practice compendium on methods to mitigate diversion. This paper draws from extensive existing research on the types of diversion and associated risks throughout the transfer chain and is informed by interviews with government officials and analyses of public ATT reports as well as the UN Programme of Action on Small Arms and Light Weapons for insights on States' practices to prevent, detect, and address weapons diversion. In short, this paper will highlight the key issues related to diversion in the ATT, provide a status update on ATT initiatives, and offer recommendations for next steps on diversion within the ATT context.

## **BOX 1: ATT ARTICLE 11 - DIVERSION**

- 1.** Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.
- 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 authorizing the export or other appropriate measures.
- 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).
- 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.
- 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 organized groups engaged in diversion.
- 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).



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## DIVERSION THROUGHOUT THE TRANSFER CHAIN: TYPOLOGIES AND RISKS

While governments understand diversion and know it is a risk, there is no single internationally accepted definition of diversion. The ATT also does not include definitions within its text but does describe diversion in its preamble in the following terms: “*Underlining* the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts.”

Civil society organizations have offered various definitions to help States better address the range of diversion risks that can arise throughout an arms transfer. For example, the Small Arms Survey has defined diversion as “the transfer of controlled items authorized for export to one end user, but delivered to an unauthorized end user or used by the authorized end user in unauthorized ways.”<sup>1</sup> The United Nations Institute for Disarmament Research notes that “Diversion, for the purposes of the ATT, is the rerouting and/or the appropriation of 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.”<sup>2</sup>

There are several ways in which weapons can be diverted from their intended end use/r, and diversion can occur at any given stage throughout the lifecycle of an arms transfer — prior to the transfer, during the transfer, at or after importation, and from storage or national stockpiles post-delivery.<sup>3</sup> Additionally, transferred weapons can

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<sup>1</sup> Matt Schroeder, Helen Close, and Chris Stevenson, “Deadly Deception: Arms Transfer Diversion,” in *Small Arms Survey 2008: Risk and Resilience*, (New York: Cambridge University Press, 2008) 114, <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2008/en/Small-Arms-Survey-2008-Chapter-04-EN.pdf>.

<sup>2</sup> United Nations Institute for Disarmament Research with Conflict Armament Research, Small Arms Survey, and Stimson, “The Arms Trade Treaty: Obligations to Prevent the Diversion of Conventional Arms,” Brian Wood, (2020) 2, <https://unidir.org/publication/arms-trade-treaty-obligations-prevent-diversion-conventional-arms>.

<sup>3</sup> For a detailed overview of diversion risks at the four main stages of an arms transfer, see: Small Arms Survey, “Possible Measures to Prevent and Address Diversion: Supporting Effective Implementation of the Arms Trade Treaty,” (2018), [http://www.smallarmssurvey.org/fileadmin/docs/Regulations\\_and\\_Controls/Levels\\_of\\_action/International/ATT-Diversion-infographic.pdf](http://www.smallarmssurvey.org/fileadmin/docs/Regulations_and_Controls/Levels_of_action/International/ATT-Diversion-infographic.pdf); See also: Small Arms Survey, “Trade Update 2018: Sub-Saharan Africa in Focus,” Paul Holtom and Irene Pavesi, (2018), <http://www.smallarmssurvey.org/fileadmin/docs/S-Trade-Update/SAS-Trade-Update-2018.pdf>.

remain operational — and the associated diversion risks can persist — years or even decades after their production and original transfer, further complicating efforts to mitigate diversion. Indeed, the lifecycle of an arms transfer, and the associated risks of diversion, varies depending on the type of transfer in question and the types of actors involved. For example, while arms transfers often take place between governments, they may also occur between a government in one State and individuals or private companies in another. Arms transfers might also involve a transfer of weapons between private companies or individuals operating in different States, without any direct government involvement. Moreover, arms transfers will often involve third parties. Exporters and importers may employ arms brokers, shippers, or other intermediaries.<sup>4</sup> These third parties can play a legitimate role in navigating complex weapon economies, identifying customers, and negotiating favorable deals — although their involvement may also increase the risk of corruption, diversion, and other nefarious practices.<sup>5</sup> Therefore, it is important that States address a range of arms transfer activities as part of their national transfer control measures and diversion mitigation efforts.

Common elements of national arms transfer control processes that support diversion prevention and risk mitigation efforts include systematic measures as well as practical measures such as control lists, licensing procedures, export and import clearance, and post-shipment verification.<sup>6</sup> Section three of this report will go into greater detail about good practices regarding existing counter-diversion measures, but it is worth noting here that while many States incorporate these elements into their national transfer controls, often the details of such features vary by State in terms of their scope, application, and implementation. The lack of standardized practices or harmonized policies can compound the risk of diversion and inadvertently make it easier for nefarious actors to take advantage of variations, inconsistencies, gaps, and/or loopholes in national transfer controls.

The following list highlights several types of diversion and can assist transfer control authorities in identifying diversion risks and strengthening their State's transfer control measures to prevent, detect, and address such risks. The list was developed by Conflict Armament Research (CAR) and further insight into this typology can be found in research conducted by the Small Arms Survey, UN Panel of Experts, as well as work from a joint UNIDIR-CAR-Small Arms Survey-Stimson project.

