

END-USER CERTIFICATES: IMPROVING STANDARDS TO PREVENT DIVERSION

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I. Introduction

One of the most effective means of preventing small arms and light weapons (SALW) from reaching conflict zones or embargoed destinations is through the denial of export licences in situations where it is likely that the goods will be diverted within the buyer country or re-exported under undesirable conditions and thus enter the illicit market. Before these weapons can be exported from the manufacturing state, the exporter is usually required to show the relevant national authorities documentary evidence of the weapons' intended destination and use. In certain cases, these documents—whether government-issued end-user certificates (EUCs); similar non-government-issued documents; or other supporting documents, such as import licences—can be easily forged and are poorly scrutinized.¹

Many governments, particularly in parts of Africa, the Americas and Asia, continue to issue EUCs that do not contain many of the elements commonly considered necessary for informed assessment of an export licence application. Meanwhile, proper scrutiny of the documentation provided by the export licensing authority—an important element of the wider risk assessment process that should accompany any SALW export licence application—is often lacking.² Higher standards in the issuing and inspection of EUCs and related documents by national authorities would make a significant contribution to the prevention of cases of SALW diversion.

This paper looks at current practice in the issuing and verification of EUCs and other types of supporting document that are submitted with applications for licences to export SALW and makes recommendations for improvements. Section II considers the role of government-issued EUCs and other types of documentation in the export licensing process, including details of internationally agreed best practice guidelines. Section III gives examples of recent documents, both government- and non-government-issued, that fail to comply with existing international best practices in this area or have the potential to facilitate cases of diversion. Section IV discusses proposals for

¹ See e.g. Greene, O. and Kirkham, E., *Small Arms and Light Weapons Transfer Controls to Prevent Diversion: Developing and Implementing Key Programme of Action Commitments*, Biting the Bullet Policy Report (Saferworld and University of Bradford: Bradford, Aug. 2007).

² It is frequently pointed out that 'while end-use certificates are an essential element of end-use controls they are not a substitute for a full assessment of risk involving both licensing authorities and the exporter'. Wassenaar Arrangement, 'Statement of understanding on implementation of end-use controls for dual-use items', agreed at the 2007 plenary, <http://www.wassenaar.org/public_documents/index.html>.

SUMMARY

● Improving standards in the issuing and inspection of end-user certificates (EUCs) and related documents would significantly contribute to preventing the diversion of small arms and light weapons (SALW) to the illicit market. This would limit the chances of SALW reaching conflict zones or embargoed destinations.

Current international standards and national practices for the issuing and verification of EUCs and other types of supporting documentation, which are submitted when applications are made for SALW export licences, are not always adequate or properly monitored. Recent government- and non-government-issued documents provide examples of failure to comply with international best practices in this area—leading to the potential for diversion.

Exchanges of information on government-issued EUCs and other supporting documents together with the improvement of government practices are vital. The submission and examination of government-issued EUCs and other supporting documents represents just one element of the risk assessment process to which any SALW export licence application should be subjected. However, raising standards in this area could go a long way to preventing cases of SALW diversion.



exchanges of information on government-issued EUCs and other supporting documents and offers recommendations to improve state practices in issuing and monitoring EUCs. Section V contains conclusions.

II. Types of documentation

The types of documentation provided by exporters in support of a licence application vary depending on the nature of the transfer, the type of recipient or importer, and the national licensing system in the exporting country. If the intended importer of the goods is a state entity, exporters must usually provide a government-issued EUC. An EUC is a document issued by or on behalf of the end-user that identifies, at a minimum, the material to be trans-

The central role of government-issued EUCs in the export licensing process is stressed in numerous agreements and best practice guidelines

ferred, the destination country and the end-user. In addition, it may contain information about the exporter and assurances regarding the use and potential re-transfer of the goods, thereby providing additional checks on the potential risk of diversion. If the importer of the goods is a non-state entity, other types of documentation may be required. For example, the export licensing authority may require an EUC issued by the non-state entity, an import licence,³ or an import certificate.⁴ Other required documentation may include official purchase orders or a delivery verification certificate.⁵ These documents play different roles in the licensing process and impose different legal obligation on the entity that receives or issues the document.

International guidelines on government-issued end-user certificates

The central role of government-issued EUCs in the export licensing process is stressed in numerous agreements and best practice guidelines. For example, the 1996 United Nations guidelines for international arms transfers state that ‘a requirement by the exporter for import licences or verifiable end-use/end-user certificates for international arms transfers is an important measure to prevent unauthorized diversion’.⁶ In addition, the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects commits states to using ‘authenticated end-user certificates and effective legal and enforcement measures’ when

³ An import licence is issued by the authorities of the country where the end-user is located. It gives the end-user permission to import a given item in a specific quantity. The importing country requires this for its own purposes (in the case of arms, as a public safety measure). Not all countries require an import licence for SALW.

⁴ An import certificate is not provided by the end-user, but by a trusted third party. This might be the government of the importing country, but it might also be a body such as a chamber of commerce. It is a certified commitment by the trusted third party that the end-user intends to import a given item in a specific quantity. One type of import certificate is the international import certificates (IIC), which is used by certain states. IICs were established in the 1950s by the Coordinating Committee for Multilateral Export Controls (CoCom). Although CoCom was dissolved in 1994, many states continue to issue IICs. For more information see Berkol, I. and Moreau, V., *Post-Export Controls on Arms Transfers: Delivery Verification and End-Use Monitoring* (Group for Research and Information on Peace and Security: Brussels, 2009).

⁵ A delivery verification certificate is issued by the authorities of the country where the end-user is located. It is a confirmation that the authorized shipment actually arrived at the end-user.

