UNODA Occasional Papers
No. 21, December 2011

STUDY ON THE DEVELOPMENT OF A FRAMEWORK FOR IMPROVING END-USE AND END-USER CONTROL SYSTEMS

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The study presented in this publication was commissioned by the United Nations Office for Disarmament Affairs and was funded by the Government of Sweden.

This publication is also available at

www.un.org/disarmament

UNITED NATIONS PUBLICATION

Sales No. E.12.IX.5

ISBN 978-92-1-142283-2

Printed at the United Nations, New York

Contents

Abstract 1

1. Introduction 2

1.1 Outlining the issue 5

1.2 Use of terms 8

2. International instruments 12

2.1 Global instruments 13

2.2 Regional and other instruments 14

2.2.1 European Union 16

2.2.2 Organization for Security and Cooperation in Europe 18

2.2.3 Wassenaar Arrangement 20

3. General practices in regulating transfers to end users . . 21

3.1 Pre-shipment risk assessments of end use/users 22

3.2 End-use certification and authentication 26

3.3 Verification procedures 28

3.4 Variations in end-use/user certificates 31

4. End-use/user certificate elements required by exporting States 32

4.1 Variations in end-use/user certificate formats by exporting States 32

4.2 Common end-use/user certificate elements required by exporting States 34

4.3 Certification of non-re-export clauses by exporting States 35

4.4 Variations in the non-re-export clauses by exporting States 36

4.5 International import certificates 37

5. End-use/user certificate elements required by importing States 40

5.1 Variations in end-use/user certificate formats by importing States 41

5.2 Common end-use/user certificate elements required by importing States 41
5.3 Certification of non-re-export clauses by importing States 41
5.4 Variations in the non-re-export clauses by importing States 42

6. Key policy challenges 43
6.1 Minimum and optimal content of end-use/user certificates 43
6.2 Import certificates. 44
6.3 Arms embargoes. 45
6.4 Variations in sanctions and penalties 46
6.5 Corruption 47
6.6 Validation of end-use/user certificate procedures 49

7. Practical obstacles 51
7.1 Lack of institutional capacity 51
7.2 Pre-shipment inspections 52
7.3 Delivery verification and post-shipment measures 57
7.4 Challenges of free trade zones 60

8. Practical steps to assist States to build a common framework. 63
8.1 Conclusions 63
8.2 Recommendations on standards 63
8.2.1 General requirements for national end-use/user control systems. 63
8.2.2 End-use certification. 66
8.2.3 Authentication of end-use documentation 67
8.2.4 Verification and compliance of delivery and end use/users 68
8.2.5 International cooperation and assistance 71
8.2.6 Sharing information 72
8.2.7 Training and technical assistance 73
8.2.8 Law enforcement capacity and cooperation 73

Appendices

I. Sample of national standards for end-use/user certificates of exporting States compared with the minimum standards agreed by the Organization for Security and Cooperation of Europe, Wassenaar Arrangement and European Union 76

II. Countries that have specifically adopted the Convention relating to legalization of documents by Apostille 78

III. Tables illustrating variations in end-use/user certificates . . 80

Abstract

End-use certificates are designed to form a key line of defence against the diversion of authorized arms transfers. These documents are effective only in the context of a broader system that includes a comprehensive consideration of diversion risks at the licensing stage, the verification of end-user documentation and post-shipment controls.

Already, in 2002, the Security Council called upon States to establish an effective national end-user certificate system and to study the feasibility, as appropriate, of developing such a system at the regional and global levels, as well as information exchange and verification mechanisms.

Mindful of the role that end-use certificates could play in preventing the diversion of authorized arms transfers—in particular regarding small arms and light weapons and their ammunition—the United Nations Office for Disarmament Affairs (UNODA) decided to undertake this study to further enhance understanding of this highly topical issue.

The study assesses existing practices regarding end-user certification in a wide range of countries. It examines concepts, documents and procedures relating to the regulation of end use and end users of conventional arms. It also endeavours to identify political and practical obstacles to the development of an international framework for authentication, reconciliation and standardization of end-user certificates. Finally, it proposes practical guidelines to assist States in the development of a reliable system of end-user certification.

UNODA thanks the Government of Sweden for its generous grant, making this study possible.

1. Introduction

Diversion of authorized conventional arms transfers, including small arms, forms a consistent problem for security at both the regional and global level. A key measure to prevent diversion is for importing States to issue end-use certificates allowing licensing authorities in exporting countries to be assured of the trade partner's future control over the weapons shipment. These documents, however, are effective only in the context of a broader system that includes a comprehensive consideration of diversion risks at the licensing stage, the verification of end-use documentation and transit/post-shipment controls. Moreover, without a basic standard or agreed format for authenticated end-use certificates, Government agencies in transit and destination States have little means of establishing their veracity. This makes interdiction of illicit transfers extremely difficult without prior intelligence. Member States have recognized these difficulties and committed themselves to putting in place and implementing adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of small arms and light weapons (SALW), including through the use of authenticated end-use certificates and effective legal and enforcement measures.[1] The importance of putting in place measures to avoid the misuse and forgery of end-use certificates and for validating the authenticity of documentation submitted by brokers, including end-use certificates, was also recognized in the outcome document of the Third Biennial Meeting of States to Consider 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.[2] The outcome document recommended the implementation of the recommendations contained in the report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps

[1] Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, section II, paragraph 12 (A/CONF.192/15) and Report of the Secretary-General to the Security Council on the subject of Small Arms (S/2008/258).

[2] Report of the Group of Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons (A/62/163).

to enhance international cooperation in preventing, combating and eradicating illicit brokering in SALW.

The United Nations first recognized the importance of this aspect of national regulatory systems in 1996 when the General Assembly agreed upon guidelines for international arms transfers,[3] by which States are encouraged to establish and maintain an effective system of export and import licences for international arms transfers with requirements for full supporting documentation. United Nations groups of governmental experts have also called for action to improve end-use/user control systems. The Group of Experts appointed in 1998 to prepare a study on the problems of ammunition and explosives in all their aspects[4] recommended the international standardization of the form and content of end-use/end-user certificates.

In 2001 Member States adopted the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,[5] by which they committed themselves to putting in place and implementing adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of SALW, including the use of authenticated end-user certificates and effective legal and enforcement measures. In October 2001, in its report to the Security Council, the Panel of Experts on Liberia urgently recommended the establishment of a United Nations working group to develop the modalities for a standardized end-user certificate that would include the name, address and telephone number of the signing authority for the certificate, and the name, address, telephone number and arms trading licence of the broker(s) involved.[6]

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[3] United Nations, *Report of the Disarmament Commission*, General Assembly Official Records, Fifty-first Session Supplement No. 42 (A/51/42), 22 May 1996, annex I, Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991, paragraph 33.

[4] Report of the Group of Experts established pursuant to General Assembly resolution 52/38 J of 9 December 1997.

[5] Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, section II, paragraph 12 (A/CONF.192/15).

[6] Letter dated 26 October 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1343 (2001) concerning Liberia addressed to the President of the Security Council (S/2001/1015), paragraph 27.

A year later, by its Presidential Statement on the subject of small arms,[7] the Security Council urged Member States to consistently and responsibly utilize end-use certificates in their transfers of SALW and called upon States "to establish effective national end-use certificate systems and to study the feasibility, as appropriate of developing an end-use certificate system at the regional and global levels, as well as information exchange and verification mechanisms".

Subsequently, the Group of Experts to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in SALW encouraged States to put in place measures to prevent the forgery and misuse of end-user certificates or other documents that might be relevant in conducting brokering activities. States were also urged to set up internal measures, as appropriate, for validating the authenticity of documentation submitted by the broker, such as import licence or end-user certificates and/or letters of credit.[8]

Most recently, end-use/user certification and controls were discussed in the context of recent efforts by States to negotiate in the United Nations an arms trade treaty to regulate imports, exports and transfers of conventional arms, as highlighted below.[9] This treaty may provide a means of establishing global minimum standards for end-use/user controls systems of conventional arms.

Mindful of the above-mentioned expressions of interest in the issue by States, and in particular the 2002 Security Council call to study the feasibility of developing an end-use certificate system at the regional and global level as well as information exchange and verification mechanisms, the United Nations Office for Disarmament Affairs commissioned this study. Its objectives are to:

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[7] S/PRST/2002/30.

[8] Report of the Group of Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons (A/62/163).

[9] See for example the United Nations Secretary General's report on Member States' views on an arms trade treaty (2007) in which many States expressed comments on the need for end-use/user controls to be addressed in an arms trade treaty. Available from http://www.un.org/disarmament/convarms/ATTPrepCom/Documents.html.

(i) Enhance understanding of the issue of end-user certification;

(ii) Help build common understandings on actions that need to be undertaken at the national, regional and global levels in order to develop a framework for improved end-user certification; and

(iii) Propose practical guidelines to assist States in the development of a reliable system of end-user certification.

The study assesses existing practices regarding end-user certification. It examines concepts, procedures and documents relating to the regulation of end use and end users of conventional arms. It also endeavours to identify political and practical obstacles to the development of an international framework for authentication, reconciliation and standardization of end-user certificates.

1.1 Outlining the issue

International markets and supply chains for conventional arms are subject to national laws, regulations and procedures to ensure that deliveries are made to the lawful end users and for lawful end uses. An end-use/user certificate is one among several documents used for such purposes. Whether the international transfer in question is a sale, loan or gift, the end-use/user certificate or an equivalent official document to verify the end user and use must usually be obtained. This document is to certify to the export authorities, before they can authorize the export, that the buyer, consignee or importer is the final intended recipient of the materials, and that the recipient is not planning to transfer the items to another party without prior official approval.

To be fully effective, national controls over the end user and end use should be established prior to the approval of any arms shipment, firstly to authenticate the proposed end-use/user certificate or statement, secondly to assess the risks and legitimacy of the export, and then thirdly to help monitor the shipment and verify its delivery to the legitimate end user. Moreover, in sensitive cases, end-use/user controls require post-delivery checks by the exporting authorities on the use and/or holdings of the arms.

It is generally accepted among States that international transfers of conventional arms should only be permitted by national authorities

on the basis of reliable prior knowledge of the end use and the end user in the country of final destination so as to ensure in each case that the arms under consideration are only delivered to the legally authorized end user and for the legally declared end use. The standards and procedures required to do this, however, are not sufficiently harmonized among States to ensure effective control across the arms supply chains. The following are some of the key problems found in existing standards and procedures:

(i) End-use/user certificates can be forged or falsified, and can be obtained from corrupt officials. Investigations of United Nations arms embargo violations by the monitoring groups of the Security Council have exposed some international networks involved in the illicit trade and brokering of small arms. These brokers and dealers exploit legal loopholes, evade customs and airport controls and falsify documents such as passports, end-user certificates, cargo papers and flight schedules.[10] In other instances, arms dealers resort to smuggling arms by mislabelling them as ordinary commercial goods and by re-transferring them via circuitous routes.

(ii) Increasingly global markets for conventional arms, including munitions, parts, components and technologies, have been challenging traditional control systems. To prevent diversion and the unauthorized use of arms, it has become recognized that not only is enhanced cooperation among States required, with robust procedures for the certification of the end user and end use, but also the reliability of the contracted parties, the consignee and intermediaries should be verified by the exporting and importing State before a licence for the international transfer is granted.[11]

(iii) Import licences or certificates are also used by States to permit arms imports, but not always. Some States have a standardized international import certificate through regional agreements.

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[10] Ibid.

[11] OSCE Handbook of Best Practices on Small Arms and Light Weapons (2003), Chapter of Best Practice Guide on National Control of Brokering Activities, paragraphs 12 and 14; Chapter on Export Control of Small Arms and Light Weapons, paragraph 7; Best Practice Guidelines for the Implementation of the Nairobi Declaration and Protocol on Small Arms and Light Weapons, RECSA, June 2005.

(iv) Rigorous procedures by the States involved in the international transfer regarding end-use and end-user documentation should not be the sole basis for determining whether an arms export and import licence should be granted to an end user. Authentication and verification of an end-use/user document does not by itself guarantee that the arms recipient will actually live up to his/her promise not to re-transfer the arms received. States do not always have a broader system in place for assessing licence applications to help prevent diversion and misuse and for verifying the actual delivery, as well as, in sensitive cases, for post-shipment inspections and the monitoring of end use.[12]

(v) End-use/user certificates and import licences that are not supported by proper delivery verification and end-use monitoring systems increase the risk of diversion. Traffickers use transit ports where they can avoid customs checks and physical inspections because of lack of capacity or they bribe officials to avoid checks. National systems to regulate exports, imports, transfers, transits and trans-shipments do not always include a comprehensive range of checks beginning with a rigorous assessment of the risks of diversion of the arms before export authorization is granted.

(vi) Recipients sometimes re-export or re-transfer arms exports internally, within a short time, to an end user that was not initially the one authorized by the exporting State. This can be exploited to undermine arms export control systems. Additionally, in the longer term, if the arms eventually become surplus to the requirements of the initial importer and end user, then those arms could also be re-exported or transferred to another end user. Thus, the legal end user in the initial approved export should first obtain another authorization from the original exporting State to conduct a re-export or re-transfer of the arms to another end user, unless the exporting State had designated that authority to the initial receiving State of the end user. Trans-shipments can also pose similar risks.

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[12] United Nations Security Council, Small arms: Report of the Secretary-General, S/2008/258, 17 April 2008, paragraph 17; and Council of the European Union, User's Guide to Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, 29 April 2009.

(vii) Following the supply to the recipient, the arms may be leaked from State stockpiles as a consequence of poor stockpile management, theft or corruption. In any case, objective criteria should be used to assess the suitability of the end use and end user, the safe transport, storage and management of the international arms transfer and the mechanisms established to ensure the verification of the arms delivery, as well as compliance with non-re-export clauses in end-use certification.