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<sup>4</sup> United Nations, General Assembly, "Study on ways and means of promoting transparency in international transfers of conventional arms: report of the Secretary-General," A/46/301 (9 September 1991) 12, <https://digitallibrary.un.org/record/128250?ln=en>.

<sup>5</sup> Transparency International Defence and Security, "Licence to bribe? Reducing corruption risks around the use of agents in defense procurement," Katie Fish and Michelle Man, (2016), <https://ti-defence.org/wp-content/uploads/2016/06/Licence-to-Bribe-web.pdf>.

<sup>6</sup> For a detailed analysis of such measures, see United Nations Institute for Disarmament Research with Conflict Armament Research, Small Arms Survey, and Stimson, "The Arms Trade Treaty: Measures to Prevent, Detect, Address and Eradicate the Diversion of Conventional Arms," Brian Wood and Paul Holtom, (2020), <https://www.unidir.org/publication/arms-trade-treaty-measures-prevent-detect-address-and-eradicate-diversion-conventional>.

## Diversion Typologies<sup>7</sup>

### ▶ **Battlefield capture**

Unauthorized users seize weapons from State forces during fighting or armed conflict.

### ▶ **Leakage due to ineffective physical security and stockpile management**

Weapons are removed from national or civilian stockpiles, either intentionally or unintentionally, due to inadequate security, accounting and record keeping, and/or accountability measures.

### ▶ **State-sponsored diversion**

Weapons are removed from national custody through deliberate action on the part of State officials — be it through approval of the direct supply of arms to unauthorized end users from the point of manufacture, the unauthorized retransfer of imported arms, or other means.

### ▶ **Illicit transfer of material following State collapse**

Weapons are lost and/or illicitly transferred following the partial or total collapse of State governing bodies and security forces that oversee national stockpiles. This type of diversion gained considerable attention following the upending of Muammar al-Gaddafi's government in Libya and the subsequent looting of Libya's national weapon stockpiles in 2011.<sup>8</sup>

### ▶ **Diversion from private actors<sup>9</sup>**

A private actor is commissioned to illegally supply weapons to an unauthorized end user.

### ▶ **Loss from national custody through undetermined means**

Weapons are lost from national custody, but the precise nature of their diversion remains unknown. In such cases, national authorities are the last recorded recipient of the arms in question.

In addition to the different types of diversion, there are several risks that exist throughout the transfer chain that can affect the likelihood of weapons diversion. Incidents of diversion occur during all stages of the transfer chain and therefore States should establish preventive and mitigation measures that address the entirety of the transfer chain.<sup>10</sup> For example, prior to an arms transfer, weapons or ammunition could be diverted before the transfer even begins if forged documents are used to conceal the identity of the actual end users. Furthermore, national authorities could fail to adequately verify information contained within relevant documentation submitted in export applications (e.g., end-user certificates, import licenses, transport plans,

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<sup>7</sup> The following list reflects a summarization of diversion typologies as defined by Conflict Armament Research (CAR). For more information on this list and CAR's methodological approach, see: Conflict Armament Research, *Diversion Digest*, vol. 1 (August 2018), <https://www.conflictarm.com/digests/diversion-digest-issue-1/>.

<sup>8</sup> United Nations, Security Council, "Final report of the Panel of Experts Established pursuant to Security Council Resolution 1973 (2011) concerning Libya," S/2014/106 (19 February 2014), <https://digitallibrary.un.org/record/766738?ln=en>.

<sup>9</sup> Jonah Leff, "Typology of Diversion: Case Studies of Diversion Documented by Conflict Armament Research" (presentation given at the 5<sup>th</sup> Conference of States Parties to the ATT, Geneva, Switzerland, 27 August 2019).

<sup>10</sup> Conflict Armament Research, *Diversion Digest*, vol. 1; Small Arms Survey, "Preventing Diversion: Comparing ATT and African measures for importing states," Paul Holtom and Benjamin Jongleux, (2019), <http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Preventing-Diversion.pdf>.

proposed sales contracts, etc.) either intentionally due to corruption or as a result of negligence. During an arms transfer, there is a risk that arms or ammunition become lost and/or information is not appropriately relayed to transit States due to intentional or unintentional miscommunication between officials in the exporting State, arms brokers, and customs officials in the transit State(s). There is a further risk that items are unloaded during transit without prior authorization due to inadequate monitoring and security measures in the transit State(s). At or after importation, weapons or ammunition could be stolen due to inadequate security and monitoring measures or intentionally retransferred to an unauthorized end user. Finally, while the weapons or ammunition are in post-delivery storage, there is a risk that they could be lost, stolen, or retransferred without authorization due to negligence, corruption, or inadequate physical security and stockpile management. The Small Arms Survey identifies several diversion risks throughout the transfer chain (see box 2). Understanding these particular vulnerabilities allows States to identify potential mitigation measures.