⁶ United Nations, Guidelines for international arms transfers in the context of General Assembly Resolution 46/36 H of 6 Dec. 1991, A/51/42, 22 May 1996.



controlling the export and transit of SALW.⁷ The Organization of American States (OAS) 1997 Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials stresses the importance of government-issued EUCs and related documentation in the export licensing process, as does the 2004 Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa.⁸

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA), the Organization for Security and Co-operation in Europe (OSCE) and the European Union (EU) have also produced detailed best practice guidelines. These guidelines detail the types of documentation that export licensing authorities should require to be submitted with export licence applications and the types of information and assurance they should contain. All of the guidelines also stress the need to verify the contents of the documentation as part of a broader assessment of the risk of diversion that the proposed transfer presents (see table 1).

The OSCE's 2000 Document on Small Arms and Light Weapons states that 'participating States agree . . . that no export licence is issued without an authenticated end-user certificate, or some other form of official authorization'.⁹ The 2004 OSCE's *Handbook of Best Practices on Small Arms and Light Weapons* and its 2004 Decision no. 5/04, 'Standard elements of end-user certificates and verification procedures for SALW exports', go into more detail, listing the documents that a prospective exporter might be required to submit, together with the information that an EUC should include.¹⁰

The Wassenaar Arrangement's 1999 'End-user assurances commonly used indicative list', which was amended in 2005, provides 'a non-binding list of end-use assurances to be used by Participating States at their discretion'.¹¹ In 2005 the WA participating states agreed a revised version of the indicative list, based on a survey of states' existing practices.¹² The 2005 list provides additional information on certain of the elements included in the 1999 version and also divides them into 'essential' and 'optional' elements.¹³

⁷ United Nations, General Assembly, 'Programme of action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects', A/CONF.192/15, July 2001, section II, para. 12.

⁸ The Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials was signed on 14 Nov. 1997 and entered into force on 1 July 1998; its text is available at <<http://www.oas.org/juridico/english/Treaties/a-63.html>>. The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa was signed in April 2004 and entered into force in May 2006; its text is available at <[http://www.recsasec.org/pdf/Nairobi Protocol.pdf](http://www.recsasec.org/pdf/Nairobi%20Protocol.pdf)>.

⁹ OSCE, Forum for Security Co-operation, 'OSCE document on small arms and light weapons', 24 Nov. 2000, <<http://www.osce.org/fsc/13281.html>>.

¹⁰ OSCE, 'Best practice guide on export control of small arms and light weapons', *Handbook on Best Practices on Small Arms and Light Weapons* (OSCE: Vienna, 2003), <http://www.osce.org/fsc/item_11_13550.html>, pp. 53–54; and OSCE, Forum for Security Co-operation, 'Standard elements of end-user certificates and verification procedures for SALW exports', Decision no. 5/04, document FSC/DEC/5/04, 17 Nov. 2004, <<http://www.osce.org/item/1699.html?html=1>>.

¹¹ Wassenaar Arrangement, 'End-user assurances commonly used: consolidated indicative list', adopted in 1999, revised in 2005, <<http://www.wassenaar.org/publicdocuments/>>.

¹² Anthony, I. and Bauer, S., 'Transfer controls', *SIPRI Yearbook 2006: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2006), p. 785.

¹³ Wassenaar Arrangement (note 11).



Table 1. Elements that export licensing authorities should demand in government-issued end-user certificates

Element	Recommended by		
	European Union	Wassenaar Arrangement	OSCE
<i>Essential elements</i>			
The details of the exporter and end-user (at least name, address and business name) ^a	x	x	x
Contract number or order reference and date	–	–	x
Country of final destination	x	x	x
A description of the goods being exported (type, characteristics) or reference to the contract concluded with the authorities of the country of final destination	x	x	x
Quantity and/or value of the exported goods	x	x	x
Signature, name and position of the end-user’s representative	x	x	x
The date of issue of the end-user certificate	x	x	x
Indication of the end-use of the goods	x	x	x
An undertaking, where appropriate, that the goods being exported will not be used for purposes other than the declared use	x	x	x
<i>Additional, optional elements</i>			
A clause prohibiting re-export of the goods covered in the certificate	x	x	x
Full details, where appropriate, of any intermediaries involved in the transfer	x	x	x
A commitment by the importer to provide the exporting state with a delivery verification on request	x	x	x
Certification that the goods will be installed at the premises of the end-user or will be used only by the end-user	–	x	–
Agreement by the importer/end-user to allow on-site verification	–	x	–
Assurance from the importer/end-user that any re-exports will only be carried out under the authority of the importer’s/end-user’s export licensing authorities	–	x	–
An undertaking from the importer/end-user not to divert or relocate the goods covered by the end-use certificate/statement to another destination or location in the importing country	–	x	–

OSCE = Organization for Security and Co-operation in Europe; x = Element recommended.

^a In the case of an export to a firm that resells the goods on the local market, the firm is regarded as the end-user.

Sources: Organization for Security and Co-operation in Europe (OSCE), ‘Best practice guide on export control of small arms and light weapons’, *Handbook on Best Practices on Small Arms and Light Weapons* (OSCE: Vienna, 2003), pp. 53–54; OSCE, Forum for Security Co-operation, ‘Standard elements of end-user certificates and verification procedures for SALW exports’, Decision no. 5/04, document FSC/DEC/5/04, 17 Nov. 2004, <<http://www.osce.org/item/1699.html?html=1>>; Wassenaar Arrangement, ‘End-user assurances commonly used: consolidated indicative list’, adopted in 1999, revised in 2005, <http://www.wassenaar.org/public_documents/>; and Council of the European Union, User’s Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, document 9241/09, Brussels, 29 Apr. 2009.