1.2 Use of terms

Existing national end-use/user terminology and documentation used for arms transfers between countries can cause confusion. Some terms are often used interchangeably, and there is a lack of consistency in usage. A common misconception is that a State will have the same elements in its end-use documents and the same end-use certification requirements for both its arms exports and its imports. Moreover, in international instruments the terms "end use" and "end user" are sometimes referred to interchangeably without distinction. There is also little consistency in defining the actors who should be involved in end-use/user certification systems, for example, whether the consignee who is not the final consignee or importer should be included, as well as the final end user.

In their regulatory practices, States use different concepts for their end-use and end-user controls with almost the same meaning. The study has uncovered the following terms: "end-use statement", "end-use assurance", "end-use certificate" and "end-user certificate", "private end-user certificate" versus "official end-user certificate", and "end-user undertaking". States also use import licences or permits and international import certificates, with the latter sometimes replacing end-user certificates. Other terms used include: "end-use verification", "end-use controls", "end-users verification", "universal end-user confirmation" or other mechanisms prior to an arms export approval to ensure that transfers reach and remain with the intended end user and for the lawful end use.

For example, a number of States in Europe and North America require forms to be entitled "end-user certificate", which are used for both official (Governments) and private (companies) end users. This

blurs the useful distinction between the "end-use certificate" (official) and the "end-use statement" (private).

Typically there are two broad kinds of end-use/user documents: (i) for international transfer to State entities, where the importing State authorities provide assurances that the arms will only be used for the stated end use by the stated end user; and (ii) for transfers to private entities, where the same assurances are provided by the commercial importer. A private end-use/user document is supposed to be certified by the authorities of the importing State. Both State and private end-use/user documents usually also contain a specific clause limiting the potential re-export of the transferred arms.

For the purpose of this study, unless otherwise stated, an "end-use or user document" or undertaking may include an "end-use/user certificate" or an "end-use/user statement". These documents are not the same as import licences and international import certificates. Thus, for the purposes of this study, the following definitions apply:

(i) *End-user certificate* is a clear certified undertaking of a purchaser/importer that any arms transferred from the exporting country is for its sole lawful use and that the arms are not destined for transfer or re-export to any other entity or State, without the prior written consent of the relevant authority in the exporting State. Such consent has to be obtained from the relevant arms export authority in terms of the applicable legislation and procedures of the exporting State prior to the authorization to export. The end-use/user certificate should be an original document and the information pertaining to the arms on the end-use/user certificate should correspond with the order(s) from the purchaser/importer regarding the specific transaction of the arms. It should include an official stamp and or seal legalizing (authenticating) the end-use/user certificate by the appointed Government authority in the buyer/importer's country indicating that it is an authentic document.

(ii) *End-use/user statement* is an affidavit that a purchaser/importer, whether a Government agency or private entity, must submit

in order to acknowledge that goods will not be re-sold or used for purposes other than those for which they are intended.[13]

(iii) *Stated end use* is the information provided in the end-use certificate on the intended use of the notified commodity (e.g., spare part for ..., incorporation in ..., use as ...). If it is a supply to a project, the name of the project would normally be indicated.

(iv) *Authentication* or legalization is the formality by which the authorities of the exporting State certify the authenticity of the signature, the capacity in which the person certifying the document has acted and, where appropriate, the identity of the seal or stamp which it bears.

(v) *Validity* is the length of time an individual end-use/user certificate is valid. This should be clearly indicated on the document through the date of issue, preferably accompanied by a register number and the expiry date of the end-use/user certificate.

(vi) *Verification* is the process by which the authorities of the exporting State check the accuracy of the information contained in an end-use/user certificate, especially regarding the risk of diversion and the end user.

(vii) *Validation* is the documented act of demonstrating with evidence that the end-use/user procedure will consistently lead to the correct outcome.

(viii) *Arms import licence* is an official permit issued by the authorities of the importing country granting permission, in terms of national laws, regulations and procedures, to a specific importer to bring a specified quantity and type of arms into that country's territory within a certain period of time under certain conditions.

(ix) *International import certificate* (IIC) is a standardized certificate accepted by some States through bilateral or multilateral agreements, such as through the North Atlantic Treaty Organization and the European Union, which is signed and stamped by the importing Government's authorities to confirm that the importing Government is aware of, and does not object to, the proposed transfer of arms or

[13] See also http://www.managementdynamics.com/html/solutions_library_glossary.shtml#e-f (accessed 7 December 2011).

dual-use items to the commercial entity or individual. An IIC constitutes an undertaking by the importer (whether consignee or purchaser) to import the arms or dual-use items into the country of destination without diversion or trans-shipment elsewhere, and not to re-export the items without an export licence from the relevant authority in the country of importation. It is also an assurance from the Government of the importing country that it will control any subsequent export of these goods. It may also require the importer to obtain proof of delivery of the arms through a delivery verification certificate. [14]

(x) *Delivery verification certificate* (DVC) is a document used to prove that the arms have been effectively transferred and delivered to the end user or consignee in the importing State.

(xi) *Post-shipment inspection* is an exporting State's physical inspection of the transferred arms in the importing country. This may happen in circumstances of higher risk, such as when the arms in question are of a very sensitive nature or when the end user may lack full capacity to prevent the arms in question from being stolen.

(xii) *Transit* of arms involves the international transfer from the original exporting State to the ultimate end user through the territory of one or more other States. Contrary to what is frequently stated, goods in transit are not required to use the same transport modality or transport means throughout the route. If the same modality (a railway, for example) is not available all throughout the route that connects the first loading point with the last unloading point, the goods in transit (or the unit of transport into which they are loaded, such as a container) can be transferred from one means of transport to another, provided certain customs-mandated procedures for their identification as "good in transit" are observed.[15]

(xiii) *Trans-shipment* of arms is the act of transferring a cargo at an intermediate transport point (an airport, a land or sea port) from the

[14] Small Arms Survey 2008, chapter 5.

[15] Sergio Finardi, "A global Arms Trade Treaty, the problem of common international standards", TransArms draft report to IANSA and AI, Chicago, 2009.

carrier used at the departing point to a different carrier bound to the stated final destination or to another intermediate point.[16]

(xiv) *Re-export* of arms is the international transfer of arms that have been imported from another State.

(xv) *Country of final destination* is the country where, according to the exporting State's authorities' verified information, the end user is located. The "final end user" should be the same as the "ultimate end user" in the country of final destination. European Union guidelines refer to the "final consignee."

(xvi) *Exporter* is the party who makes, or on whose behalf the export declaration is made, and who is the owner of the arms or has similar right of disposal over them at the time when the declaration is accepted.

(xvii) *Consignor* is the shipper of the arms as stipulated in the transport contract by the party ordering transport.

(xviii) *Importer* is the party who makes an import declaration—or on whose behalf a customs clearing agent or other authorized person makes the import declaration. This may include a person who has possession of the arms or to whom the arms are consigned.

(xix) *Consignee* is the party to which arms are addressed.

2. International instruments

The commitment of States to establish effective end-use/end user control systems can be seen in the establishment of several international instruments over the past 14 years, but the more detailed elaboration of such standards has been confined to the European Union, the Organization for Security and Cooperation in Europe and the Wassenaar Arrangement, as discussed below.

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[16] Ibid. Trans-shipments mostly occur for economic reasons: (i) if at the origin point A there is not a carrier that regularly serves the destination point C and (ii) the cargo is smaller than the full loading capacity of a ship, an aircraft, a truck, etc., and chartering an ad hoc carrier to go from A to C could be very costly for the shipper. It is far more economical to use scheduled transport services that both serve an intermediary point B (the trans-shipment point) from and to A and C.

2.1 Global instruments

The United Nations has not yet systematically addressed the issue of end-use/user control systems. Apart from the 1996 United Nations guidelines for international transfers of conventional arms mentioned earlier, in 2001 States agreed on the Firearms Protocol supplementing the United Nations Convention against Transnational Organized Crime.[17] Under the United Nations Firearms Protocol, State parties are required to "establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition". Before issuing export licences or authorizations for such shipments, "each State Party shall verify: (a) that the importing States have issued import licences or authorizations; and (b) that, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit".[18]

Also, in 2001 States committed themselves in the Programme of Action on the illicit trade in small arms and light weapons (SALW), to put in place and implement adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of SALW, including the use of authenticated end-user certificates and effective legal and enforcement measures.[19] During the Third and Fourth Biennial Meetings of States held under this agreement in 2008 and 2010, respectively, Member States affirmed the need

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[17] *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition* adopted by General Assembly resolution 55/255 of 31 May 2001. It entered into force on 3 July 2005 and has 52 signatories and 83 States Parties. This is a protocol to the United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, opened for signature in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003. The Convention has 147. signatories and 158 States parties, and is supplemented by another two protocols.

[18] *United Nations Firearms Protocol*, article 10. General requirements for export, import and transit licensing or authorization systems.

[19] *United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, section II, paragraph 12.

to put in place measures to avoid the misuse and forgery of end-user certificates and for validating the authenticity of documentation submitted by brokers, and that States should further consider end-user certification, verification and standardization for the international transfer of SALW. End-user certification and control systems are also being discussed in the contexts of current efforts to negotiate an arms trade treaty to regulate the transfers of conventional arms.

2.2 Regional and other instruments

States have also committed themselves in regional and multilateral organizations to using effective end-use/user control systems for international transfers of conventional arms. The most detailed best practice instruments are the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, the 2003 Handbook of Best Practices on Small Arms and Light Weapons of the Organization for Security and Cooperation in Europe (OSCE), the 2004 OSCE Standard Elements of end-user certificate and verification procedures for SALW exports, and the 2009 User's Guide to Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment of the European Union.[20] These instruments specify types of end-use/user documentation that export licensing authorities should require with export licence applications and types of information and assurance they should contain. They also recommend the end-use control processes that States should implement to: assess the risks of an international transfer; formally authenticate the signatory or seal/stamp to verify the accuracy of the documentation; and safeguard and

[20] OSCE Decision No. 5/04, "Standard Elements of end-user certificate and verification procedures for small arms and light weapons exports", 2004, and OSCE "Handbook of Best Practices on Small Arms and Light Weapons, Chapter 5 Export Control of Small Arms and Light Weapons", 2003, paragraph 7; Wassenaar Arrangement, "End-user Assurances Commonly Used Consolidated Indicative List", 2005; and Council of the European Union, *User's Guide to Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment*, 29 Apr. 2009, arising from the Council of the European Union, *Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment*, Official Journal of the European Union L 335, 13 December 2008.

confirm the delivery of the arms as part of a broader control system to prevent the diversion and abuse of the arms in each case.

Less detailed, but relevant for the express commitments of States to establish end-use/user control systems, are the Economic Community of West African States Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials (2006),[21] the Best Practice Guidelines for 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 (2004),[22] the Southern African Development Community Protocol on Control of Firearms, Ammunition and Other Related Materials (2001),[23] and the Organization of American States Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (1997),[24] and the Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components That Can Be Used for Their Manufacture, Repair and Assembly (2010).[25] These regional instruments emphasize the importance of Government-issued end-user certificates and related documentation in the export licensing process.

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[21] Economic Community of West African States, *Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials* (2006), chapter 2.

[22] *Best Practice Guidelines for the Implementation of the Nairobi Declaration and Protocol on Small Arms and Light Weapons*, RECSA, June 2005, Section 3, paragraph 23; and in section 4, "We undertake to: (b) Make every effort, in accordance with national laws and practices, without prejudice to the right of States to re-export SALW that they have previously imported, to notify the original exporting State, in accordance with their bilateral agreements, before the retransfer of those weapons; …"

[23] Southern African Development Community *Protocol on Control of Firearms, Ammunition and Other Related Materials* (2001).

[24] Organization of American States, *Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials* (1997).

[25] Identical letters dated 13 October 2010 from the Permanent Representative of the Democratic Republic of the Congo to the United Nations addressed to the Secretary-General and the President of the Security Council A/65/517–S/2010/534.

2.2.1 European Union

According to the European Union (EU) Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, EU Member States are legally required to implement a number of export criteria and procedures. Criterion Seven concerns the "existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions". EU States must have regulations and procedures to assess the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end user.

The EU User's Guide recommends that: "If the end-user certificate comes from the Government of the country of destination of the goods, the certificate will be authenticated by the authorities of the exporting country in order to check the authenticity of the signature and the capacity of the signatory to make commitments on behalf of its government." Also, in accordance with the United Nations Firearms Protocol, EU States parties are required, within available means, to "take such measures as may be necessary to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified or validated."[26]

As part of the regulatory system, the User's Guide to the Common Position,[27] sets out "Best practices in the area of end-user certificates", which require that an end-use certificate should include at a minimum the following elements: (a) details of exporter (at least name, address and business name); (b) details of end user (at least name, address and business name); (c) country of final destination; (d) a description of the goods being exported (type, characteristics), or reference to the contract concluded with the authorities of the country of final destination; (e) quantity and/or value of the exported goods; (f) signature, name and position of the end user; (g) the date of the end-user certificate; (h) end-use and/or non-re-export clause,

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[26] United Nations Firearms Protocol Article 10: General requirements for export, import and transit licensing or authorization systems, paragraph 5.

[27] Council of the European Union, *User's Guide to Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment*, 29 April 2009, chapter 2, section 1.

where appropriate; (i) indication of the end use of the goods; (j) an undertaking, where appropriate, that the goods being exported will not be used for purposes other than the declared use; (k) an undertaking, where appropriate, that the goods will not be used in the development, production or use of chemical, biological or nuclear weapons or for missiles capable of delivering such weapons.