### **BOX 2: SMALL ARMS SURVEY: SELECT DIVERSION RISKS IN THE ARMS TRANSFER SUPPLY CHAIN<sup>11</sup>**

- ▶ Corruption by government official(s)
- ▶ Negligence by government official(s)
- ▶ Inadequate security and monitoring by competent government authorities
- ▶ False information provided by an entity involved in the arms transfer
- ▶ Government intention to divert
- ▶ “Honest mistake” by government official(s)

<sup>11</sup> Small Arms Survey, “Possible Measures to Prevent and Address Diversion: Supporting Effective Implementation of the Arms Trade Treaty.”





## CURRENT INITIATIVES FOR PREVENTING AND MITIGATING DIVERSION

**T**here are several ongoing initiatives in which key stakeholders are developing and strengthening measures to prevent and mitigate diversion.

The UN Programme of Action on Small Arms and Light Weapons (UN PoA) contains guidance on numerous measures that States can take to strengthen their counter-diversion efforts. While the UN PoA maintains as its primary focus efforts to prevent illicit trafficking in small arms and light weapons specifically, its prevention and mitigation measures can apply more broadly to appropriate controls for various types of conventional weapons. Among the measures included in the UN PoA are efforts to establish laws and regulations to control the production and transfer of small arms and light weapons, to integrate marking into the weapons production process, to take into consideration the risk of diversion specifically when assessing applications for export authorizations, to regulate brokers and brokering activities, to ensure States' security forces develop and maintain standards and procedures for the management and security of their weapon stockpiles, and to promote weapons tracing to help better identify points of diversion — in addition to many other relevant measures.

Implementation of the ATT is another opportunity for preventing, detecting, and addressing diversion. In underscoring the importance of responsible arms transfers to reduce human suffering, the treaty emphasizes the need to prevent and eradicate the diversion of conventional arms to the illicit market, and for unauthorized end use and end users. Article 11 of the treaty identifies several actions that States Parties can take at each stage of the transfer chain to mitigate diversion risks, such as examining the parties involved in an export prior to the transfer; exchanging information with importers, transit/transshipment countries, and exporters; developing mitigation processes; and reporting on measures taken to address diversion. Additionally, articles on regulating export assessments, brokering activities, record keeping, and reporting

all highlight actions that States can take to reduce the risk of diversion.<sup>12</sup> However, while the ATT provides standardized guidance and requirements, States often lack a shared understanding of how the treaty has contributed to reducing diversion risks since its entry into force, and what new opportunities exist to improve policies and practices to tackle diversion in arms transfers.

Two presidencies of the ATT Conference of States Parties (CSP) have selected diversion as their core focus for their terms. During the CSP4 process, Japan proposed revisiting the suggestions offered in Module 10 of the United Nations Office for Disarmament Affairs's ATT implementation toolkit on diversion<sup>13</sup> in order to help States share information and experiences in addressing diversion.<sup>14</sup> Japan also proposed including contact information for national points of contact on the restricted section of the ATT Secretariat website as well as information on States Parties' best practices in addressing diversion and insights on prior cases of arms diversion, illicit arms transfers, trafficking routes and methods, and entities involved — among other details and information.<sup>15</sup> During the CSP6 process, Argentina emphasized the roles of transparency and the exchange of information in diversion prevention.<sup>16</sup> The adoption of the Diversion Information Exchange Forum decision at the virtual CSP6 fulfilled a key objective of this theme.

Within the ATT process, the Working Groups on Effective Treaty Implementation (WGETI) and on Transparency and Reporting (WGTR) have taken steps to help ATT States Parties better address and develop measures to mitigate the risks of diversion. In particular, WGETI selected diversion as one of its first three priority issue areas and created a sub-working group on diversion during the preparatory process for the 4<sup>th</sup> Conference of States Parties to the ATT. The sub-working group has considered risks of diversion throughout the different stages of the arms transfer chain and, in 2018, produced what has since come to be known as a living document on “possible measures to prevent and address diversion” — which contains a list of actions that States can take to prevent and address diversion.<sup>17</sup> In 2020, the sub-working group received a revised multi-year work plan following meeting cancellations and delays caused by the global

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<sup>12</sup> The legal commentary on the ATT highlights several provisions within the treaty text that support and facilitate counter-diversion efforts, including Article 5 on general implementation, Article 7 on export and export assessment, Article 13 on reporting, and Article 15 on international cooperation — among others. For additional insights, see: Stuart Casey-Maslen, Andrew Clapham and Gilles Giacca, “Article 6. Prohibitions” in *The Arms Trade Treaty — A Commentary* (New York: Oxford University Press, 2016) and Clare da Silva and Brian Wood, eds., *Weapons and International Law: the Arms Trade Treaty* (Gent: Larcier, 2015).

<sup>13</sup> The United Nations Office for Disarmament Affairs created an ATT implementation toolkit to serve as a guide for States and that features 10 modules across a range of topics, including a module dedicated specifically to preventing diversion. Module 10 contains an overview of how the ATT addresses the issue of diversion, offers details on various causes of diversion, and provides insights on preventive measures that States Parties can take to help address the risk of diversion in their arms transfers as well as actions that can be taken if diversion is detected.