The EU’s ‘User’s Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment’ (the EU Common Rules) includes a section on best practices in the area of end-user certificates.¹⁴ New language was introduced to the User’s Guide in June 2006 in order to bring the document into line

¹⁴ Council of the European Union, User’s Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, document 9241/09, Brussels, 29 Apr. 2009.



with the WA's 2005 indicative list.¹⁵ The EU's 2006 annual report notes that 'with a view to further enhancing and expanding best practices in this area a survey among Member States on national requirements and policies for end-user certificates was initiated to identify possible common elements and/or approaches'.¹⁶

States use EUCs, import certificates and other documents discussed above differently when making export licence decisions. In some states the decision about which documents and assurances to require is made on a case-by-case basis as determined by the licensing authority. In other states the types of documents that are required is laid out in export control legislation. A chapter of the *Small Arms Survey 2008* explores differing national practices in this area and concludes that 'leading small arms exporting states seem to have in place at the national level the basic components to prevent unauthorized end use'.¹⁷ However, the manner in which these components are implemented, including the extent to which the information contained in end-user documentation is verified in advance of export, remains unclear.¹⁸

Other types of documentation used in the export licensing process

In situations where a government agency is neither the end-user nor the final consignee, government-issued EUCs cannot be submitted in support of an export licence application and other documentation must take their place. In these situations the most commonly used documents are: (a) a privately issued EUC (sometimes referred to as an end-user statement) issued by the commercial entity purchasing the goods; (b) an import licence, issued by the government of the state to which the goods are being delivered; or (c) an import certificate, also issued by the government of the state to which the goods are being delivered.

There are no agreed international or regional standards with regard to import licences and import certificates

There are no agreed international or regional standards with regard to import licences and import certificates, even within the EU, and different countries handle the issue in different ways depending on their national priorities. Relevant guidelines and best practice documents focus mainly on government-issued EUCs and seldom refer to privately issued EUCs, import licences or import certificates. A 2005 survey of the then 25 EU member states found that 22 had systems for issuing import licences in place for all imports of controlled items; 2 did not issue import licences in all situations (the Netherlands and the United Kingdom); and 1 (Sweden) did not require issue licences in any situation (see box 1).¹⁹

The Wassenaar Arrangement's indicative list of commonly used end-user assurances does not make specific exceptions for situations in which the end-user or the final consignee is a commercial entity. The indicative list

¹⁵ Council of the European Union, Eighth Annual Report According to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, *Official Journal of the European Union*, C 250, 16 Oct. 2006.

¹⁶ Council of the European Union (note 15).

¹⁷ Small Arms Survey, 'Who's buying? End-user certification', *Small Arms Survey 2008: Risk and Resilience* (Cambridge University Press: Cambridge, 2008).

¹⁸ Small Arms Survey (note 17).

¹⁹ European Commission, Enterprise and Industry Directorate-General, 'Intra-Community transfers of defence products', Unisys, Brussels, Feb. 2005.

**Box 1. An alternative to end-user certificates: the case of Sweden**

At least one government has formulated an alternative approach to the issue of end-user certificates (EUCs). Sweden produces its own EUCs rather than relying on documentation issued by the end-user. The EUCs are printed on banknote paper, and a Swedish exporter must see that they are completed by their proposed customers before an export licence may be issued. A signed copy of the EUC is then sent to the Swedish licensing authority via the Swedish embassy in the importing country.^a For exports of small arms and light weapons, the Swedish authorities also require a small arms and ammunition certificate that the end-user provides to the Swedish exporter on its official letterhead. This certificate has to be provided to the Swedish licensing authority as part of the licence application.^b However, most export licensing authorities rely on documentation issued by the importer government when making their assessments of an export licence application.

^a Swedish Agency for Non-Proliferation and Export Controls, 'End-user certificate', 16 July 2009, <<http://www.isp.se/sa/node.asp?node=543>>.

^b Swedish Agency for Non-Proliferation and Export Controls, 'Certificates and other forms', 16 July 2009, <<http://www.isp.se/sa/node.asp?node=551>>.

only states that 'in the case of an export to a firm which resells the goods on the local market, the firm will be regarded as the end-user', implying that EUCs issued by commercial entities are also acceptable.²⁰ No mention is made of import licences or import certificates. The WA's 2002 'Best practice guidelines for exports of small arms and light weapons', which were amended in 2007, note that 'Participating States will take especial care when considering exports of SALW other than to governments or their authorised agents.'²¹

The EU's User's Guide does not mention import licences in the list of documentation that export licensing officials might demand. However, it does state that 'if the importer is a company', the following questions should be asked: 'Is the company known?'; 'Is the company authorized by the government in the recipient state?'; and 'Has the company previously been involved in undesirable transactions?'²²

The OSCE Handbook, however, does specifically address situations in which the end-user is not a government agency, noting that 'The type of EUCs required may differ according to whether the recipient is a government end-user or a private end-user'.²³ The OSCE Handbook also notes that 'where an export is made to a non-governmental end-user, the government in the receiving State is required to validate the EUC and/or the exporter is required to present the licensing authority some other form of official authorization, such as an import licence or a copy of the concession of the consignee'.²⁴

The UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition also makes specific reference to import licences, noting that states parties 'shall establish or maintain an effective system of export and import licensing or authorization'. Such licences or authorizations and the accompanying documentation should contain information on 'the place and date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a

²⁰ Wassenaar Arrangement (note 11).

²¹ Wassenaar Arrangement, 'Best practice guidelines for exports of small arms and light weapons (SALW) (agreed at the 2002 Plenary and amended at the 2007 Plenary)', <<http://www.wassenaar.org/publicdocuments/>>.

²² Council of the European Union (note 14).

²³ OSCE, 'Best practice guide on export control of small arms and light weapons' (note 10), pp. 53–54.

²⁴ OSCE, 'Best practice guide on export control of small arms and light weapons' (note 10), p. 54.



description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit'.²⁵

III. Typical problems

The following examples illustrate the types of problem related to EUCs and other supporting documents that need to be addressed in order to help prevent cases of diversion. These problems can be broadly categorized into three types: forgery of documents; false, misleading or incomplete information being provided on the end-use or end-user; and unauthorized diversion of authorized shipments. The cases themselves are divided between those involving government-issued EUCs and those involving privately issued EUCs, import licences or import certificates.