The following elements might be required by a member State, "at their discretion": (1) a clause prohibiting re-export of the goods covered in the end-user certificate. Such a clause could: (a) contain a pure and simple ban on re-export; (b) provide that re-export will be subject to agreement in writing of the authorities of the original exporting country; and (c) allow for re-export without the prior authorization of the authorities of the exporting country to certain countries identified in the end-user certificate; (2) full details, where appropriate, of the intermediary; (3) if the end-user certificate comes from the Government of the country of destination of the goods, the certificate will be authenticated by the authorities of the exporting country in order to check the authenticity of the signature and the capacity of the signatory to make commitments on behalf of its Government; and (4) a commitment by the final consignee to provide the exporting State with a delivery verification certificate upon request.

The non-re-export clause is a minimum element that might be demanded. However, delivery verification was not deemed to be a necessary element by the EU to include in the end-use/user certificate.

According to the EU "User's Guide", the information required on the consignee and end user should be as detailed as possible in order to permit a comparable assessment. Name, address, country, telephone number, fax number and e-mail address should be given, specifying whether the buyer is a Government agency, the police, army, navy or air force, a paramilitary force, or a private natural or legal person.

Furthermore, with regard to re-exports, EU member States must fully apply the export criteria in the Common Position to licence applications for goods where it is understood that the goods are to be incorporated into products for re-export. However, in assessing such applications, member States will also have regard, inter alia, to: (i) the

export control policies and effectiveness of the export control system of the incorporating country; (ii) the importance of their defence and security relationship with that country; (iii) the materiality and significance of the goods in relation to the goods into which they are to be incorporated, and in relation to any end use of the finished products which might give rise to concern; (iv) the ease with which the goods, or significant parts of them, could be removed from the goods into which they are to be incorporated; and (v) the standing entity to which the goods are to be exported.

2.2.2 Organization for Security and Cooperation in Europe

The main documents agreed upon by the participating States of the OSCE that refer to standards for end-use/user certification include: (i) Decision No. 5/04—Standard Elements of End-User Certificates and Verification Procedures for SALW Exports (FSC.DEC/5/04, 17 November 2004); (ii) Best Practice Guide on Export Control of Small Arms and Light Weapons (FSC.GAL/4/03/Rev.1, 19 September 2003); and (iii) Best Practice Guide on National Control of Brokering Activities (FSC.GAL/63/03/Rev.2, 19 September 2003).

The OSCE requests that the end-use/user control system includes "certification by the relevant Government authorities, according to national practice, as to the authenticity of the end user. The certification must include the date, name, title and original signature of authorizing official." These standards stem from the 1993 OSCE Principles Governing Conventional Arms Transfers (paragraph 4 b), which require each participating State to avoid transfers that would be likely to be diverted within the recipient country or re-exported for purposes contrary to the aims of this document.

The OSCE requests that the following standard elements are included in an end-user certificate:[28] (a) a detailed description (type, quantity, characteristics) of the SALW or technology related to the design, production, testing and upgrading of SALW to be exported; (b) contract number or order reference and date; (c) final destination country; (d) a description of the end use of the SALW (for example, use by the armed forces or internal security forces); (e) exporter's

[28] Decision No. 5/04, *Standard Elements of End-user Certificates and Verification Procedures for SALW Exports* (FSC.DEC/5/04, 17 Nov 2004).

details, at least name, address and business name; (f) end-user information, specifically, name, position, full address and original signature; (g) assurances that the SALW will be used only by the end user and for the stated end use; (h) assurances that re-export of imported SALW, can take place only after receiving a written authorization from the exporting country unless the exporting country decides to transfer that authority to the export licensing authorities of the importing country; (i) information on other parties (intermediate consignees/ purchasers) involved in the transaction, as appropriate, including, name, title and original signature of any consignee. As an alternative, information on the intermediate consignee and purchaser might be provided in writing during the authorizing procedure; (j) certification by the relevant Government authorities, according to national practice, as to the authenticity of the end user (the certification must include the date, name, title and original signature of authorizing official); (k) the date of issue and, if applicable, register number and the duration of the end-use/user certificate.

Additional elements, such as a clause on post-shipment control, a commitment by the final consignee to provide the exporting country a delivery verification certificate, may be included in an end-use certificate. Furthermore, the OSCE demands that the end-use documentation should provide a high guarantee of authenticity. This can be accomplished by submitting end-use documentation as follows:[29] (a) written on the original stationery of the authority (only in exceptional cases, should it be written on the stationary of the company); (b) certified with original signatures and authentic stamps; (c) original (a copy should only be allowed in cases where a broker has indicated that an opportunity for a transaction exists); and (d) conforming to the specimen requirements of the licensing State.

Moreover, to prevent abuse and fraud, the OSCE recommends that an end-use/user certificate should take the format of an official form printed on banknote paper.[30] The OSCE makes the distinction between Government and private end-use/user certificates, but requires

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[29] *Best Practice Guide on National Control of Brokering Activities* (FSC. GAL/63/03/Rev.2, 19 Sep 2003).

[30] *Best Practice Guide on Export Control of Small Arms and Light Weapons* (FSC. GAL/4/03/Rev.1, 19 Sep 2003).

that non-governmental end-use/user certificates be authenticated by the Government in the receiving State.[31] Although the OSCE asks that the Government in the receiving State should verify the end use of the arms (e.g., by requiring the final consignee to provide the exporter with a delivery verification certificate once the export has reached the final destination or by conducting on-site inspections), inclusion of a clause on post-shipment control in the end-user certificate is deemed optional.[32]

2.2.3 Wassenaar Arrangement

The Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons require each participating State to avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: (i) be diverted to territories whose external relations are the internationally acknowledged responsibility of another State; and (ii) contrary to the aims of the document, be either re-sold (or otherwise diverted) within the recipient country, reproduced without licence, or be re-exported.

In addition, Wassenaar Arrangement participating States have agreed to ensure, as far as possible, without prejudice to the rights of States to re-export SALW that they have previously imported, that the original exporting participating State, in accordance with bilateral agreements, will be notified before re-export/retransfer of those weapons.

Specific standards or elements for the participating States of the Wassenaar Arrangement are contained in the "End-user assurance commonly used in consolidated indicative list", 2005 (originally 1999). The 2005 "indicative list" provides additional information on certain of the elements included in the 1999 version and also divides them into "essential" and "optional" elements. Most elements in the Wassenaar list are identical or almost identical to that of the OSCE,

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[31] *Best Practice Guide on Export Control of Small Arms and Light Weapons* (FSC.GAL/4/03/Rev.1, 19 Sep 2003); *Best Practice Guide on National Control of Brokering Activities* (FSC.GAL/63/03/Rev.2, 19 Sep 2003).

[32] *Best Practice Guide on Export Control of Small Arms and Light Weapons* (FSC.GAL/4/03/Rev.1, 19 Sep 2003).

which is not surprising given the high level of overlapping membership of the two entities.

However, the Wassenaar list does not require a contract number or order reference and date, while the OSCE list of elements does not include the following "optional requirements" contained in the Wassenaar list: (a) certification that the goods will be installed at the premises of the end user or will be used only by the end user; (b) agreement by the importer/end user to allow on-site verification; (c) 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; and (d) 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.

3. General practices in regulating transfers to end users

For most States some sort of end-use/user assurance is required to regulate the international transfer of weapons, munitions and associated equipment for use in military and internal security or law enforcement operations. This is reflected in national laws and regulations of States. At present, the national systems appear to be a relatively ad hoc patchwork of reciprocal relations requiring States to provide authorizations to one another according to various normative, certification and verification procedures before permitting shipments of conventional arms to leave, arrive or transit across their territory to a lawful end user. However, the systems show some basic common elements at least to enable law enforcement agencies to track the legal movement of shipments to prevent theft and diversion.

It seems that States participating in the Organization for Security and Cooperation in Europe (OSCE), European Union and Wassenaar Arrangement do not necessarily implement all standards set out by these intergovernmental bodies. In particular, the optional requirements are seldom included in their national policy. A comparison of a sample of national standards for end-use/user certificates of arms exporting States with the minimum standards agreed by the participating and member States of the OSCE, Wassenaar Arrangement and European Union is set out in **appendix I**.

Post-shipment inspection is an optional requirement in the OSCE and Wassenaar Arrangement standards for end-use/user certificates. The OSCE and Wassenaar participating States in the sample do not appear to include a post-shipment inspection clause in their end-use/user certificate requirements for export on delivery verification. However, Finland, Norway, Romania, Sweden and Switzerland require it in their end-use/user certificates.

3.1 Pre-shipment risk assessments of end use/users

In most significant arms exporting States, the licensing authority provides preliminary information that may be treated as a non-binding but authoritative indication of the prospects of being granted an export licence.[33] However, the licensing authority is supposed to conduct an inter-departmental risk assessment of the intended end user/use and other principal parties and modalities involved in a proposed arms export on a case-by-case basis. An essential tool in undertaking such assessments is a list of national criteria for legitimate arms exports. Such criteria are usually based on respect for international law and increasingly States have been developing common criteria in regional and multilateral instruments.

When assessing export and import licence applications for transfers of conventional arms—including for the transfer of technology, parts, components or equipment for the purposes of production or assembly of conventional arms in the recipient country—States generally require applicants to take into account the potential use of the finished product in the recipient country and of the risk that the arms transferred or the finished products might be diverted or transferred to an unauthorized or unsuitable end user.[34]

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[33] OSCE Handbook of Best Practices on Small Arms and Light Weapons, chapter 5, Export Control of Small Arms and Light Weapons (2003), page 6.

[34] UNDP "How to Guide: Small Arms and Light Weapons Legislation", 2008, paragraphs. 46-47; Council of the European Union, Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, Official Journal of the European Union L 335, 13 December 2008, and Council of the European Union, User's Guide to Council Common Position, 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, 29 April 2009.

Evaluations of individual export licence applications are usually done on a case-by-case basis and include an overall risk analysis, based on the potential risk level in the recipient State, the reliability of those involved in the transactions, the nature of the goods to be transferred and the intended end use. An undertaking is normally required that the arms to be exported will not be used for purposes other than the "declared" or "stated" end-use. Certain situations warrant additional measures and safeguards due to the increased risks of diversion and abuse of the arms. These include: [35]

(i) *Deliveries to private entities*—States should take particular care when considering exports to recipients that are neither Governments nor their authorized agents, and check whether a transfer has been previously denied to the end user or whether the end user has diverted for purposes inconsistent with non-proliferation goals any transfer previously authorized (in the case of an export to a firm that resells the arms on the local market, the dealing firm should not be regarded as the only final "end user");

(ii) *Questionable legitimacy or authenticity of end-use assurances*—authorization should therefore be withheld pending thorough investigation; for example, whether the equipment, material, or related technology to be transferred is appropriate for the stated end use, and whether the end user is capable of securely handling and storing the item transferred;

(iii) *Violations of international law or commitments* on previous end-use assurances by the intended recipient—where it is found during the verification process that there are substantial risks of serious violations, authorization should be refused even if an end-use/user certificate is authenticated; the track record and institutional safeguards of the proposed user should be checked to assess the likelihood of the user committing or facilitating serious violations of international law with the arms.

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[35] OSCE *Handbook of Best Practices on Small Arms and Light Weapons*, chapter 5, Best Practice Guide on National Control of Brokering Activities (2003), paragraph 5; and Wassenaar Arrangement, Best Practice Guidelines for Exports of Small Arms and Light Weapons, Agreed at the 2002 Plenary and amended at the 2007 Plenary.

(iv) *The danger of unauthorized onward shipment* to neighbouring countries, especially those in conflict or threatening conflict—rigorous assessment of the risks should be conducted before allowing export and import approval, and special care should be taken to authorize arms shipments to higher risk ports such as free trade zones—States should request information on all parties involved in the transaction including brokers and dealers, intermediate consignees and final consignees;

(v) *Deliveries by circuitous routes* or mediated by unregistered/unlicensed intermediaries—thorough explanations for these should be required before export and import approval; States should request details of the transport route, including countries of transit, trans-shipment and ports of entry or exit;

(vi) *Trade in arms that are unmarked or captured in war*—transfers should be suspended until complete inventories are carried out and an assessment made regarding the weapons' disposal, including destruction. If a decision is made to export the arms, all items should be properly marked and then become subject to normal export control criteria and end-use procedures;

(vii) *The sensitive nature of the arms to be transferred*, such as their inherent ease of concealment and abuse, or potential destructive power—thus, special procedures should be required if the items to be transferred could contribute to a delivery system for weapons of mass destruction, or in the case of small arms and light weapons (SALW).

For example, regarding prospective end users, national authorities in the European Union are required to consider the following in assessing the impact of the proposed export on the importing country and the risk that exported goods might be "diverted to an undesirable end user":[36] (a) the legitimate defence and domestic security interests of the recipient country, including any involvement in United Nations or other peacekeeping activity; (b) the technical capability of the recipient country to use the equipment; (c) the capability of the recipient country to exert effective export controls; (d) the risk of the arms being re-exported or diverted to terrorist organizations (e.g.,

[36] EU Common Position "User's Guide", op cit.

anti-terrorist equipment would need particularly careful consideration in this context).

Thus, as part of the export licence application process in the majority of significant arms exporting States, companies and individuals are normally required to formally submit a range of information, including on the final end user and end use, the intermediate and final consignees, the type, characteristics, value and quantities of the arms to be exported, reference to the contract or order number concluded with the end user, and relevant import authorization documents from the country of final destination.[37] Details of the exporter, importer and, where relevant, the intermediaries should be submitted to the export authorities so that it can be established that they are all in possession of the appropriate operating licences.[38]

Under article 10.6 of the United Nations Firearms Protocol, "States Parties may adopt simplified procedures for the temporary import and export and the transit of firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs." Some arms-exporting countries like Singapore and the United Kingdom also have a hierarchy of export licences or permits so that trusted companies can use open general licences.