<sup>14</sup> Government of Japan, “Addressing Diversion of Conventional Arms” (working paper presented to the ATT Working Group on Effective Treaty Implementation, 25 May 2018), [https://www.thearmstradetreaty.org/hyper-images/file/Working\\_Paper\\_-\\_Japan\\_-\\_Addressing\\_Diversion\\_in\\_Conventional\\_Arms\\_25\\_May\\_2018/Working\\_Paper\\_-\\_Japan\\_-\\_Addressing\\_Diversion\\_in\\_Conventional\\_Arms\\_25\\_May\\_2018.pdf](https://www.thearmstradetreaty.org/hyper-images/file/Working_Paper_-_Japan_-_Addressing_Diversion_in_Conventional_Arms_25_May_2018/Working_Paper_-_Japan_-_Addressing_Diversion_in_Conventional_Arms_25_May_2018.pdf).

<sup>15</sup> Government of Japan, “Facilitating Information Exchange and Treaty Implementation via the ATT Website” (working paper presented to the ATT Working Group on Transparency and Reporting, 25 May 2018), [https://www.thearmstradetreaty.org/hyper-images/file/Working\\_Paper\\_-\\_Japan\\_-\\_Facilitating\\_Information\\_Exchange\\_25\\_May\\_2018/Working\\_Paper\\_-\\_Japan\\_-\\_Facilitating\\_Information\\_Exchange\\_25\\_May\\_2018.pdf](https://www.thearmstradetreaty.org/hyper-images/file/Working_Paper_-_Japan_-_Facilitating_Information_Exchange_25_May_2018/Working_Paper_-_Japan_-_Facilitating_Information_Exchange_25_May_2018.pdf).

<sup>16</sup> President of the Sixth Conference of States Parties to the ATT, “Draft Decision of the Sixth Conference of States Parties for Consideration and Adoption via Silent Approval” (paper presented 20 July 2020), [https://www.thearmstradetreaty.org/hyper-images/file/Announcement%20-%20ATT%20CSP6%20Draft%20Decision%202017%20-%20CSP6%20President%20Working%20Paper\\_EN/Announcement%20-%20ATT%20CSP6%20Draft%20Decision%2017%20-%20CSP6%20President%20Working%20Paper\\_EN.pdf](https://www.thearmstradetreaty.org/hyper-images/file/Announcement%20-%20ATT%20CSP6%20Draft%20Decision%202017%20-%20CSP6%20President%20Working%20Paper_EN/Announcement%20-%20ATT%20CSP6%20Draft%20Decision%2017%20-%20CSP6%20President%20Working%20Paper_EN.pdf).

<sup>17</sup> ATT Working Group on Effective Treaty Implementation, “Chair’s Draft Report to CSP4, Annex D: Possible Measures to Prevent and Address Diversion” (draft report presented at the 4<sup>th</sup> Conference of States Parties to the ATT, 20 July 2018), 18-24, [https://www.thearmstradetreaty.org/hyper-images/file/ATT\\_CSP4\\_WGETI\\_Draft\\_Report\\_ENI/ATT\\_CSP4\\_WGETI\\_Draft\\_Report\\_EN.pdf](https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP4_WGETI_Draft_Report_ENI/ATT_CSP4_WGETI_Draft_Report_EN.pdf).

COVID-19 pandemic, and plans to further explore practical measures for assessing the risk of diversion as well as discuss, at future dates, the roles of importing and transit/transshipment States in preventing diversion as well as post-delivery cooperation.<sup>18</sup>

As mentioned above, CSP6 established the Diversion Information Exchange Forum (DIEF), as proposed by the Working Group on Transparency and Reporting, which is intended to serve as a mechanism for informal voluntary information exchanges between States Parties and signatory States on “concrete cases of suspected or detected diversion and for sharing concrete, operational diversion-related information.”<sup>19</sup> The DIEF is part of a three-tier approach established by the CSP process to discuss diversion:

1. A subgroup for the exchange of policies to prevent and mitigate diversion,
2. A forum to exchange information on policies and operational implementation of measures to prevent and mitigate diversion, and
3. A mechanism for informal meetings to discuss specific cases of diversion that have been detected or suspected that can preserve the confidentiality of the information.<sup>20</sup>

However, the terms of reference for the DIEF have not been made public and it is unclear how the forum will operate and if it will include non-government experts that may have information or knowledge to share with States Parties. The first formal meeting of the DIEF will be organized by the president of 7<sup>th</sup> Conference of States Parties and hosted on a yet-to-be-determined date in 2021.