Problems with government-issued end-user certificates

Despite the existence of the various best practice guidelines, many states continue to produce government-issued EUCs that do not contain many of the core elements commonly accepted as necessary for an informed assessment of an export licence application (see table 1). Such documents can easily be abused in order to acquire SALW or ammunition for diversion onto the illicit market. At the same time, it is also worth remembering that even in situations where a government-issued EUC is submitted that contains all of the core elements laid down in the best practice guidelines, all aspects of the proposed transfer need to be closely scrutinized to assess whether or not it represents a potential risk of diversion.

Example 1. Missing essential information

The EUC reproduced in figure 1 was allegedly issued by the Ministry of Security of Equatorial Guinea in 2005. It provides few of the core elements recommended in the various best practices guidelines. For example, the exporter is not identified, which means that this document could be presented as part of more than one export licence application by more than one exporter or broker in more than one country. In addition, there is little information about the end-user, such as an address or contact number.

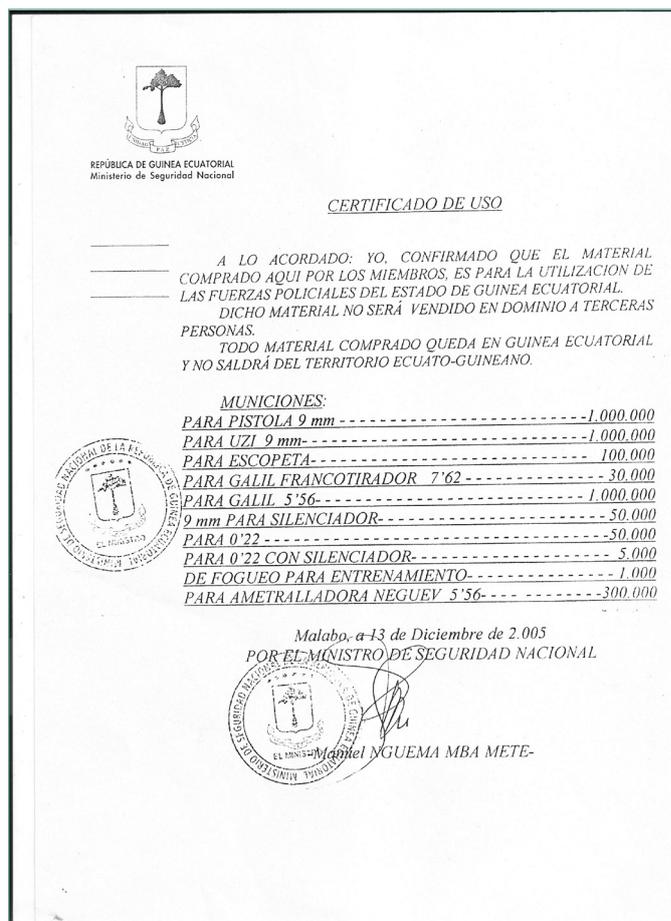


Figure 1. End-user certificate allegedly issued by the Ministry of Security of Equatorial Guinea

Source: Griffiths, H. and Wilkinson, A., *Guns, Planes and Ships: Identification and Disruption of Clandestine Arms Transfers* (South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons: Belgrade, Aug. 2007).

²⁵ United Nations, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, 8 June 2001.