The United States regulations on import documentation have a special procedure for "triangular transactions", which apply to a transaction that involves three or more countries that have adopted the import certificate/delivery verification (IC/DV) procedure. The Governments of these countries may stamp a triangular symbol on the IC. This symbol is usually placed on the IC when the applicant for the IC (the importer) states: (i) that there is uncertainty whether the items covered by the IC will be imported into the country issuing the IC;

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[37] Arab Model Law on Weapons, Ammunitions, Explosives and Hazardous Material, League of Arab States 2002; UNDP *How to Guide: Small Arms and Light Weapons Legislation*, UNDP, 2008, paragraphs 63-64; and Wassenaar Arrangement, "End-user Assurances Commonly Used Consolidated Indicative List", 2005.

[38] *How to Guide: Small Arms and Light Weapons Legislation*, UNDP, 2008, paragraphs 63-64; OSCE *Handbook of Best Practices on Small Arms and Light Weapons*, Chapter 5 Export Control of Small Arms and Light Weapons (2003), page 7.

or (ii) that he or she knows that the items will not be imported into the country issuing the IC; or (iii) that the items to be imported into the country issuing the IC will subsequently be re-exported to another destination. All parties, including the ultimate consignee in the country of ultimate destination, must be shown on the completed IC. This risk assessment procedure is designed to enable further customs checks.

3.2 End-use certification and authentication

In order to help assess the risk of international transfers of conventional arms and firearms to commercial or private end users, and of transfers to State end users, end-use documents, such as end-use/user certificates or end-use statements or assurances backed up by import licences, need to be authenticated. Authentication of an end-use document is the legal formality by which the authorities of the exporting State certify the authenticity of the signature, the capacity in which the person certifying the document has acted and, where appropriate, the identity of the seal or stamp which it bears. Upon request, the importing State should assist the exporting State in the end-use/user certificate authentication process, a procedure usually undertaken by embassies or consular agents. It may also require checks against open source information such as telephone and business directories, Internet sources and national contact points. The process should be undertaken impartially, fairly and within a reasonable period of time.

For instance, in the United States, the Directorate of Defense Trade Controls may require the Import Certificate/Delivery Verification (IC/DV) procedure on proposed exports of defence articles to non-governmental entities in those countries participating in IC/DV procedures. In such cases, United States exporters must submit both an export licence application and the original IC, which must be provided and authenticated by the Government of the importing country. The document verifies that the foreign importer complied with the import regulations of the Government of the importing country and that the importer declared the intention not to divert, trans-ship, or re-export the material described therein without the prior approval of that Government.

In another example, South Africa requires that the foreign end-use/user certificate includes an official stamp and/or seal of the

appointed Government authority in the buyer/importer's country, indicating that it is an authentic document and legalizing (authenticating) the end-use/user certificate. According to the South African export control authority, this authentication is defined as the formality by which the diplomatic or consular agents of the country in which the document has to be produced certifies the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears. If the buyer/importer's country is a State party to The Hague Convention,[39] the legally appointed State authority in the buyer's or importer's country may authenticate or legalize the end-use/user certificate with the prescribed Apostille Stamp of the Convention.

Under The Hague Convention, end-use/user certificates from an importing country that bear the Apostille Stamp must be accepted by the exporting country as authentic. Typically the Apostille Certificate is issued by the State from which the document originates, although in some cases another State can issue the Apostille. Once a document has had an Apostille Certificate attached to it confirming the authenticity of signatures and seals, the document can be presented to any country which recognizes the Apostille. The authority receiving the document should then accept the seals or signatures as true and valid without requesting further evidence or proof.

The Apostille Certificate follows a prescribed format and must include the following information: (i) country of issue; (ii) who has signed the document; (iii) the capacity in which the person signed the document; (iv) details of any seal on the document; (v) place of issue; (vi) date of issue; (vii) issuing authority; (viii) Apostille Certificate number; (ix) stamp of issuing authority; and (x) signature of representative of issuing authority. Countries listed in **appendix II** are currently those that have specifically adopted the Convention relating to legalization of documents by Apostille.

[39] *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents*, concluded on October 5, 1961.

3.3 Verification procedures

Verification of certified end-use/user documents should not be confused with authentication.[40] Verification is not simply the official certification of the signature and authenticity of the document but is the whole process by which the authorities of the exporting State check the validity of the documents and the accuracy of the information contained in those documents regarding the risk of diversion and the suitability of the end user. Not only the authenticity of the documents but also the security of the transfer and storage, and crucially the legitimacy of the end user and end use must be verified before an export licence is granted so that if the risk of diversion or of unlawful end use is substantial, the export should not be authorized. Even an original end-use/user certificate should not be accepted at face value by export licensing authorities because the provider of that end-use/user certificate may be acting as an undeclared agent in acquiring arms to then divert them to a proscribed and/or unauthorized end user.

For example, it should be established whether the exporter, importer and consignees are properly functioning official agencies or legally recognized companies and that there is no reason to question their reliability and intention to comply with national arms export/import regulations or end-use and re-export controls.[41] Verification of end-use/user documents also involves checking whether the proper authorization has been provided by the importing State and, if relevant, by the transit State. It may also require a general assessment of the effectiveness of end-user and end-use controls in the importing State and its procedures of stockpile management and security.[42]

Thus, when requested to do so, the importing State should assist the exporting State in verifying the end-use/user certificate by providing relevant information. Firstly, the identity and the legal status of the exporter, the end user and the consignee, as well as the intermediate consignee, if applicable, must be thoroughly checked. The following

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[40] For example in some of the discussion by Berkhol, 2009, op cit.

[41] OSCE, *Handbook of Best Practices on Small Arms and Light Weapons*, chapter 5, Export Control of Small Arms and Light Weapons (2003), page 7.

[42] Wassenaar Arrangement, *Best Practice Guidelines for Exports of Small Arms and Light Weapons* (SALW), agreed upon at the 2002 Plenary and amended at the 2007 Plenary.

must also be verified: the veracity of the signature of the end user; the accuracy of assurances regarding the end use, the end user and re-export; the adequacy of information provided in the end-use/user certificate concerning the contract, transportation and other relevant documents; and the existence of a certification by the authorities of the recipient State.

The national export authority, with the assistance of the importing State, should thus check: whether the intended end user has any record of involvement in illicit activities; the risk of involvement in corrupt or other unlawful practices of the supplier, brokers, other intermediaries or the recipient; the appropriateness of the particular arms requested for that end user; the ability to protect against unauthorized transfers, loss, theft, or diversion; and the record of compliance with commitments and transparency in the field of non-proliferation, arms control and disarmament. States may also maintain a list of problematic end users to identify licence applications deserving closer scrutiny.

End-use/user certificate verification may be undertaken by using open-source information such as telephone directories, Internet, media and non-governmental organization resources, and by using diplomatic channels or national contact points. Additional information may be obtained from diplomatic missions and other governmental institutions such as customs, police and other law enforcement services as well as those providing intelligence information.

Verification may also require an assessment of the risk of diversion during the actual physical transfer, particularly taking into account the possible itinerary, modalities and the transit points. The exporter should inform the exporting State, the importing State, and, if relevant, the transit State when the consignment has been dispatched from its territory. States may also require that transfers of arms take place under the supervision and escort of security forces assigned by the relevant national authorities.[43] Such strengthened requirements

[43] Arab Model Law on Weapons, Ammunitions, Explosives and Hazardous Material, League of Arab States, 2002.

may be imposed on transfers of certain high-risk categories of arms, such as ammunition, SALW and man-portable air defence systems.[44]

States may also request the following relevant information:[45] an undertaking that dual-use items will be used for civil end use; information on transit points; a commitment by the end user and/or the importing State to provide the exporting State a delivery verification certificate; an undertaking that the final consignee/end user agrees to allow on-site verification; and a clause allowing the exporting State to carry out, upon its request, on-site inspections of the transferred items. If an end-user certificate requires such information and commitments from the importer or final consignee/end user but the information or commitments are not submitted and received by the export authorities at the time the export authorization is considered, then approval for the arms export should be withheld.

States participating in the Wassenaar Arrangement, for example, have agreed that when issuing a licence for an export of SALW that will involve transport by air, States may require additional information on transport logistics prior to the actual export taking place.[46] Such additional information may include: (i) air carrier and freight forwarding agent involved in the transportation; (ii) aircraft registration showing number and flag; (iii) flight route to be used and planned stopovers; (iv) records of previous similar transfers by air; and (v) compliance with existing national legislation or international agreements relating to air transport of weapons. In situations where such information is not available to the exporter at the time they apply for a licence, States may issue an export licence subject to the condition

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[44] Report of the Group of Governmental Experts established pursuant to General Assembly resolution 61/72 to consider further steps to enhance cooperation with regard to the issue of conventional ammunition stockpiles in surplus, July 2008, A/63/182, especially pages 14-16; and APEC, *Guidelines on Controls and Security of Man-Portable Air Defence Systems*, 2004.

[45] OSCE *Handbook of Best Practices on Small Arms and Light Weapons*, Chapter 5 Export Control of Small Arms and Light Weapons (2003); and Wassenaar Arrangement, *Best Practices for Effective Export Control Enforcement*, 2000.

[46] OSCE Decision No. 11/08, *Introducing Best Practices to Prevent Destabilizing Transfers of Small Arms and Light Weapons Through Air Transport and on an Associated Questionnaire*, FSC.DEC/11/08, 5 November 2008; and Wassenaar Arrangement, "Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport", agreed upon at the 2007 Plenary .

that this information will be provided to the relevant authorities prior to the goods being exported.[47]

3.4 Variations in end-use/user certificates

Apart from the OSCE, the European Union and the Wassenaar Arrangement, regional or multilateral groupings exist where, in general terms, end-use/user controls are expected but the controls are not defined in detail. A number of regions have not established any instrument that mentions end-use/user controls. Thus, national end-use/user certificate systems tend to display wide variations even within regions.

What is universally accepted in the sample of national end-use/user certificate requirements are the date of issuance of end-use/user certificates, a description of the conventional arms and the inclusion of a non-re-export clause. However, only two States in the sample, Azerbaijan and Romania, appear to include expiry dates as a routine element in their end-use/user certificates, both limiting their end-use/user certificates to six months only. Moreover, gaps are evident in end-use/user certificate elements required by exporting States regarding: the details of the end user (Switzerland only requires a letterhead), details of the exporter (Italy only requires the name of the applicant), description of the end use (Australia, Italy, Portugal, Sweden and the United States do not include this aspect) and the assurance about end use (Australia, Hungary, Italy, and Singapore do not include this aspect).

Some States only require the name of the exporter and/or the name of the end user (Finland, France, Norway, Romania, Sweden, Switzerland and the United States), while the majority of other States demand the full street address. Some of the latter States also make it explicit that post office boxes are not acceptable and insist on the use of street or physical addresses.

For several countries, the name and/or details of the end user and/or exporter is sufficient for the end-use/user certificate, instead of asking for full contract details such as the number and date (Australia, Austria, Germany, Ireland, Portugal, Singapore, South

[47] Wassenaar Arrangement, 2007, ibid.

Africa, Switzerland and the United Kingdom). Moreover, while the OSCE recommends that the details of third parties be included on the end-use/user certificate, especially the details of the broker. None of the countries in the sample included the details of the broker in their national end-use/user certificate requirements. However, a few exporting States require details on the importer (Australia, Azerbaijan, Ireland, Luxembourg, Portugal and the United Kingdom).

4. End-use/user certificate elements required by exporting States

Despite some regional agreements detailing elements for end-use/user certificate systems, there is still a lack of consensus and agreement among most States on what should be the uniform format, content or common procedures for end-use/user control systems, including for non-re-export clauses. The systems also vary depending on whether the end-use/user certificate or equivalent document is required by an exporting or importing State, as described below.

4.1 Variations in end-use/user certificate formats by exporting States

Typically, these are issued either on a pre-printed form or on letterhead paper as required by State authorities. A pre-printed form is a clear official method for requiring specific information about the intended final end use and user. Sometimes, in order to avoid forgery, national authorities issue end-use/user certificates on special paper, such as bank-note-quality paper, but this practice appears to be rare. Also, end-use/user certificates do not always have an individual reference number. Some States merely require the name of the exporter and others require only the name of the end user while the majority of other States demand the full street address. While the Organization for Security and Cooperation in Europe recommends that the details of third parties be included in the end-use/user certificate, especially the details of the broker, none of the countries in the sample included the details of the broker in their national end-use/user certificate requirements. A few exporting States require details on the importer.

Most States require a non-re-export clause in the end-use/user certificate from the potential end user for consideration in their arms

export licensing process, but not all national arms export licensing authorities have this requirement. However, a potential ambiguity arises in the relationship between the system of end-use/user certificates and the system of international import certificates where controls on the end user are relaxed in favour of controls on the importer, which may not be the same agency, person or commercial entity as the end user.

Distinctions in end-use/user certificate formats are made by exporting States for different regulatory procedures on the basis of whether the end user may fall into a category of higher or lower risk. In the case of an end-use/user certificate issued by private entities, these are usually issued on a letterhead paper of the end user and should be authenticated by an official seal. They should also be backed up by an import licence.

Within Europe and North America some exporting States demand that the end-use/user certificate be presented on a letterhead while other States within those regions prefer an official form that they present to the final recipient, whether a Government, private entity, or consignee (the exporter may fill out the form and then seek the recipient's signature).

The United Kingdom demands that the form be preceded by a cover letter on letterhead. Still those States that demand an end-use/user certificate on letterhead have required elements to be included in the end-use/user certificate that should be presented. Ireland uses a standard format that needs to be copied to a company letter headed paper.

In the Nordic countries, Sweden makes the distinction between a "Declaration by End user", which is used for exports of "military equipment for combat" to States and written on numbered banknote paper (usually by the exporting company), and a "Declaration of Use", which is used for exports of "other military equipment" to military and civilian authorities of European Union (EU) countries and to countries with which Sweden has bilateral cooperation agreements. The Declaration of Use is written on the letterhead of the foreign authority. The Declaration by End user on numbered banknote paper is also used for exports of "other military equipment" to non-EU countries and countries with which Sweden does not formally have

bilateral cooperation agreements. Finland makes a distinction between exporting military equipment to governmental or to private end users. Norway uses different end-use assurances depending on who the end user is and the type of equipment.