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<sup>18</sup> ATT Working Group on Effective Treaty Implementation, “Co-Chairs’ Draft Report to CSP6, Annex C: Revised Multi-Year Work Plan for the WGETI Sub-Working Group on Article 11 (Diversion)” (draft report presented at the 6<sup>th</sup> Conference of States Parties to the ATT, 17 July 2020), 13-18, [https://thearmstradetreaty.org/hyper-images/file/ATT\\_CSP6\\_WGETI%20Draft%20Report\\_with%20Annexes\\_EN/ATT\\_CSP6\\_WGETI%20Draft%20Report\\_with%20Annexes\\_EN.pdf](https://thearmstradetreaty.org/hyper-images/file/ATT_CSP6_WGETI%20Draft%20Report_with%20Annexes_EN/ATT_CSP6_WGETI%20Draft%20Report_with%20Annexes_EN.pdf).

<sup>19</sup> ATT Working Group on Transparency and Reporting, “Co-Chairs’ Draft Report to CSP6” (working paper presented to the 6<sup>th</sup> Conference of States Parties to the ATT, 17 July 2020), [https://www.thearmstradetreaty.org/hyper-images/file/ATT\\_CSP6\\_WGTR%20Draft%20Report\\_with%20Annexes\\_EN\\_min/ATT\\_CSP6\\_WGTR%20Draft%20Report\\_with%20Annexes\\_EN\\_min.pdf](https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP6_WGTR%20Draft%20Report_with%20Annexes_EN_min/ATT_CSP6_WGTR%20Draft%20Report_with%20Annexes_EN_min.pdf).

<sup>20</sup> President of the Sixth Conference of States Parties to the ATT, “Transparency and Exchange of Information: Its Role in the Prevention of Diversion” (working paper presented 28 July 2020), [https://www.thearmstradetreaty.org/hyper-images/file/ATT\\_CSP6\\_President's%20Working%20Paper%20on%20Transparency%20and%20Information%20Exchange\\_EN\\_Rev1/ATT\\_CSP6\\_President's%20Working%20Paper%20on%20Transparency%20and%20Information%20Exchange\\_EN\\_Rev1.pdf](https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP6_President's%20Working%20Paper%20on%20Transparency%20and%20Information%20Exchange_EN_Rev1/ATT_CSP6_President's%20Working%20Paper%20on%20Transparency%20and%20Information%20Exchange_EN_Rev1.pdf).





## GOOD PRACTICE TO PREVENT AND MITIGATE DIVERSION

**G**overnments have developed several elements of good practice to prevent and mitigate diversion. Such examples are at the national and regional levels and are organized within the two approaches of (1) measures to prevent and mitigate the risk of diversion and (2) measures taken when a diversion is detected. The following list highlights several such measures that States can take to address diversion through their national systems. While not exhaustive, the list is informed by elements identified in the ATT initial report on measures undertaken to implement the treaty, the national report on implementation of the UN Programme of Action on Small Arms and Light Weapons and the International Tracing Instrument, as well as interviews with States.

### Measures to Prevent and Mitigate the Risk of Diversion

- ▶ Assessing the risk of diversion of an export
- ▶ Establishment of a national control system to implement prevention and mitigation measures
- ▶ Establishment of criminal offenses in national law for deliberate acts of arms diversion, including provisions for criminal investigations and prosecutions
- ▶ Provision, upon request, of mutual legal assistance
- ▶ Provision, upon request, of end-use/r documentation to the exporting State
- ▶ Measures in place to verify or seek to authenticate end-user certificates or other types of end-user documentation
- ▶ Measures in place aimed at preventing the forgery and misuse of end-user certificates or other types of end-user documentation
- ▶ Requirement for end-use/r assurances from importing State (or industry)

- ▶ Examination, where appropriate, of parties involved in a transfer
- ▶ Requirement, where appropriate, for additional documentation, certificates, assurances for a transfer
- ▶ Exchange of relevant information with other States on effective measures to address diversion, as well as on illicit activities and actors
- ▶ Reporting to international or regional body(-ies) on measures taken to address diversion of transferred conventional arms
- ▶ Regular meetings with key stakeholders engaged in process or that can provide information
- ▶ Reporting / sharing information on denials and justifications for denials with others
- ▶ Involvement of key agencies — whole of government approach — including customs, intelligence, police, etc. when relevant
- ▶ Controls on retransfers
- ▶ Post-shipment controls
- ▶ National stockpile management security systems and processes
- ▶ Robust record keeping and reporting
- ▶ Ensuring appropriate training of officials

## **Measures Taken When Diversion is Detected**

- ▶ Alerting potentially affected States
- ▶ Investigative and law enforcement measures at the national level
- ▶ Using international tracing mechanisms to identify points of diversion

Although measures to prevent diversion are required and also mentioned in the ATT and the UN PoA, specific types of good practice to counter diversion are not elaborated. This lack of specific good practice is also due to the way questions are asked in the templates for international reporting instruments — such as the ATT initial report and the UN PoA national report. The reporting templates often require States only to tick a yes or no box about whether they have such measures in place, and do not require details or descriptive insights on current practices. As a result, it is often challenging to identify what good practice measures are in place for preventing, detecting, and addressing weapons diversion, and how to analyse their effectiveness.

Despite the challenges with the reporting templates, some States have offered greater information in their national reports that can serve as examples of good practice. Many of these good practices are codified in other multilateral, regional and sub-regional instruments and good practice guides. The following examples offer a sample of different types of measures that States currently have in place to prevent diversion and to mitigate the risk of diversion.