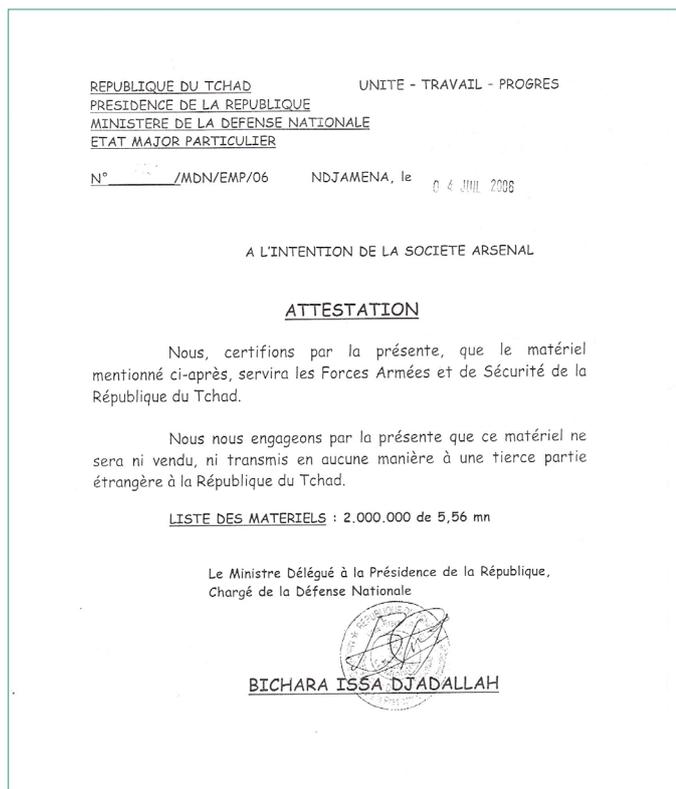


Figure 2. End-user certificate allegedly issued by the Government of Chad

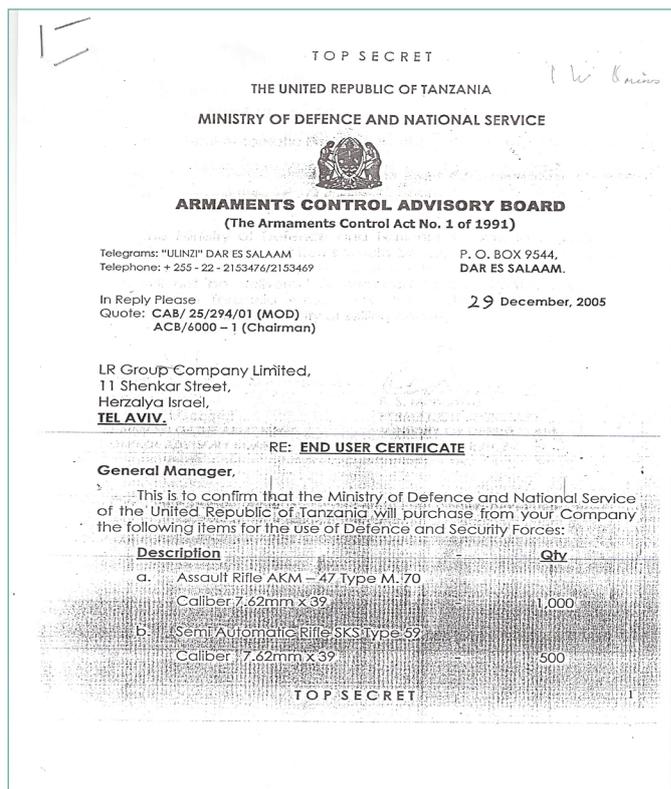


Figure 3. End-user certificate allegedly issued by the Government of Tanzania

Source: Griffiths, H. and Wilkinson, A., *Guns, Planes and Ships: Identification and Disruption of Clandestine Arms Transfers* (South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons: Belgrade, Aug. 2007).

Example 2. Easily forged or re-used

The document in figure 2 was allegedly issued by the Government of Chad and exhibits many of the problematic characteristics of certain EUCs. It lacks a ministerial or governmental seal, enabling falsification. In addition, there are no details about the exporter or exporting country, which allows this document to be presented as part of several export licence applications. Similarly, the space provided for an individual certification number has been left blank and no specific broker or agent is named as facilitating the transfer, enabling any number of entities to use the document.

Example 3. Inconsistent names

The third example, a document that was allegedly issued by the Government of Tanzania, provides many of the common core elements, including details about the exporter, the intermediary and the end-user's address and contact numbers. However, because the legislation of the exporting state did not prohibit such an application by another broker, this EUC was presented as part of an export licence application by an intermediary whose name was not that given in the EUC. In addition, the entity named in the EUC has been



noted in open-source documentation as having previously been involved in arms transfers to conflict zones in Africa.²⁶

Problems with other supporting documents

The lack of clear guidance on the issuing, monitoring and assessment of privately issued EUCs and of import licences and import certificates is unfortunate. An increasing number of non-governmental actors, including arms brokers and transport agents, are involved in global supply chains for defence and security goods, particularly SALW. Thus, the use of such forms of documentation is common. However, as the following examples make clear, without close oversight such documentation must ultimately rely on the probity of the commercial entities in question to ensure that arms are actually shipped to the stated destination and not diverted elsewhere.

Example 4. Diverted export

The British import licence and the privately issued EUC shown in figure 4 were submitted to the Bosnian authorities and the EU Military Operation in Bosnia and Herzegovina (EUFOR ALTHEA) as part of an export licence application in February 2005. Together with additional British import licences, they were used to obtain permission for the transfer of more than 100 000 AK-47 assault rifle derivatives, rocket launchers and mortars into the UK. Although at least 78 000 AK-47 assault rifle derivatives were imported into the UK, at least one shipment was diverted to Iraqi government forces.²⁷ In total, the British Government issued import licences for more than 200 000 AK-47 assault rifles between 2003 and 2005.

British legislation covering arms imports dates back to the beginning of World War II, when any arms procurer in possession of an import licence would almost certainly have been acting on behalf of the British Government.²⁸ The British customs authorities maintain that there is a '100% check on commercial imports of firearms'. However, they also acknowledge that 'officers have some discretion over how they execute that' and may confine themselves to a documentary check if the importer is 'a well known, regular shipper through their port'.²⁹ The British Parliamentary Committee on Arms Export Controls has recommended that the British Government should 'improve the arrangements for monitoring and controlling large volumes of weapons that enter the UK for destruction or re-export'.³⁰

²⁶ Feldman, Y., 'High times in Angola', *Haaretz*, 4 Jan. 2009; and Griffiths, H. and Wilkinson, A., *Guns, Planes and Ships: Identification and Disruption of Clandestine Arms Transfers* (South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons: Belgrade, Aug. 2007).

²⁷ Doward, J. and McDevitt, J., 'British firm under scrutiny for export of Bosnian guns to Iraq', *The Observer*, 12 Aug. 2007; and Griffiths and Wilkinson (note 26), pp. 93–97.

²⁸ British Import Licensing Board (ILB) official, Interview with the authors, London, Sep. 2006.

²⁹ British House of Commons, Defence, Foreign Affairs, International Development and Trade and Industry Committees, *Strategic Export Controls: 2007 Review* (Stationery Office: London, 23 July 2007).

³⁰ British House of Commons, Defence, Foreign Affairs, International Development, and Trade and Industry Committees (Quadripartite Committee), *Strategic Export Controls: 2007 Review*, First Joint Report of Session 2006–07 (Stationery Office: London, 7 Aug. 2007), para. 310.

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Details of Electronic Import Licences issued on 27 April 2005 and sent to HM Customs and Excise

Enclosure 1 AJM

PROCUREMENT MANAGEMENT SERVICES LTD
BASEMENT, UNIT 31
BYRON IND EST, BROOKFIELD RD
ARNOLD, NOTTINGHAM
NG5 7EU

Licence expires on: 26 October 2005

TURN: 806580331000

License Number	Quantity	Unit	COO	COC	Applicants Reference	Commodity Code	
3	GBSIL7731584D	40,000	Units	AC	BA	HPMS 13	ex Chapter 93

Description:
4000 x Assault Rifles - Various

Number of licences: 3

In case of any queries please contact: Import Licensing Branch, Queensway House, West Precinct, Billingham, TS23 2NF.
Tel: 01642 364333. Fax: 01642 533557 E-mail: enquiries.ibt@dti.gsi.gov.uk

Certified Copy
For information only
Signed: [Signature] Dated: 27/4/05
Department for Trade and Industry
Import Licensing Branch
Queensway House
Billingham
TS23 2NF
United Kingdom
Tel: +44(0)1642 364333

dti

dti

Procurement Management Services Ltd.
Tel / Fax : 01159831506
Mobile: 07802 41 4433 (24 hr)
Procurements@pmst.com

P.O Box 7918
Arnold
Nottingham
NG5 7WP

20 September 2004

END USER CERTIFICATE

"UNIS PROMEX" d.d.
Bosanska 13
71000 Sarajevo
Bosnia and Herzegovina

With the present document the company Procurement Management Services Ltd., Basement Unit 31, Byron Industrial Est, Brookfield Rd., Arnold, Nottingham NG5 7EU, United Kingdom confirms that the following goods will be imported to the United Kingdom for sale within the U.K. to bona fide dealers with authority or for reexport to other countries which are not under UN embargo.