Like Austria and Germany, Switzerland makes the distinction between weapons of war and other weapons (e.g., hunting rifles). Military equipment falling under the War Material Act requires an End-Use Certificate for War Material. Non-war weapons require a Statement of End Use for Specific Military Goods. Both are a pre-set format to be copied onto the letterhead of the consignee.

Pakistan requires that the end-use/user certificate is furnished on company letterhead and signed by the defence/interior/governmental department responsible for "attestation". Through the end-use/user certificate, the client undertakes that under no circumstance whatsoever will these weapons be exported to any other country or agency without the prior approval of the Government of Pakistan.[48]

Based on a sample of end-use/user certificates, the requirements determined by the exporting States listed in **table 1 in appendix III** show that both the "form" and the "letterhead" formats for end-use/user certificates are deployed, and also that some exporting States refer to end "user" while others refer to end "use" in the title of the document.

4.2 Common end-use/user certificate elements required by exporting States

In general, the following are elements in the sample data of end-use/user certificates that are most frequently required by major exporting States, bearing in mind that there are some slight variations in formulations: (i) date of issuance of the end-use/user certificate; (ii) contract number; (iii) details of the exporter (name, address); (iv) details of the end user (name, address); (v) details of the foreign consignee (name, address); (vi) country of final destination; (vii) description of the goods; (viii) quantity; (ix) value; (x) stated end-use of the goods; (xi) non-re-export clause; (xii) full name of person

[48] See http://www.pof.gov.pk/download/euc.pdf.

authorized to sign end-use/user certificate, signature of said person; and (xiii) seal of company or Government.

From the sample of end-use/user certificate data, the elements that are less frequently demanded by exporting States include: (i) end-use/user certificate number; (ii) contract date; (iii) import licence number; (iv) export application number; (v) expiry date of end-use/user certificate; (vi) place of final destination; (vii) details of intermediaries; (viii) delivery verification; (ix) post-shipment inspection; (x) follow-up check on the use of goods; and (xi) expected delivery date.

4.3 Certification of non-re-export clauses by exporting States

When an exporting State requires a non-re-export clause and it is included in the end-use/user certificate for a specific authorization of transfers, in the majority of cases it is the end user that has to certify that arms will not be re-exported. Either the end user cannot re-export the arms at all or the end user must ask for prior written approval from the original exporting State or from the importing State if it is the designated authority in the non-re-export clause required by the exporting State. Some exporting States are stringent and demand certification from the importer or consignee, as well as the end user and the foreign Government (**see table 2 in appendix III**). Note that the end user could be the consignee or foreign Government, or both.

For example, the United States regulations for international traffic in conventional arms[49] stipulate that: (a) the written approval of the Directorate of Defense Trade Controls must be obtained before reselling, transferring, trans-shipping or disposing of a defence article to any end user, end use or destination other than as stated on the export licence or on the Shipper's Export Declaration in cases where an exemption is claimed under this subchapter (exporters must ascertain the specific end user and end use prior to submitting an application to the Directorate of Defense Trade Controls); and (b) the exporter shall incorporate the following statement as an integral part of the bill of lading and the invoice whenever defence articles on the United States Munitions List are to be exported:

[49] United States International Traffic in Arms Regulations, section 123.9.

> These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end user]. They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in their original form or after being incorporated into other end items, without the prior written approval of the U.S. Department of State.

4.4 Variations in the non-re-export clauses by exporting States

The non-re-export clause in an end-use/user certificate from an exporting State can either be a straightforward prohibition whereby the arms in question are not allowed to be re-exported by the end user, or the re-export of the arms can only be permitted with the consent of the exporting State. There are various elaborations and combinations of such non-re-export clauses as can be seen in **table 3 in appendix III**.

According to the Irish non-re-export clause, "diversion" is not allowed, but for "re-exports", the Irish export control authority merely needs to be informed and expects that the export will be conducted in accordance with the regulations of the national licensing authority in the country that initially received the weapons from Ireland.

In contrast, both Italy and the United States require a recipient State to seek prior authorization from them in order to re-export the arms in question. The main difference between the Italian and United States non-re-export clauses is that the United States Government retains full rights over the right to re-export military items, while in Italy the authorities can delegate the right over re-exports to the export control authority of the country that bought the weapons from Italy.

For exports of arms from South Africa, the Government requires the consignee or buyer to certify that neither "the item(s) nor derivatives will be transferred to any other party without the prior written consent of the South African Government Representative(s)" and that no re-exports will take place to any "country and or entity against which a United Nations Security Council Arms Embargo has been imposed or who have been identified as a terrorist organization".

Switzerland also does not allow the re-export of "weapons of war" without prior written consent, but exceptions are made for "other military weapons".

In Belgium, the Flemish export control authority has recently dropped the legal requirement for a non-re-export clause in end-use/user certificates. The Flemish authority argues that with the issuance of an end-use/user certificate, the buyer already indicates the end use. The non-re-export clause is only included in an end-use/user certificate on the explicit request of a Flemish exporter in order to meet the requirement of a foreign Government, or on the request of foreign buyers to meet their import regulations.

4.5 International import certificates

Another form of simplified procedure adopted by significant arms exporting States is the standardized international import certificate (IIC). Transfers of defence-related and dual-use items from EU and North Atlantic Treaty Organization (NATO) States to other States considered "friendly"[50] typically require the presentation of an IIC by the commercial importer or the Government of the importing State prior to the transfer being authorized by the exporting State. Arguably, this system may sometimes loosen end-use (but not end-user) controls.

IICs are signed and stamped by the authorities of the importing State and are usually valid for six months. They confirm that the importing Government is aware of, and does not object to, the proposed transfer to the importer, usually a commercial entity or individual. In contrast, end-use/user certificates, statements and undertakings are signed and stamped by the end user and any retransfer restrictions they contain apply to the end user, who may not be the importer or consignee.

The practice of States regarding not only IICs but import licences and permits varies even among those States with long-standing close relations such as in the EU and NATO, e.g., on formats, content and procedures. Nevertheless, in general an IIC can be said to be a standardized form and procedure to officially notify the exporting

[50] Usually was Australia, Japan, New Zealand and Switzerland.

State authorities that the importing State authorities are aware of the importer's intention to obtain a specific export authorization for an intended recipient or "user".

Crucially, IICs do not require a non-re-export undertaking from the final end user, but they do also place limits on re-exports and trans-shipments by requiring an undertaking from the importer, who may not be the end user, to first seek permission from their own Government before any re-export or trans-shipment of the named arms can take place. Typically, in an IIC the importer must also undertake to supply proof of delivery, if requested by the exporter, in the form of a Delivery Verification Certificate, usually verified by customs. On the other hand, the importing State does not commit to any restrictions in relation to such imports other than to apply its export control laws and regulations, a system that is approved through mutual agreement between those States using the IIC system.

The company that is asked by a potential commercial customer to export arms may be required under its domestic regulations to obtain an authorized IIC from the importer before applying for an export licence or permit for those items. Thus, the commercial importer must obtain the signed IIC to initiate the export risk assessment process. The importer may still need to obtain an import licence or permit if the end user is a private entity. In such cases, the IIC is usually sent to the exporter with the certified end-user certificate and an import licence. The United Nations Firearms Protocol requires import licensing.

According to one analyst,[51] "IICs do not make provision for end-use controls such as 'no re-export without permission' clauses, so the maximum obligation set out in an IIC is often that future re-export is made under an export licence approved by the recipient authorities. In effect, this puts the issue of re-export completely in the hands of the importing State, with the original exporting State unable to investigate potential onward transfer to undesirable end use(r)s." However, while this may be generally true for EU member States, under the United

[51] Jacqueline Macalesher (Saferworld), EU NGO submission to COARM on harmonization among EU Member States on end-use and post-export controls, London, May 2008.

States regulations[52] importers must undertake that they will not divert, trans-ship, or re-export the items to another destination except with explicit approval of the Department of Commerce, the Department of State or the Department of the Treasury, as appropriate. Another analyst has reported[53] that IICs do not designate the final consignee, and that may be true in some cases, but United States regulations[54] state that the import certificate may be made out to either the ultimate consignee or the purchaser, even though they are different parties, as long as both are located in the same country. Thus, there are variations in the way that IICs are designed and used.

In Germany, IICs are used from those countries with which Germany has bilateral governmental agreements on their mutual acceptance. This includes countries that share the same arms control commitments and have likewise stringent export control legislation.[55] In the Netherlands IICs are utilized, for example, for transfers of controlled goods to the United States such as components for incorporation into F-16 fighter aircrafts or Apache helicopters.[56] In other countries, such as Austria, Brazil, Canada and China, it is reported by the Small Arms Survey[57] that an IIC can be requested for exports of small arms and light weapons, as shown in **table 4 in appendix III**.

The IIC appears to be generally used alongside an end-use/user certificate, but there may be some exceptions. For example, in Australia, an IIC is the authorization that is to be issued to other countries instead of the "certified copy" of the B709, which is an Australian customs form issued by the State authority (Firearms Registry) to ascertain if controlled items (firearms and parts, etc.) can be possessed

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[52] United States Code of Federal Regulations (15 CFR 748.10 - Import and End-User Certificates.) (http://cfr.vlex.com/vid/10-import-and-end-user-certificates-19634532).

[53] Ilhan Berkol and Virginie Moreau, *Post-Export Controls on Arms. Transfers: Delivery Verification and End-use Monitoring*, GRIP, Brussels, 2009; this study has many other positive insights and information.

[54] United States Code of Federal Regulations (15 CFR 748.10 - Import and End-User Certificates.), op cit.

[55] Saferworld correspondence with German arms export control expert, January and April 2008.

[56] Jacqueline Macalesher (Saferworld) op cit.

[57] Small Arms Survey 2008.

legally.[58] Likewise, in the export and import regulations of Latvia, the company may receive an import certificate or an end-user certificate before an import transaction of strategic goods, if so required by export control authorities of the exporting country, while for the export of strategic goods the Latvian authorities require an IIC of the importing country (or an equivalent document—statement, permit, etc.) and, if required by the authorities, the end-use/user certificate.[59] Latvia appears to recognize that an end-use/user certificate is not always required by other countries. In Belgium, the Government has allowed IICs to be used without necessarily being accompanied by an authenticated end-use/user certificate for exports to EU and NATO countries.

Further analysis of the regulations for IICs in the Czech Republic, Finland, China (Hong Kong), Hungary, Latvia, Singapore and Ukraine shows again that the format and procedures for IIC systems varies to some extent. In most cases, the IIC is not an official permit to import but only an official notification to the prospective importer and the exporting State that the export licensing procedure can begin, giving basic details of the importer, exporter, the items to be transferred, sometimes the shipper and an undertaking by the importer not to divert the arms or dual-use items and to submit to the arms export control laws of the proposed importing State.

5. End-use/user certificate elements required by importing States

Further variations can be found in end-use/user certificate systems required by States that are importing conventional arms, as described in **table 5 in appendix III**.

[58] Department of Defence, Australia, Department of Defence – International Import Certificate, procedures November 2009.

[59] Latvian Government Regulations on Control of Strategic Goods, page 1, see part III. See http://www.latvia-usa.org/latgovregonc.html 11/29/2010.

5.1 Variations in end-use/user certificate formats by importing States

For the purpose of their arms imports, in their national systems, most Organization for Security and Cooperation in Europe participating States tend to prefer the end-use/user certificate format as an official form rather than a letterhead. Nonetheless, this depends on the requirements of the exporting States. Also, most importing States refer to the term end "user" rather than end "use". On the other hand, based on a sample of actual end-use/user certificates for imports by a few African and Asian States, for the period 2005-2008, as indicated in **table 6 in appendix III**, the preferred format of end-use/user certificates for these countries seems to be the letterhead rather than an official form. This format may result from the requirements of exporting States. However, because importing countries have to follow the procedures of the exporting States, the content of an end-use/user certificate of an importing country may vary depending on which country they buy the arms from. Essential elements in end-use/user certificates required to prevent diversion and malpractices can sometimes be missing when they are issued by the importing State and also accepted as valid by the exporting State.

5.2 Common end-use/user certificate elements required by importing States

In general, the most frequently found elements in the sample of end-use/user certificates of importing States are similar to those required by exporting States. The least common elements found in the sample of end-use/user certificates of importing States include: (i) expiry date of the end-use/user certificate; (ii) place where goods will be used, or the place of installation; and (iii) delivery verification.

5.3 Certification of non-re-export clauses by importing States

In general it is the end user in the importing State that certifies whether the arms will not be re-exported, sold or transferred without some sort of prior written approval from the exporting company, the export control authority of the exporting State or the importing State, as well as from a combination of these.

For example, in several East European and Central Asian countries, it is the Government through its export control authority that bears the responsibility for certifying the non-re-export clauses. In most importing States listed in **table 7 in appendix III**, it is the end user that certifies a non-re-export clause. It should be noted that the end user could be the importing Government or another consignee.

In the sample of end-use/user certificates used in this study for actual arms deliveries by importing States, the non-re-export clause was in all cases certified by the end users, the exception being Afghanistan where the United States Army certified on behalf of the Afghan Ministry of Defence that the military items were for the exclusive use of the Afghan Armed Forces and would not be resold, re-exported or disposed of without the consent of the Afghan Government (see **table 8 in appendix III**).

In Brazil, the Ministry of Defence appears to have used two different formats for end-use/user certificates to import arms. One was addressed to the United States Government and did not contain a non-re-export clause, but referred to an international import certificate that, as explained above, required the importer to give an undertaking that the arms would not be diverted, re-exported or trans-shipped to another country without the approval of the exporting State. Usually the authority for re-export approval is given to the importing State's national export authorities under the terms of a bilateral agreement, but for sensitive items the United States Government retains the right to make the final approval. The other end-use/user certificate was addressed to the Italian Government and did contain a non-re-export clause, which must have been guaranteed by the actual end user. These are summarized in **table 9 in appendix III.**

5.4 Variations in non-re-export clauses by importing countries

As can be noted in **table 10 in appendix III**, the terms of the non-re-export clause found in end-use/user certificates of importing States can vary widely. Some end users promise not to re-export *tout court*. Other end users promise not to re-export without consent from the exporting State and/or importing State.