# Examples of Current State Practice to Prevent and Mitigate the Risk of Diversion

## AUSTRALIA: ASSESSING THE RISK OF DIVERSION

When it comes to assessing the risk of diversion, Australia noted in its ATT initial report that “Risk is mitigated through the assessment process, by requiring the exporter to provide end-user statements (verifying what the end-user will do with the products), and ensuring that additional information like firearm’s licences, and import certification is provided. In addition export analysts check every destination, and consignee/end-user against Wassenaar denial lists, and entities of concern lists; and if in the end we consider the risk of diversion too high, we deny the export.”<sup>21</sup>

## CANADA: ASSESSING THE RISK OF DIVERSION

Canada reported that “...a rigorous risk assessment process [...] includes a number of questions related to the risk of diversion (and proliferation). Thus, when permit applications are consulted with various departments of the Government of Canada, consultation partners are asked to answer questions such as: Is there a strong likelihood that the proposed export may be diverted from its stated end-use or end-user? The Government of Canada advises exporters and brokers of controlled goods and technology that they also have a responsibility to conduct due diligence verifications of actual and potential foreign customers and to provide all relevant information in their permit applications.”<sup>22</sup>

## BRAZIL: MEASURES TO VERIFY OR SEEK TO AUTHENTICATE END-USER CERTIFICATES OR OTHER TYPES OF END-USER DOCUMENTATION

Brazil highlighted in its 2018 UN PoA national report that “According to paragraph 2 of Article 178 of Decree 3665, a declaration from the Brazilian diplomatic mission in the importing country or from the diplomatic mission in Brazil of the importing country is required.”<sup>23</sup>

<sup>21</sup> Government of Australia, “Initial Report on Measures Undertaken to Implement the Arms Trade Treaty, in Accordance with its Article 13(1),” (2015), <https://thearmstradetreaty.org/download/dbb08a3a-1d5e-3f1d-9511-aa80f4b414c5>.

<sup>22</sup> Government of Canada, “Initial Report on Measures Undertaken to Implement the Arms Trade Treaty, in Accordance with its Article 13(1),” (2020), <https://thearmstradetreaty.org/download/733233d5-8bb8-30f3-8a53-396909f9ae0e>.

<sup>23</sup> Government of Brazil, “National Report on the implementation of the Programme of Action on small arms and light weapons (PoA) and the International Tracing Instrument (ITI),” (2018), <https://unoda-poa.s3.amazonaws.com/reports/BRA-English-769-SUBMITTED.pdf>.

## ROMANIA: HOSTING REGULAR MEETINGS WITH KEY STAKEHOLDERS ENGAGED IN THE ARMS TRANSFER PROCESS

Romania indicated that it organizes “outreach activities with private actors to raise awareness on the existing risks related to a possible transaction” and offers free “specialized consultancy to legal persons and individuals with respect to the national export policy.”<sup>24</sup>

## EUROPEAN UNION: REPORTING AND/OR SHARING INFORMATION ON DENIALS AND JUSTIFICATIONS FOR DENIALS WITH OTHERS

In terms of reporting and/or sharing information with other States on denials and the justifications for said denials, EU Member States share information on transfer denials in an online system. EU Member States are required to ask for information on denials if a licensing request by another State is similar to what has been previously denied. Member States can also ask about sensitive destinations.<sup>25</sup>

## SWITZERLAND: CONTROLS ON RETRANSFERS

Switzerland noted in its ATT initial report that “The granting of a license for the export of finished products or for individual parts or assembly packages to a foreign government or a company acting on behalf of a foreign government requires a non-re-export declaration from the government of the country of destination. The requirement for a non-re-export declaration is waived if the case involves individual parts or assembly packages of negligible value. By issuing the non-re-export declaration, the country of destination confirms not to export, sell, lend, or gift the war material or to transfer it in any other way to third parties abroad without the consent of the Swiss Confederation.”<sup>26</sup>

<sup>24</sup> Government of Romania, “Initial Report on Measures Undertaken to Implement the Arms Trade Treaty, in Accordance with its Article 13(1),” (2015), <https://thearmstradetreaty.org/download/a9bfaf84-95fa-3a83-90b6-a43e65597417>.

<sup>25</sup> Author interview with EU official, 8 October 2020.

<sup>26</sup> Government of the Swiss Confederation, “Initial Report on Measures Undertaken to Implement the Arms Trade Treaty, in Accordance with its Article 13(1),” (2016), <https://thearmstradetreaty.org/download/06b4a15b-f55a-35db-98b5-0c3bed1f95d6>.