Items as follows:

- 1. Rifles cal 7.62 mm**
Qty: 52,000 off
Note: on the basis of:
UK Import Licences from Nos: GBSIL 7549971A till GBSIL 7549983M
(13 documents in original)
- 2. Machine Gun**
Qty: 4000 off
Note: on the basis of:
U.K Import Licence from Nos: GBSIL7549971A till GBSIL 7549983M
(13 documents in original)
- 3. Mortar**
Qty: 2,200 off
Note: on the basis of:
U.K Import Licence from Nos: GBSIL 7549971A till GBSIL7549983M
(13 documents in original)

Yours faithfully,
Mr. I.M. Varley
Procurement Management Services

Figure 4. British import licence and privately issued end-user certificate

Source: Griffiths, H. and Wilkinson, A., *Guns, Planes and Ships: Identification and Disruption of Clandestine Arms Transfers* (South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons: Belgrade, Aug. 2007).

Example 5. Diverted export

The Swiss import certificate and the privately issued EUC shown in figure 5 were also submitted to the Bosnian authorities and to EUFOR ALTHEA in early 2005. The import certificate covered the transfer of 30 000 AK-47 type assault rifles, 59 000 000 rounds of ammunition, 2770 light machine guns, 300 sniper rifles and 113 heavy machine guns to Switzerland. The document stated that 'the importer has undertaken to import into Switzerland the abovementioned goods. The said goods are subject to official control as regards their importation'. However, apart from 4272 assault rifles that were transferred to Switzerland and 2273 light and heavy machine guns that may have been transferred to Switzerland, the arms exported on the basis of this import certificate were shipped to Iraq for the government forces.³¹ According to EUFOR ALTHEA, 24 199 980 AK-47 rounds (7.62 mm), 1 million heavy

³¹ Danssaert, P., Cappelle, J. and Johnson-Thomas, B., *Recent Arms Deliveries from the Successor States of the Former Yugoslavia* (International Peace Information Service: Antwerp, Mar. 2007), pp. 20, 21, 27, 28, 29, 30.