6. Key policy challenges

6.1 Minimum and optimal content of end-use/user certificates

States parties to the United Nations Firearms Protocol have already agreed upon a global standard for documentation used in the export and import of firearms, their parts and components and ammunition. Article 10.3 of the United Nations Firearms Protocol states that "the export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States. The importing State party shall, upon request, inform the exporting State party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition."

From the data analysed, it is evident that many arms-exporting States, especially the arms-manufacturing countries that participate in the Wassenaar Arrangement, the Organization for Security and Cooperation in Europe (OSCE) and the European Union , usually request end users and importing States to provide detailed information for end-use certification and verification as indicated in section 4.2. Regarding the validity of the end-use/user certificate, it is essential that States specify the actual date of expiration of each end-use/user certificate and that it can only be used once. Moreover, given the problems associated with verification of end-use/user certificates, States should also seriously review the higher risk circumstances in which it is necessary to require the following as part of end-use/user certificate undertakings by the end user (as recommended by the Wassenaar Arrangement): certification that the goods will be installed at the premises of the end user or will be used only by the end user; agreement by the importer/end user to allow on-site verification; 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; and 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.

6.2 Import certificates

The OSCE advises participating States that they should officially authenticate private end-use statements or assurances before issuing import authorizations for each. In the United Nations Firearms Protocol, States agreed that: "the information contained in the import licence must be provided in advance to the transit States". However, there are no agreed international or regional standards with regard to import licences and import certificates, 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 end-use/user certificates and seldom refer to privately issued end-use/user certificates, statements or "assurances", import licences or import certificates.

As international import certificates (IICs) only concern the initial recipient of the items in question, rather than the ultimate end user, without an authenticated end-use/user certificate or equivalent document it would be virtually impossible for the initial exporting State to carry out a pre-licence risk assessment that takes into consideration the legitimacy and likely conduct of the final end-use/user. This undermines the credibility of the pre-licensing assessment process and negatively impacts upon Member States' ability to fulfil their export control obligations. The obligation set out in an IIC is often that a future re-export be made under an export licence approved by the recipient authorities. In effect, this puts the issue of re-export completely in the hands of the importing State, with the original exporting State unable to investigate potential onward transfer to undesirable end use/user.

Some non-governmental organizations have recommended that States should discontinue the practice of accepting IICs in place of more rigorous end-use/user certificates and advised that, at a minimum, the use of IICs by Member States should be limited to transfers to States that agree to consult with the original exporting Member State in the event that a re-export is proposed and that they take the views of that Member State fully into account in any eventual decision.

6.3 Arms embargoes

It has been argued that United Nations arms embargoes would be more effectively implemented if United Nations Member States routinely used standard international end-use documents.[60] Although this claim may be exaggerated, as can be seen from the analysis, of all the related issues to do with end-use/user control systems, there are circumstances in which end-use documentation can be crucial to preventing diversion to targets of an embargo.

For example, in April 2006 the United Nations Panel on Sudan[61] recommended that countries that conduct trade in military goods and services with Sudan should implement a self-imposed requirement for end-use certification and that the supplying State should request the Government of the Sudan to provide an end-use certificate, that would state the destination of the respective military goods and services. The Panel noted the potential risk that military goods and services exported to Sudan may be diverted to the embargoed region of Darfur. The Panel underscored that by insisting on end-use certification, Sudan's trading partners could play a more active role in ensuring that military goods that originate from their ports were not diverted to Darfur. The Panel also underlined that end-use certification would be more effective if the countries concerned followed up with their own verification checks, to trace goods that are at risk of being diverted into Darfur.

From subsequent reports of the United Nations Panel on Sudan and the deliberations of the Sudan Sanctions Committee, it was quite evident that Sudan's major trading partners had not reported on their own verification checks to trace weapons, munitions and associated materiel that may have been diverted. However, this appeared to have more to do with the lack of political will to carry out the checks and reporting than the absence of an internationally standardized end-use/user document.

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[60] Hagelin, Björn, "International armament embargoes and the need for end-use documents", in *International Sanctions: Between Words and Wars in the Global System*, ed. Peter Wallensteen and Carina Staibano. Oxford: Frank Cass, 2005.

[61] Letter dated 19 April 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan addressed to the President of the Security Council (S/2006/250), paragraph 61.

In yet another example of United Nations Panels/Expert Groups advocating for effective use of end-use certification, in 2009 the United Nations Expert Group on Côte d'Ivoire reiterated the importance of States taking appropriate measures to sensitize their relevant Government institutions to prevent the direct and indirect supply, sale or transfer of arms or any related materiel to Côte d'Ivoire, as called for in paragraph 7 of resolution 1572 (2004). The Group advised all States to remain vigilant to the possibility that weapons, ammunition and related materiel, while transferred legally from one State to another, may be retransferred in violation of the arms embargo. Before transferring weapons, including surplus weapons, to a State in the region, the Group urged exporting States to consider carefully the willingness and ability of the recipient State to take all necessary measures to prevent illicit retransfer, including the authenticity of its end-user certificates.[62]

6.4 Variations in sanctions and penalties

Domestic enforcement mechanisms and regulations should be put in place to ensure compliance with the national controls over the end use and the end user of internationally transferred arms. These should enable the investigation and prosecution of violations of the laws and regulations on international transfers of arms.

Effective sanctions should be in line with penalties for non-compliance. The sanctions need to be sufficient to punish and deter violations of end-use controls and could be based on a mix of civil and criminal penalties including fines, the confiscation of proceeds from transactions and custodial sentences. Such sanctions can apply to all relevant activities that take place on a State's territory and to both nationals and non-nationals. Also, considering that serious violations of the regulations regarding end-use/user rules can be carried out by a State's own nationals and residents outside of that State's territory, appropriate sanctions can also be applied in such cases.

Some States including China, Jordan, New Zealand, the Philippines, the Republic of Moldova and Tunisia, reported under the

[62] Letter dated 8 April 2009 from the Chairman of the Security Council Committee established pursuant to resolution 1572 (2004) concerning Côte d'Ivoire addressed to the President of the Security Council (S/2009/188), paragraph 130.

United Nations Programme of Action that they were considering regulating and criminalizing arms smuggling.[63] Various case studies of illegal international trafficking of arms also show inconsistencies in penalties. In some cases reported by United Nations investigative panels, no prosecutions have been pursued and in other cases, sentences appear lenient.

6.5 Corruption

No country has been immune to some level of corrupt practices. End-use/user certificates can be relatively easy to forge because, even though only original documents (not photocopies) should be accepted, there is no universal water-marking, hologram and sequential numbering system required on the documents. There is merely the use of seals, stamps and Apostilles.

For instance, in 2001 the Guinean authorities told the United Nations Panel investigating violations of the arms embargo on Liberia that many forged Guinean end-user certificates were circulating in Eastern Europe.[64] During the course of its investigation, the Panel obtained several copies of orders and end-user certificates for small arms, missiles, helicopters and cargo aircraft, apparently all with the Guinean armed forces as the end user. The Panel showed copies of these end-user certificates to the acting Chief of Staff of the Guinean armed forces and the officer in charge of procurement, who identified six of those documents as forgeries. All those had been used by a network of brokers to obtain weapons for transfer to Liberia.

Some States have expressed concern about export licensing officials being required to investigate corruption allegations when this isn't seen as their role. The European Union Common Position does not have a corruption parameter for considering arms exports but European Union Member States do have provisions to address corrup-

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[63] Sarah Parker, National Implementation of the United Nations Small Arms Programme of Action and the International Tracing Instrument, for the period 2009-10, Small Arms Survey Working Paper, June 2010.

[64] Letter dated 26 October 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1343 (2001) concerning Liberia addressed to the President of the Security Council (S/2001/1015), paragraphs 253-267, The Pecos End-User-Certificate Trail.

tion in other national laws, regulations and procedures, for example on serious fraud and bribery.

In recent years, many national, regional and international initiatives have been undertaken to address various aspects of the problem of corruption. For instance the Council of Europe has adopted the Criminal Law Convention on Corruption, while the Organization of American States has come up with the Inter-American Convention against Corruption. These two instruments use similar, but not identical, language to that of article 8 of the United Nations Convention against Transnational Organized Crime. Measures against corruption have also been agreed upon in the Organization for Economic Cooperation and Development Working Group on Bribery and Corruption, the World Bank and the European Union.

States are under a general obligation to adopt legislative, administrative and other effective measures to prevent, detect and punish corruption of their public officials and should guard against the risk of corruption by officials in arms export and import application processes, including in relation to end-use/user requirement. The United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption both require States to act to improve accountable and transparent Government spending, tackle corruption, and investigate and prosecute corrupt activities.[65] The United Nations Development Programme has recommended to States that they should assess the likely involvement in corrupt practices, at any stage of an arms deal, of the supplier, brokers, other intermediaries or the recipient.[66]

In some countries law enforcement officials admit that diversion of weapons to neighbouring countries or to citizen militias occurs with the collusion of State officials.[67] Corruption by public officials needs to be addressed by independent official bodies backed by international assistance, especially where the State cannot guarantee the safety and

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[65] See articles 26-42 of the *United Nations Convention Against Corruption,* and on the *United Nations Convention Against Transnational Organised Crime*, see article 8 on criminalization of corruption, article 9 on public procurement and management of public finances, and article 10 on public reporting.

[66] UNDP, "*How-to Guide: Small Arms and Light Weapons Legislation*", New York, 2008.

[67] Confidential interviews June 2010.

security of its own officials. In its commentary on article 10 of the Firearms Protocol, regarding general requirements for export, import and transit licensing or authorization systems, the Legislative Guide to the United Nations Firearms Protocol underscores that in determining the actual scope of the discretion to be delegated to officials, there are several points to take into account. Generally, broad discretion facilitates transfers, but may also create opportunities for corruption or other activities that are inconsistent with the Protocol or with whatever national policy criteria are established for the issuance or refusal of permits.[68]

The Guide recommends that legislation should allow officials to prohibit the issuance of the requested documents if certain criteria are not met. In other words, one way to reduce corruption involving licensing officials is to ensure that the criteria for licence approvals are clear.

Another precautionary measure for reducing the risk of corruption related to end-use/user certificates and associated documents would be for States to establish a rule whereby applicants for end-use/user certification and for export, import and transit authorizations are required to undertake that, in the course of arranging the transfer, no public official has been or will be promised, offered or given, directly or indirectly, an undue advantage, for the official himself or herself or another person, in order that the official acts or refrains from acting in the exercise of his or her official duties.[69]

6.6 Validation of end-use/user certificate procedures

End-use/user control systems—both the content and the procedures—are frequently not harmonized between States involved in transferring arms, and sometimes not even applied consistently by a single State, which renders them less effective than they could be. End-use/user certificates are rarely produced on special paper, such as bank note quality paper, and do not always have an individual reference number and an expiry date, to prevent forgery and abuse. The

[68] See https://www.unodc.org/tldb/pdf/English-%20Firearms-Protocol-guide.pdf, para. 101, p. 29.

[69] United Nations Convention Against Corruption, article 15 (Bribery of national public officials).

same can be said for import licences/permits and certificates where there is a mixed practice among States. Private or corporate end users in most cases require an import licence/permit along with an authenticated end-use/user certificate to support export applications to meet the requirements of the United Nations Firearms Protocol and similar regional instruments. Moreover, the internationally standardized system of IICs is used by major arms trading countries only, which in some cases may replace standard end-use/user certificates and loosen non-re-export clauses in the sense that only the importer and not the end user gives an undertaking to not re-export or trans-ship the imported arms or dual-use items.

An international standardized end-use/user certificate linked to other standardized documents with a system for serial numbers, and better procedures for cross-checking could overcome some of these problems, but even these are not enough. The international system of authentication of end-use/user certificates for commercial end users through the Apostille system is undermined by the far from universal participation by States in The Hague Convention.

United Nations arms embargoes are violated or undermined by failures to enforce the compliance of importers, consignees and end users with their import, delivery and end-user undertakings. Such failures reflect the more widespread lack of capacity to perform pre-delivery inspections and post-delivery checks on end-use and users. In this way, the problems of monitoring and verification arising from the inconsistencies in the format, content and certification of end-use/user certificates are made worse by the failure of virtually all arms-exporting States to conduct systematic delivery verification and post-delivery inspections. The solutions require greater international appreciation of these problems and more political will to collectively solve them.

The problem is compounded further by the absence of a common approach to risk assessments and authorizations of transfers to end users. Modern approaches to supply chain security focus first of all on the responsibilities of the supplier. In order to ensure compliance with existing or future enhanced standards, a more holistic and accountable approach would need to be adopted for the verification of end-user undertakings and deliveries. This would also enable the validation of end-use/user control systems. Institutional changes could encourage

closer cooperation between the national licensing authority, customs and other relevant law enforcement agencies, and between those agencies in the different States involved in an international arms transfer. National authorities in charge of end-user and end-use authorizations and verification should be the same as the officials who process risk assessments and approvals or denials for the international transfer of arms.

In addition, capacity issues must be addressed, as discussed further below. At the same time, the number of officials and institutions authorized to stamp or sign such documents should be kept to a minimum. Such a carefully calibrated control system needs to be backed up by a precise legal framework and a consistent system of sanctions and penalties.