# Examples of Current State Practice to Prevent and Mitigate the Risk of Diversion

## LATVIA: CONTROLS ON RETRANSFERS

Latvia reported that it conducts “thorough evaluation[s] of end-user certificates in which no re-export or diversion clause must be included. If the circumstances require and allow, consultations via diplomatic and intelligence channels in the end-user state are made.”<sup>27</sup>

## SOUTH AFRICA: POST-SHIPMENT CONTROLS

South Africa noted in its 2014 UN PoA national report that when exporting, it requires a delivery verification certificate to confirm that the exported items reached their intended end user or intended importer in the importing State.<sup>28</sup>

## KAZAKHSTAN: POST-SHIPMENT CONTROLS

Kazakhstan indicated in its 2020 UN PoA national report that when importing, it grants the right to the exporting State to conduct a physical check at the point of delivery of the items transferred.<sup>29</sup>

## NETHERLANDS: ENSURING APPROPRIATE TRAINING OF OFFICIALS

The Netherlands noted that Dutch Customs has specialized officers (so-called Vraagbaak) that receive specialized training in the field of strategic goods and are trained to detect listed items and diversion risks.<sup>30</sup>

<sup>27</sup> Government of Latvia, “Initial Report on Measures Undertaken to Implement the Arms Trade Treaty, in Accordance with its Article 13(1),” <https://thearmstradetreaty.org/download/17a97cde-552b-3ed7-9110-0ab70164dc4e>.

<sup>28</sup> Government of South Africa, “Reporting Template for 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 (PoA),” (2014), <https://unoda-poa.s3.amazonaws.com/poa-reports-le/2014%40177%40South%20Africa%20UNPoA%20Report%202014.pdf>.

<sup>29</sup> Government of Kazakhstan, “National Report on the implementation of the Programme of Action on small arms and light weapons (PoA) and the International Tracing Instrument (ITI),” (2020), <https://unoda-poa.s3.amazonaws.com/reports/KAZ-English-1083-SUBMITTED.pdf>.

<sup>30</sup> Author interview with government official from the Netherlands, 27 August 2020.



## ZAMBIA: NATIONAL STOCKPILE MANAGEMENT SECURITY SYSTEMS AND PROCESSES

Zambia indicated in its 2020 UN PoA national report that it maintains standards and procedures on the management and security of small arms and light weapons (SALW) held by the authorized national forces, which include provisions on: the appropriate location of stockpiles; physical security measures; controlling access to the stocks; inventory management and accounting controls; staff training; security, accounting and control of SALW held or transported by operational units or authorized personnel; procedures and sanctions in the event of theft or loss; and procedures for managing and recording surplus weapons.<sup>31</sup>

## TRINIDAD AND TOBAGO: USING INTERNATIONAL TRACING MECHANISMS TO IDENTIFY POINTS OF DIVERSION

Regarding the use of international tracing mechanisms to identify points of diversion, Trinidad and Tobago noted that it employs a variety of tracing mechanisms, including the Integrated Ballistics Identification System (IBIS), the Electronic Tracing System (eTrace), and INTERPOL's Weapons Electronic Tracing System (formerly known as IWeTS).<sup>32</sup>

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<sup>31</sup> Government of Zambia, "National Report on the implementation of the Programme of Action on small arms and light weapons (PoA) and the International Tracing Instrument (ITI)," (2020), <https://unoda-poa.s3.amazonaws.com/reports/ZMB-English-1001-SUBMITTED.pdf>.

<sup>32</sup> Government of the Republic of Trinidad and Tobago, "Initial Report on Measures Undertaken to Implement the Arms Trade Treaty, in Accordance with its Article 13(1)," <https://thearmstradetreaty.org/download/1a04efd7-f017-36b4-94a2-c3b15948e312>.

Other good practice measures have also been identified by some national authorities, private sector business associations, and civil society organizations. These have not necessarily been mentioned in States' national reports, but can serve as useful elements for establishing national practice. For example:

- ▶ When exchanging information with States, include information to help develop a shared understanding of terminology for end-use and end-user documentation.<sup>33</sup>
- ▶ Engage with non-government stakeholders, such as industry and civil society, to exchange views and share information on a range of issues, such as incidents and risks of diversion, concerns relating to alleged serious violations of human rights and international humanitarian law, company liability considerations, establishing internal compliance systems, and other practical applications of control measures.
- ▶ Develop interagency processes and/or information exchange platforms that are available to all relevant ministries and agencies involved in an arms transfer to help identify and share information on risks.
- ▶ Provide trainings for detecting fraudulent information/behaviors.
- ▶ Provide trainings on risks of diversion and violations of international humanitarian law and international human rights law, including those related to gender-based violence.

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<sup>33</sup> United Nations Institute for Disarmament Research, "Strengthening End Use/r Control Systems to Prevention Arms Diversion: Examining Common Regional Understandings," Paul Holtom, (2017), <https://unidir.org/publication/strengthening-end-user-control-systems-prevent-arms-diversion-examining-common-regional>.



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DEFENCE FORCE

## CONCLUSION: NEXT STEPS FOR THE ATT PROCESS

**T**he ATT process has prioritized efforts to prevent and mitigate diversion. It has established numerous initiatives and opportunities to discuss potential measures, identify specific cases of diversion, and exchange information and good practice. However, diversion does not occur, nor can it be addressed, in isolation. Rather, diversion needs to be examined holistically — as an issue which can and does present itself at all points in the transfer chain and in a weapon’s lifecycle. Likewise, efforts to mitigate and respond to diversion must be multi-faceted and well-coordinated if they are to be effective.