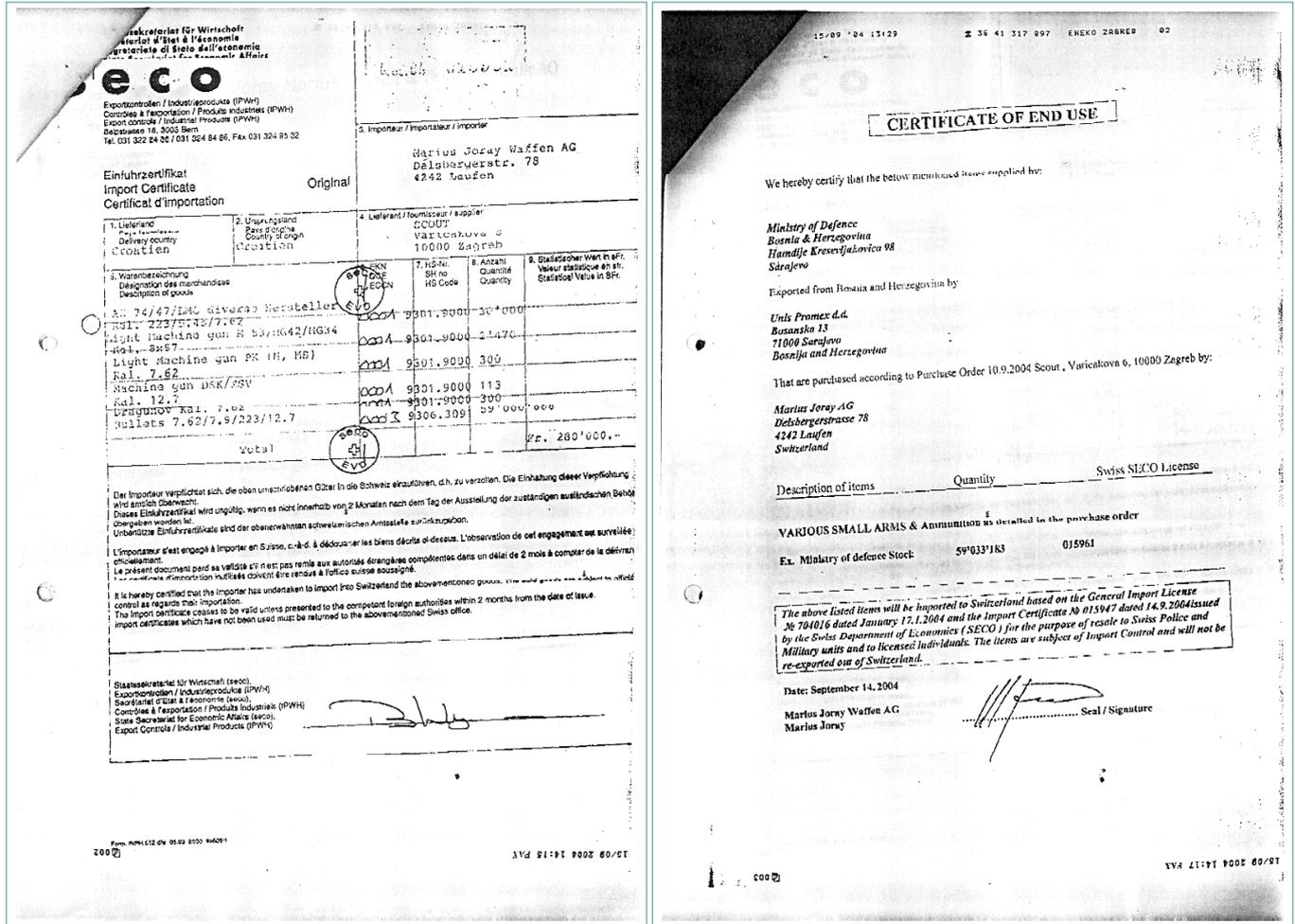


Figure 5. Swiss import certificate and privately issued end-user certificate

Source: Griffiths, H. and Wilkinson, A., *Guns, Planes and Ships: Identification and Disruption of Clandestine Arms Transfers* (South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons: Belgrade, Aug. 2007).

machine gun rounds and 11 960 AK-47 derivatives were transferred to Iraqi government forces on the basis of Swiss import certificates.³²

Under Swiss law the recipient of an import licence ‘must provide proof to SECO [the State Secretariat for Economic Affairs] that the goods have been imported by submitting the original customs receipts and invoices from the Supplier’.³³ In situations where an import licence is not used ‘the import certificate must be returned to SECO’. If the import certificate is only partially used, ‘the importer must report this in writing to SECO before expiry of the period allowed for the import of the goods’.³⁴ In this case, the arms broker cancelled the import licence in August 2005 after all the shipments

³² Danssaert, Cappelle and Johnson-Thomas (note 31).

³³ Swiss State Secretariat for Economic Affairs, Goods Control Ordinance, GKV, 25 June 1997 (Stand am 1. Feb. 2005), Article 23, Conditions ordinance on the export, import and transit of dual use goods and specific military goods, 946.202.1.

³⁴ Swiss State Secretariat for Economic Affairs, Goods Control Ordinance, GKV, 25 June 1997 (Stand am 1. Feb. 2005), Article 24, Unused or only partially used import certificates: ordinance on the export, import and transit of dual use goods and specific military goods, 946.202.1.



from Bosnia to Iraq had taken place.³⁵ The Swiss authorities were notified of the cancellation, but only after the mandatory time limit for cancellation.³⁶ The Swiss authorities launched an investigation into the case in late 2007.³⁷ The broker involved maintains that he had nothing to do with the arms shipments to Iraq and that the documentation was used by someone else without his knowledge.³⁸

IV. Recommendations

Current practices for government-issued EUCs and other types of documentation can be improved in order to address the problems identified above. The following recommendations are divided between regional activities, global activities and those focused at the European level.

Regional activities

If export licensing officials were to apply the principles laid down in the various best practice guidelines, this would go a long way towards preventing governments from issuing incomplete EUCs because governments that import SALW would, ultimately, be forced to issue documents that complied with the best practice standards. However, agreeing best practice in the production of government-issued EUCs would also assist in this process. In recent years proposals have been made by the OAS, the OSCE and the governments that signed the Nairobi Protocol regarding the development of standardized practices for preparation of government-issued EUCs, either through the implementation of agreed best practices or via confidential exchange of information. For example, the Nairobi Protocol commits states to ‘establish a sub-regional system to harmonize relevant import, export and transfer documents and end-user certificates’.³⁹

To date, the OSCE appears to have been the most active in moving this process forward. The OSCE Handbook states that ‘in order to prevent fraud and abuse, an EUC should take the format of, for example, an official form printed on banknote paper’.⁴⁰ OSCE Decision no. 5/04 notes ‘the usefulness of developing standard elements among the participating States for application to end-user certificates’ and states that the Forum for Security Co-operation may examine ‘the utilization of an appropriate common website within the OSCE which might include the sample format of end-user certificates issued by the participating States’.⁴¹ In November 2008 the OSCE agreed to ‘provide a sample format of their national end-user certificate and/

³⁵ Swiss licensing officials and federal police, *Staatssekretariat für Wirtschaft (SECO)*, Interviews with the authors, Bern, Sep. 2006.

³⁶ Swiss State Secretariat for Economic Affairs (note 34).

³⁷ Meier, P. J., ‘Verdacht auf Waffenschleberei’ [Suspected of arms trafficking], *SonntagsZeitung*, 18 Nov. 2007.

³⁸ Von Dohnányi, J., ‘“Marius waffen” im visier’ [‘Marius arms’ in focus], *Sonntags Blick*, 14 May 2006.

³⁹ Nairobi Protocol (note 8).

⁴⁰ OSCE, ‘Best practice guide on export control of small arms and light weapons’ (note 10), p. 53.

⁴¹ OSCE, Forum for Security Co-operation, ‘Standard elements of end-user certificates and verification procedures for SALW exports’ (note 10). To date, it is unclear if any states have submitted a ‘sample format of end-user certificates issued by the participating States’ as the decision suggests.



or other pertinent documents to all other participating States . . . by 27 March 2009'.⁴² As of September 2009, 47 of 56 participating OSCE states had exchanged sample formats for EUCs and other pertinent documents.⁴³

Regional exchanges of information on government-issued EUCs could make a significant contribution to preventing the diversion of SALW. Such exchanges would help to raise standards in terms of the amount of information states include in their EUCs, assist licensing officials in checking if an EUC is genuine and, most importantly, facilitate the processes of verification that should lie at the heart of any assessment of an export licence application. These exchanges should include information on the government ministries and agencies that are responsible for issuing EUCs, contact details for officials working in those ministries and sample EUCs.