7. Practical obstacles

7.1 Lack of institutional capacity

The Organization for Security and Cooperation in Europe (OSCE) Best Practice Guide on Export Control of Small Arms and Light Weapons emphasizes that officials in national arms export and import bodies need sufficient resources and training to make an informed and detailed assessment of end-use documentation—including the recognition of false documentation—and to carry out thorough risk assessments and verifications of proposed end users and other actors involved in proposed international transfers of arms.[70] They are required to examine critically the information in end-user certificates. They also need to seek information as appropriate, from diplomatic missions and through exchanges of views with other States, through customs, police and other law enforcement services, as well as those providing intelligence information. The information obtained must be objectively analysed and communicated.

These tasks require well organized and dedicated professional personnel that is free from corruption and political interference. They need to be accountable, as well as have the support services to

[70] Best Practice Guide on Export Control of Small Arms and Light Weapons (FSC.GAL/4/03/Rev.1, 19 Sep 2003).

efficiently carry out administrative procedures relating to end-user certification, validation and delivery verification.

Unfortunately, there are many examples which indicate that these institutional and personnel standards and requirements are well below standards, which would facilitate a consistent upholding of adequate rules and regulations. It is evident that States and international and regional organizations should consider elaborating better guidance and also consider assisting interested States in the development and implementation of appropriate national capacities to control the end user and the end use of internationally transferred arms. Evidence from cases of diversion, violations of United Nations arms embargoes and international arms trafficking indicate that many States lack capacity to verify end users mentioned on the end-use certificates and assurance statements.

For instance, during an audit of the South African Directorate Conventional Arms Control (DCAC), it was found that, on the sample of end-use certificates issued for commercial imports, no reference could be found to the related import permit. The draft DCAC operating procedures indicate that when a South African end-use certificate has been issued for the import of an armaments-related product, there should be an accompanying official import permit for the same items. Thus, the South African Auditor General warned of the possible risk that end-use/user certificates might be issued without any application of an approved import permit for the same items.[71]

7.2 Pre-shipment inspections

International guidelines for arms control generally do not mention pre-shipment inspection of the arms cargo to be delivered. However, international standards for customs administrations do encourage the pre-shipment inspection of higher risk cargoes. Customs officers frequently see end-use/user certificates when carrying out checks on the bona fide cargo. They are also usually included in the training of customs officers, but in many countries the customs administration is not regarded as the competent authority to verify delivery to an end user as this is considered to be the responsibility of

[71] South African Auditor General, report, 6 August 2007.

other law enforcement agencies.[72] Nevertheless, under general agreements regarding international cooperation of customs authorities, it is expected that the customs office in the country of departure will take all necessary action to enable the identification of the consignment and the detection of any unauthorized interference along the supply chain.

As regards maritime containerized consignments, any such screening, risk assessment and action should be taken prior to loading the container onto the ship. The International Ship and Port Facility Security Code (b1630-37) outlines in broad terms the measures that should be taken by the port facility. The World Customs Organization (WCO) SAFE Framework of Standards[73] state that the sending State's customs administration will perform an outbound inspection of high-risk containers and cargo, preferably using non-intrusive detection equipment such as large-scale X-ray machines and radiation detectors. In addition, WCO standards state that the customs administrations along the supply chain should agree to use an electronic messaging system to exchange customs data, control results and arrival notifications, in particular for high-risk consignments.

The WCO General High-Risk Indicator document[74] contains indicators that set out standardized sets of targeting criteria for customs administrations to detect customs infringements in a general manner. The criteria include: (i) details of the carrier's manifest; (ii) identification of a high-risk country; (iii) commodity and transportation factors that may indicate high-risk conditions; (iv) known high-risk commodities used for concealment purposes; (v) list of dangerous goods that may be potentially used in a terrorist attack; and (vi) factors which may reflect high-risk, such as container, importer/exporter and shipper. This set of indicators are updated regularly by the WCO for customs authorities, and include ammunition and explosives, as well as dual-use chemicals.

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[72] Interview by the consultant with the WCO, 14 October 2010.

[73] See http://www.mof.go.jp/customs_tariff/trade/international/wco/wakugumieibun.pdf.

[74] See http://ec.europa.eu/taxation_customscustoms/resources/documents/customs/policy_issues/customs_security/normes_wco_en.pdf p. 22.

As the trade in parts and components for arms increases relative to completed weapon systems, descriptions of arms cargoes can sometimes be wrong or inadequate and harder to discover when integrated supply chain management systems among customs are absent. The carrier or his/her agent has to submit in advance (electronically) a "cargo declaration" with details of the cargo and carrier to the customs authorities at the exporting and/or importing State. For maritime containerized shipments, the advance electronic cargo declaration should be lodged prior to the goods/container being loaded onto the vessel. For all other modes and shipments, it should be lodged prior to arrival of the means of transport at the customs office at the exporting and/or importing State. Even then, if modern scanning technologies were absent, it could still be difficult to check against diversion.

For security purposes, with high-risk cargoes the export and import goods declarations may only contain a brief description of the cargo. As part of the integrated customs control chain, customs administrations along the supply chain must consider customs-to-customs data exchange, in particular for high-risk consignments, to support risk assessment and facilitate release. Such an electronic messaging system could include the exchange of notifications about the export transaction and the control results, as well as a corresponding arrival notification.

Pre-shipment checks do not need to be confined only to physical inspections of the cargo by customs officials. Depending on the circumstances and nature of the international transfer, law enforcement and licensing agencies may need to verify pre-shipment arrangements for commercial arms sales over the logistics and supply chain, including the roles of some or all actors involved:[75] manufacturer; buying agent; banking institutions for the Letter of Credit; freight forwarders or consolidators; origin customs officials and ports/airports authorities; Non-Vessel Operating Common Carrier;[76] asset-based carriers; officials of destination customs and other governmental regulatory

[75] Amnesty International and TransArms, *Dead on Time - arms transportation, brokering and the threat to human rights*, 9 May 2006, AI Index Number: ACT 30/008/20.

[76] An NVOCC is a company that consolidates small shipments in a full load container and loads the container into a ship it does not own. The profit comes from the difference between the price the company pays for the transport of

agencies; customs brokers; rail lines/trucking or inter-modal companies (third-party entities); destination warehouse/distribution entities; and the importer's representatives.

For the supply chain to function legally, a series of documents are required that precede and accompany the shipments.[77] Most of this documentation is actually hidden from public scrutiny. These are intended to address national and international general provisions, regulations, and voluntary agreements, and may be important for the authorization and verification of international arms transfers to a Government or private end user. The types of documents include:

(i) *Documents related to the transaction* such as commercial invoices; enquiry/request for quote/offer; invitation; offer/quotation; pro-forma invoice; dispatch advice;[78]

(ii) *Documents related to payments* such as: documentary credit application and types of documentary credit;[79]

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the container and the total revenues it gains from the sum of all shipments it consolidated in the container.

[77] Amnesty International and TransArms, *Dead on Time*, 2006, op cit.

[78] A dispatch advice is a message sent by the seller to advise the buyer of the dispatch of goods and the detailed contents of the shipment in order to enable the receiving location to control the incoming flow of material. The dispatch advice relates one buyer to one seller and will always be sent by the seller to the buyer before the goods are physically delivered. As a shipping term, dispatch is also used to mean that the "loading and/or unloading has been completed in less than the number of days specified in the charter-party (the document containing the contract of affreightment, i.e. the conditions of chartering the means of transport), in which case the charterer is rewarded by the ship-owner for each day saved at a rate as specified in the charter-party."

[79] The International Chamber of Commerce (ICC) has developed a set of rules nearly universally accepted in the banking sector and known as Uniform Customs and Practices for Documentary Credits (1993), or UCP500. Other sets of rules are the Uniform Rules for Collections (URC 522), the Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits (URR 525) and the Uniform Rules for Demand Guarantees (URDG 458). Whereas UCP500 essentially deals with paper documentation, the ICC has recently moved in the direction of studying, clarifying, and setting rules for trade transactions online and electronic documentation, the so-called e-UCP. A common definition of the Letter of Credit is as follows: "A document issued by the bank per instructions by a buyer of goods authorizing the seller to draw a specified sum of money under specified terms, usually the receipt by the bank of certain shipping documents, within a given time."

(iii) *Documents related to forwarding and cargo-handling*[80]such as: standard consignment instructions; International Federation of Freight Forwarders Associations (FIATA) forwarding instructions; forwarder's certificate of receipt; FIATA warehouse receipt;

(iv) *Documents directly related to transport* such as: Government Bill of Lading; Standard Bill of Lading (International Chamber of Shipping);[81] international rail consignment note; international road consignment note; Universal Air Waybill;[82] negotiable FIATA multimodal transport Bill of Lading; non-negotiable FIATA multimodal transport Way Bill; FIATA forwarder's certificate of transport; FIATA shipper's inter-modal weight certificate; and

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[80] UNCTAD Secretariat/Geneva, United Nations Conference on Trade and Development, 1992.

[81] A document signed by a carrier (a transporter of goods) or the carrier's representative and issued to a consignor (the shipper of goods) that evidences the receipt of goods for shipment to a specified designation and person. Carriers using all modes of transportation issue bills of lading when they undertake the transportation of cargo. A bill of lading is, in addition to a receipt for the delivery of goods, a contract for their carriage and a document of title to them. Its terms describe the freight for identification purposes; state the name of the consignor and the provisions of the contract for shipment; and direct the cargo to be delivered to the order or assigns of a particular person, the consignee, at a designated location.

There are two basic types of bills of lading. A straight bill of lading is one in which the goods are consigned to a designated party. An order bill is one in which the goods are consigned to the order of a named party. This distinction is important in determining whether a bill of lading is negotiable (capable of transferring title to the goods covered under it by its delivery or endorsement). If its terms provide that the freight is to be delivered to the bearer (or possessor) of the bill, to the order of a named party, or, as recognized in overseas trade, to a named person or assigns, a bill, as a document of title, is negotiable. In contrast, a straight bill is not negotiable.

[82] The most common definition of an Air Waybill is: "Shipping document used by the airlines for air freight. It is a contract for carriage that includes carrier conditions of carriage that include such items as limits of liability and claim procedures. The air waybill also contains shipping instructions to airlines, a description of the commodity, and applicable transportation charges. Truckers can use air waybills as through documents for coordinated air/truck service. Air waybills are not negotiable. The airline industry has adopted a standard formatted air waybill that accommodates both domestic and international traffic."

(v) *Documents related to the official controls sector* such as: dangerous goods declaration; goods declaration for export (Kyoto Convention); goods declaration for transit (Kyoto Convention); Single Administrative Document.

In addition, an export licence from the appropriate national authorities is usually required for military arms, ammunition, bombs, tanks, imaging devices, military aircraft and warships; nuclear-related goods including materials, reactors and processing plants; dual-use goods, such as certain materials, machine tools, electronic, computing, telecommunication, cryptographic, navigation, avionic, marine, space and propulsion equipment; goods used for the delivery of weapons of mass destruction and missiles; goods subject to trade sanctions and embargoes; chemicals, related equipment and technology, biological equipment and technology; and components, spare parts and technology for controlled goods.

Thus, not only do customs, other law enforcement and licensing agencies require specialist staff and procedures to carry out checks, but they can also often obtain a range of relevant information, prior to shipments, during the journey and upon delivery, to assess risks related to such sensitive cargoes. This could be vital for verification of the end user, the lawful end use and the prosecution of offenders.

7.3 Delivery verification and post-shipment measures

Under article 10.4 of the United Nations Firearms Protocol, the importing State party shall, upon request, inform the exporting State party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.[83] Meanwhile, the OSCE recommends that the end use of the goods should be verified, when possible. For example, this may be done by requiring the final consignee to provide the exporter with a delivery verification certificate (DVC) once the export has reached the final destination or by conducting on-site inspections. A clause on post-shipment control may be included in the end-user certificate.[84] In order for such post-shipment controls to be carried out, an agreement should be previously inserted into the con-

[83] A/RES/55/255 p. 7.
[84] FSC.GAL/4/03/Rev.1, September 2003.

tract or the end-user certificate requiring a DVC and, where necessary, a post-delivery inspection.

The Wassenaar Arrangement goes even further by including the following optional requirements in the list of end-use/user certificate elements, presumably measures that at least some of the participating States require from importing States in sensitive cases: (i) certification that the goods will be installed at the premises of the end user or will be used only by the end user; (ii) agreement by the importer/end user to allow on-site verification; (iii) 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; (iv) 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.

Unfortunately, despite numerous recommendations for DVCs and procedures such as on-site inspections, in practice, delivery verification requirements are rarely included in the end-use/user certificates of exporting and importing States. Consequently, in the detailed sample of end-use/user certificates from exporting States listed in the table in **appendix I**, only 5 out of 20 countries require some sort of delivery verification as a condition in their end-use/user certificates (Finland, Norway, Romania, Sweden and Switzerland). This may or may not reflect the fact that the international import certificate procedures can often include, at the exporting State's request, that the importer provide proof of delivery through customs with a DVC.[85] Some other States are found to have provisions to undertake delivery verification (Albania, Bulgaria, Sweden, South Africa, United Kingdom and United States). However, in the sample of end-use/user certificates studied, there is also an absence of end-use monitoring clauses of the kind listed as an option by the Wassenaar Arrangement.

Some States nevertheless do leave open the possibility of physical inspection of the arms and related equipment, if only at the point of final delivery. If the items need to be installed, then details are required on where and how the items will be installed. Inspection can

[85] A different interpretation is put forward by Berkol and Moreau, 2009, op cit, that "The IIC also excludes, for the country of origin, the possibility of requiring a delivery verification certificate (DVC)."

occur at any time and place. For example, the European Union recommends that:

> Whereas the emphasis of export controls remains on the pre-licensing phase, post-shipment control can be an important supplementary tool to strengthen the effectiveness of national arms export control. Post-shipment measures, e.g. on-site inspections or delivery verification certificates, are particularly useful tools to help prevent diversion within the buyer country or re-export under undesirable conditions. In order to share available information on a voluntary base, Member States implementing post-shipment control are invited to inform partners about their experience in this field and about knowledge of general interest gathered by post-shipment measures. In States with minimal resources and few diplomatic assets, the authorities readily admit that they cannot carry out delivery verification inspections.[86]

From off-the-record conversations with Government officials, it has become clear that some officials are not in favour of any additional paperwork which might stretch the limited resources (time, personnel) that some export control agencies have at their disposal.