A whole of government approach should contain several elements to ensure that diversion is mitigated and prevented at all levels. These efforts should not be siloed within a single agency but should instead be carried out across the various government agencies involved in the arms transfer chain.

1. States should ensure that they have in place “a strong national transfer control system and effective enforcement measures” coupled with “effective legislation for investigating and punishing theft, corruption, and other diversion-related offences.”<sup>34</sup>
2. States should also train government officials in detecting inconsistent or fraudulent information,<sup>35</sup> invest in physical security and stockpile management, and maintain robust reporting and record keeping mechanisms to ensure security and accountability.

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<sup>34</sup> Small Arms Survey, “Possible Measures to Prevent and Address Diversion: Supporting Effective Implementation of the Arms Trade Treaty,” 11; for a comprehensive review of systemic measures that States can take to prevent, detect, and address diversion in their implementation of the ATT, see: Brian Wood and Paul Holtom, “Systemic Measures for a National Control System,” in *The Arms Trade Treaty: Measures to Prevent, Detect, Address and Eradicate the Diversion of Conventional Arms*, (Geneva: United Nations Institute for Disarmament Affairs, with Conflict Armament Research, Small Arms Survey, and Stimson, 2020), 9-13.

<sup>35</sup> Small Arms Survey, “Possible Measures to Prevent and Address Diversion: Supporting Effective Implementation of the Arms Trade Treaty,” 11.

3. Given the complexity of the problem at hand, States should work with each other and with other relevant stakeholders in order to develop programs to prevent diversion and to address diversion risks. The ATT requires States Parties to cooperate in addressing diversion. This international cooperation should involve bilateral assessments as well as multilateral and regional and sub-regional cooperation. It should also involve outreach programs to the private sector, such as arms brokers, manufacturers, and shippers. States should also share information with one another on diversion risks and best practices.<sup>36</sup>
4. Licensing officers and relevant government officials should have a list of specific questions they can ask when conducting export assessments, pursuant to Article 11 obligations. These questions will be dependent on the type of actor involved in the transfer (e.g., export assessment, providing information as an importer/transit/transshipment State, etc.).

States can and should meaningfully reduce the risk of diversion by implementing these and other measures, not only because their efficacy is borne out by research and practical experience, but because doing so is consistent with their international legal obligations under the Arms Trade Treaty.

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<sup>36</sup> Small Arms Survey, “Possible Measures to Prevent and Address Diversion: Supporting Effective Implementation of the Arms Trade Treaty,” 11.



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# ANNEX

## GUIDANCE QUESTIONNAIRE ON DIVERSION

The following questions can be used by licensing officers and their information sources when undertaking a risk assessment or identifying good practice on diversion.

1. How does your State define diversion?

2. Which government ministries or agencies are involved in implementing measures to prevent diversion? What roles do they play?

- a. Customs
- b. Ministry of Defense
- c. Ministry of Economy
- d. Ministry of Finance
- e. Ministry of Foreign Affairs
- f. Ministry of Interior
- g. Other (please specify):

3. Does your State take systematic measures to prevent diversion and to mitigate the risk of diversion? (If yes, see below. If no, go to question #4.)

- a. Do you provide end-use/r documentation to the exporting State?
- b. Do you have measures in place to verify or seek to authenticate end-user certificates or other types of end-user documentation?
- c. Do you have measures in place aimed at preventing the forgery and misuse of end-user certificates or other types of end-user documentation?
- d. Do you require end-use/r assurances from importing State (or industry)?
- e. What additional documentation, certificates, or assurances for a transfer do you require?

4. If your State does not take preventive measures, including specific risk mitigation measures to prevent diversion, are there certain challenges to adopting/implementing preventive measures in your State's national transfer control system?

**5.** What measures does your State take when it detects a diversion of transferred conventional arms? Do you:

- a.** Alert potentially affected States?
- b.** Initiate investigations by law enforcement authorities with a view to possible prosecution of persons involved in the diversion?
- c.** Use international tracing mechanisms to identify points of diversion?

**6.** Does your State cooperate and exchange information with other States to mitigate the risk of diversion or inform others when it occurs?

- a.** If yes, what kind of cooperation and information exchange do you participate in?
- b.** Are there particular communication platforms that your State uses to cooperate and exchange such information?

**7.** Does your State undertake any of the following additional measures to prevent and minimize the risks of diversion? Please select all that apply.

- a.** Controls on retransfers
- b.** Controls on intermediaries involved in transfers
- c.** National stockpile management security systems and processes
- d.** Trainings for detecting and prosecuting fraudulent information/behaviors
- e.** Robust record keeping and reporting
- f.** Other (please specify)

**8.** How do you exchange relevant information with other States on effective measures to address diversion, as well as on illicit activities and actors?

**9.** Do you undertake regular meetings with key stakeholders engaged in processes related to conventional arms transfers and already transferred arms, as well as encourage stakeholders who can provide information on diversion to do so?



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