Regional exchanges of information on government-issued EUCs could make a significant contribution to preventing the diversions of SALW

In order to cover states that have been highlighted as producing problematic government-issued EUCs, the information exchange would have to encompass several states in Africa, the Americas and Asia. In this regard, the confidential exchange of information that has been carried out within the OSCE is an important first step, but a step that also needs to be taken elsewhere to have a concrete impact on preventing cases of diversion. A possible way forward would be to approach regional organizations in Africa, the Americas and Asia in order to assess their interest in participating in such regional information exchanges.

In addition, information exchange in this area should cover the full range of documentation that a state might issue and that might subsequently be used in an export licence application in another state. In particular, exchanges of information should also cover privately issued EUCs, import licences and import certificates.⁴⁴

International activities

The UN Secretary-General has raised the issue of developing more standardized practices in the production of EUCs. The 2008 small arms report of the Secretary-General notes that states 'should develop an international framework for authentication, reconciliation and standardization of end-user certificates'.⁴⁵ The report also notes that 'without a standard or agreed format for an authenticated end-use certificate, government agencies in transit states have little means of establishing their veracity. This makes interdiction of illicit transfers extremely difficult without prior intelligence'.⁴⁶

⁴² OSCE, Forum for Security Co-operation, 'Information exchange with regard to sample formats of end-user certificates and relevant verification procedures', Decision no. 12/08, document FSC.DEC/12/08, 12 Nov. 2008.

⁴³ OSCE official, Communication with the authors, 25 Sep. 2009.

⁴⁴ OSCE Decision no. 5/04, which proposed an exchange of information on government-issued EUCs, does not mention privately issued EUCs, import licences or import certificates. OSCE, Forum for Security Co-operation, 'Standard elements of end-user certificates and verification procedures for SALW exports' (note 10), agenda item 6.

⁴⁵ United Nations, Security Council, 'Small arms', Report of the Secretary-General, S/2008/258, 17 Apr. 2008.

⁴⁶ United Nations (note 45).



In the debate following the release of the Secretary-General's report, four states—Brazil, Liechtenstein, Mexico and Peru—expressed support for the proposals on developing standardized EUCs.⁴⁷ However, the United States cautioned that 'illicit brokers were able to produce forgeries' and that 'what countries needed was a robust end-user monitoring system, in which they conducted pre- and post-shipment inspections, as well as random inspections following shipment'.⁴⁸ During formulation of the 2006 UN Programme of Action, proposals were made to develop a UN group of governmental experts on end-user certificates, but these proposals failed to gain universal support.⁴⁹

During 2010 states will convene to discuss both the scope and parameters of a future arms trade treaty and the ongoing implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. Both events present opportunities to re-address at the international level the issue of improving EUC standards. In particular, a group of governmental experts could be created to examine the types of activity and practice that have been developed at the national and regional levels and to recommend improved global standards.

Activities at the European level

There is also a need for improved standards in the issuing and monitoring of import licences and import certificates, particularly at the European level. As the examples given above illustrate, the documentation issued by European states with otherwise rigorous arms export legislation is open to abuse: import licences issued by European states have been used to secure export licences for goods that were subsequently diverted to other destinations. Importers should be required to report regularly on their import licences, and the relevant authorities should conduct regular inspections to verify the information provided. States should seek to develop effective mechanisms to share information between customs authorities and the agencies responsible for issuing import licences and import certificates. This would make it easier to compare licences issued with information on what was actually imported under those licences.

Importers should be required to report regularly on their import licences

In order to promote best practice in this area, states should consider information exchange—either under the auspices of the Council of the EU's Working Party on Conventional Arms Exports (COARM) or the OSCE—to compare national practices. Such an exchange would focus on the agencies responsible for issuing import licences and import certificates, the type of information that these documents contain and the steps to be taken to ensure that they are not abused.

⁴⁷ United Nations, Department of Public Information, 'Threat posed to international peace by uncontrolled trade in small arms and light weapons cannot be over-emphasized, Security Council told as it holds day-long debate on issue', Press Release SC/9316, 31 Apr. 2008.

⁴⁸ United Nations (note 47).

⁴⁹ Small Arms Survey, 'Back to basics, transfer controls in global perspective', *Small Arms Survey 2007: Guns and the City* (Cambridge University Press: Cambridge, 2007), p. 123.



As part of this process, EU member states could also consider examining the potential overlap between the guidelines and recommendations made in the EU Common Rules governing the control of exports of military technology and equipment and those included in the Council directives that establish a system of control over the movement of firearms within the EU.⁵⁰ While the EU Common Rules are designed to cover military goods and the directives are designed to cover firearms, it may be unclear into which category a particular transfer of SALW falls and what standards should apply. An examination of where gaps and overlaps exist in these two systems may help to tighten controls at the national level and prevent diversion.

V. Conclusions

The careful examination and the verification of documents produced in support of an export licence application are among the most effective means of assessing the risk that the goods being exported will be diverted to the illicit market. The production of more detailed EUCs by importing states would greatly assist export licensing officials in making such assessments. In addition, improved standards in the issuing and monitoring of import licences and import certificates would also close a significant loophole.

The agreement of best practices in the production of government-issued EUCs and other related documentation should not detract from the national licensing authorities' ultimate responsibility to ensure the accuracy of the information contained in EUCs and other documentation. Even documents that contain all of the elements recommended in the various best practice documents can still be used to carry out illicit or illegal transfers.

Abbreviations

EU	European Union
EUC	End-user certificate
OAS	Organization of American States
OSCE	Organization for Security and Co-operation in Europe
SALW	Small arms and light weapons
WA	Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies

⁵⁰ The Council directives are part of the European Community's single market legislation and establish provisions for people carrying guns across a border for personal use and for 'definitive' intra-Community transfers of firearms. Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons, *Official Journal of the European Union*, L179, 8 July 2008.

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SIPRI INSIGHTS ON PEACE AND SECURITY NO. 2010/3

END-USER CERTIFICATES: IMPROVING STANDARDS TO PREVENT DIVERSION

MARK BROMLEY AND HUGH GRIFFITHS

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