In some countries, a Government-to-Government transfer of conventional arms can avoid passing through customs. Customs officials in a few such countries said they want to see their powers expanded in this respect in order to help enforce the law. Although customs officials do regularly see end-use/user documentation, they are not responsible for verifying the authenticity of such documents or checking their contents for clearance purposes, which is left to other national licensing and law enforcement officials. Some customs officials interviewed had never heard of nor seen a DVC.

For instance, in South Africa, a DVC from the country of destination is required for all export permits as proof of importation, and the National Conventional Arms Control Committee should issue a DVC for all import permits. The copies of these DVCs should be kept,

[86] European Union Common Position User's Guide, op cit, section 2.3.1.

together with the permit documents. However, the audit of export and import permits found that no DVCs could have been obtained.[87]

On the other hand, in Belgium a DVC is mandated by law but the Flemish arms export authority has dropped delivery verification on the grounds of lack of resources. In Wallonia and Brussels delivery verification is still carried out by the export authorities but with long delays. The legal three-month deadline is never met. The DVCs usually return a year and a half after the actual exports. The administration has to send numerous reminders to the recipient States and companies.

7.4 Challenges of free trade zones

Arms trade passing through or making use of special economic areas, such as free trade zones (FTZs),[88] are of particular concern from a shipment and end-use/user verification and monitoring point of view. Only half of the 132 respondents to a United Nations inquiry[89] declared that they recorded goods entering or leaving the zones and less than 20 per cent declared that they recorded transfers from and to their offshore territories, dependencies, possessions and military bases in foreign countries.[90]

According to the Kyoto Convention, "free trade zones are part of the territory of a Contracting Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory".[91] FTZs are "customs-cordoned

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[87] *Management Report: Limited Assurance Engagement of the Functions as required by Section 12 of the National Conventional Arms Control Act 2002 for the 2006-07 Financial Year*, Auditor General, South Africa, 6 August 2007.

[88] This paragraph is based on the analysis of FTZs provided by Sergio Finardi, "A global Arms Trade Treaty, the problem of common international standards", TransArms, Chicago, draft 2009.

[89] "An overview of National Compilation and Dissemination Practices Updated Chapter 1 of International Merchandise Trade Statistics: Supplement to the Compilers Manual", United Nations Comtrade website, May 2009; the original chapter 1 was published in March 2008.

[90] Finardi, S., "A global Arms Trade Treaty, the problem of common international standards", quoted.

[91] *International Convention on the Simplification and Harmonization of customscustomscustoms procedures* (Kyoto Convention), 1974; the *Revised Kyoto Convention* (1999) entered into force on 3 February 2006. Annex B. See http://www.wcoomd.org/Kyoto_New/Content/content.html.

spaces" (near or inside a port, an airport, a logistics distribution centre, an industrial area, etc.), where traders and manufacturers ship, store or transform their goods without paying custom duties. Goods may enter and exit the FTZ freely, with the purpose of being eventually either imported in the customs territory of the hosting country (after paying the appropriated duties) or shipped to another country (without paying custom duties). In "free ports" or in the "free area" of airports, ships and aircraft enter and leave without being mandatorily inspected by customs.[92]

Presently, there are more than 2,700 active special economic zones[93] in all parts of the world (see **table 11 in appendix III**).

A sizeable number of these zones are export processing zones, free industrial zones and free trade zones dedicated to the manufacturing, assembling or trading of products in one particular category (electronics, textiles, garments, vehicles, etc.) and the potential threat of their use for passage or processing of arms is low. On the other hand, there are free trade zones, free ports and free airports, or free trade zones inside ports (trans-shipment ports) and airports (air cargo trade and trans-shipment), which accept all kinds of commodities, including conventional arms, so can sometimes become hot spots for diversion.

Unfortunately, the legal regulations of free zones are complex and vary from country to country, so they require a careful analysis for evaluating the threats they may pose in terms of control of arms trade flows. Many free zones, and in particular free ports and airports, effectively function as redistribution centres. Their potential use for disguising origin and destination of goods is inversely proportional to the capacity or willingness of the hosting country to perform routine inspections.

In general, the director of the port of entry, the director of the zone, in particular, FTZ and customs have the power to negate admis-

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[92] Finardi, S., "A global Arms Trade Treaty" 2009, op cit.

[93] The World Bank, *Special Economic Zones Performance, Lessons Learned, and Implications for Zone Development*. Washington, DC, 2008.

For the history and development of the special economic zones, see: Sergio Finardi and Elena Moroni, "State of Exception. Free Trade Zone and Ports in the World Economy", Milan, Franco Angeli, 2001.

sion of foreign goods into the zone and to inspect whatever shipment they may consider of interest for law enforcement or monitoring activities. In many cases, the goods entering the FTZ must be declared on customs forms, with their value and all applicable customs codes. The goods entering the FTZ are also usually inventoried and stored into assigned spaces, to facilitate the work customs must perform in case the goods will later enter the fiscal territory. All transformations, except re-packaging that the foreign goods undergo in an FTZ must, in theory, receive approval by the director of the port of entry or by customs and FTZ authorities.

However, corruption, inefficiencies, the lack of universal documents and advanced procedures for monitoring arms shipments, and simply the high volumes of cargo traffic, make the reality different. A free zone may serve as: (i) a logistic hub (goods are stored in the FTZ and wait for a ship or an aircraft that suits the needs of the exporter or importer in term of price or destination, or in terms of favourable market conditions for the intended destination); (ii) a place where the goods undergo transformation of certain characteristics; (iii) a place where the different parts of a product, coming from different places, are assembled for producing that product at favourable conditions in terms of labour costs or costs of raw materials and semi-laboured products.

According to international standards, States should ensure that the transit and trans-shipment licences and other relevant documentation they produce are in line with international best practices in this area.[94] However, best practices for transit and trans-shipment documents and procedures remain vague. In the Organization of American States, it is agreed that States should not permit the transit or trans-shipment of conventional arms until the receiving State has issued the corresponding licence or authorization.[95]

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[94] United Nations General Assembly, Report of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V of 15 December 1999, entitled "Small arms", A/CONF.192/2, 11 May 2001, para 57; and OSCE Handbook of Best Practices on Small Arms and Light Weapons, chapter 5, Export Control of Small Arms and Light Weapons (2003), p. 9.

[95] Organization of American States, *Inter-American Convention against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials* Approved 13 November 1997.

8. Practical steps to assist States to build a common framework

8.1 Conclusions

The consensus among Member States seems to be that international transfers of conventional arms should only be permitted by national authorities based on reliable prior knowledge of the end use and the end user in the country of final destination to ensure in each case that the arms under consideration are only delivered to the legally authorized end user and for the legally declared end-use. However, this recognition is not fully translated into institutional practice.

Systems of end-use/user control among States vary and there is a lack of institutional enforcement capacity especially in developing countries. Not only does the capacity of arms export licensing authorities need to be strengthened, but also of customs and police.

The international community needs to find a way to make law enforcement compatible with free trade if it is serious about eliminating the illicit movement of arms, ammunition and explosives. Thus States should consider mutual ways, including through the United Nations, to provide assistance and to develop a clearer framework for end-use/user controls as outlined below.

8.2 Recommendations on standards

8.2.1 General requirements for national end-use/user control systems

1. National controls over the end user and the end use should address the entire supply chain in order to prevent the unauthorized diversion of arms. National systems to regulate exports, imports, transfers, transits and trans-shipments should include a comprehensive range of checks beginning with a rigorous assessment of the risks of diversion and unlawful misuse of the arms before export authorization is granted. If the risks are substantial, authorization should be withheld until such a risk is removed.
2. Before issuing an export licence or authorization for arms shipments, States should verify: (a) that the importing State has

issued an import licence or authorization; and (b) that, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, any transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.

3. States should take particular care when considering exports to recipients that are neighbouring United Nations arms embargoed entities, or are neither Governments nor their authorized agents, and should check whether a transfer has been previously denied to the end user or whether the end user has diverted, for purposes inconsistent with non-proliferation goals, any transfer previously authorized.

4. Special care should also be taken when authorizing arms shipments to higher risk ports such as free trade zones (FTZs), or via circuitous routes. FTZs, free ports and free airports or FTZs inside ports (trans-shipment ports) and airports (air cargo trade and trans-shipment), while they are legal transits of arms, are also potential targets for smuggling. Best practice for transit and trans-shipment documents and procedures remains vague. At least, it is agreed that States should not permit the transit or trans-shipment of conventional arms until the receiving State has issued the corresponding licence or authorization.

5. Objective criteria, based on best practice international standards, should be used to assess the suitability of the end use and end user, the safe transport, storage and management of the international arms transfer and mechanisms established to ensure the verification of the arms delivery, as well as compliance with non-re-export clauses in end-use certification.

6. The legal end user, in the first instance, should normally be under an obligation to obtain authorization from the original exporting State to conduct the re-export of the arms to another end user unless that authority is designated to the initial receiving State of the end user.

7. The exporting or the importing State should consider requiring, in certain occasions, specific controls during the transfer. In circumstances of higher risk of diversion or misuse, an exporting

State should consider undertaking physical inspections of the transferred arms and to monitor its end uses.

8. Before issuing an export licence or authorization, a State should always require an import licence or authorization from the importing State and an end-use certificate from the end user, certified by the State in which the end user is located.

9. States should consider adopting simplified procedures for the temporary international transfer of conventional arms for purposes that are verifiably lawful, such as sports shooting, exhibitions, repairs, evaluation, training and research.

10. To help avoid misunderstandings and malpractice between States and private actors, States may wish to seek through the United Nations to establish common definitions of "end-use/user documents", including an "end-use/user certificate", an "end-use/user statement or undertaking", an import licence and an international import certificate. States should clarify the functions and relationships among international import certificates, import licences and end-use/user certificates, and statements and undertakings, as they pertain to State and non-State actors, and consider whether agreed international or regional standards with regard to import licences and import certificates could improve end-use/user controls.

11. States should also consider the feasibility of establishing an internationally standardized end-use document linked to other standardized documents with a system for serial numbers and better procedures for cross-checking. This could, for example, be applied at least to the surrounding countries and associated bodies of a United Nations embargoed entity.

12. States should consider changing commercial regulations so that arms exporters use "Delivery Duty Paid, with Named Place of Destination" terms in all arms sales and purchase delivery contracts so that the seller, rather than the importer, would bear the legal responsibility of making sure that the arms reach the destination, thus reducing the risk of diversion.[96]

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[96] This idea has been put forward by Sergio Finardi, "A global Arms Trade Treaty" 2009, op. cit.

13. States should ensure that the requirements for licensing, authorization and certification apply to both nationals and non-nationals within its jurisdiction.

8.2.2 End-use certification

14. An end-use/user certificate or equivalent authorization should be an original document issued by a competent national authority. The certificate or document must include the date, name, title and original signature of the authorizing official of the national authority.

15. The certificate should at least include, in relation to the conventional arms that are the subject of the export licence or authorization: (i) a detailed description of the arms, their types and quantities and values; (ii) the end-use(s) and the location where the items shall or shall not be used; (iii) the name(s), address(es) and signatures of the immediate consignees or purchaser and of the end user(s) and the country of final destination; (iv) the contract of sale number, date and names/addresses of parties involved; (v) an undertaking that the items will not be used for purposes other than those declared, or by end users other than those declared; and (vi) the date of issue, register/serial number and the duration of the certificate.

16. Information required on the consignee and end user should be as detailed as possible in order to permit a comparable assessment. Name, address, country, telephone number, fax number, e-mail address should be given, specifying whether the buyer is a Government agency, the police, army, navy or air force, a paramilitary force, or a private natural or legal person.

17. Relevant information on other parties (intermediate consignees/purchasers) involved in the transaction should also be included, such as: name, title and original signature of any consignee. As an alternative, such information on the intermediate consignee and purchaser could be provided in writing during the authorizing procedure.

18. States should always include a provision in the end-use certificate attaching terms and conditions on the re-export of the items subject to the import certificate—assurances should be given

by the end user that the re-export of imported arms will either not be permitted or can take place only after receiving a written authorization from the exporting country's national authority, unless the Government of the exporting country decides to transfer that authority to the export licensing authorities of the importing country.

19. States should consider requiring certification that the goods will be installed at the premises of the end user or will be used only by a particular end user, and to obtain 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, for example to ensure respect for a United Nations arms embargo.

20. The validity of an end-use/user certificate or an equivalent authorization should be limited to a reasonable period of time and not more than one year and this should be clearly indicated on the licence. Upon expiry of the licence, a new application should be required. The certificate should only be used once for the stated items.

8.2.3 Authentication of end-use documentation

21. Each State should take such measures as necessary to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified or validated.

22. All end-use/user documents should be certified with original signatures and authentic stamps. The certificate should include an official stamp and or seal to legalize (authenticate) the document by the appointed Government authority in the end user's country.

23. More States may wish to use the Apostille system to authenticate end-use/user certificates by ratifying The Hague Convention relating to legalization of documents by Apostille.

24. Before issuing an export licence or authorization, an exporting State should authenticate the certificate. If the end-user certificate comes from the Government of the country of

destination of the goods, the authorities of the exporting country should authenticate the certificate in order to check the authenticity of the signature and the capacity of the signatory to make commitments on behalf of its Government.

25. End-use/user certificates and equivalent documents should preferably take the format of an official form printed on banknote paper bearing a unique serial number and conforming to the specimen requirements of the licensing State. In any case, they should be written on the original stationery of the national authority. Only in exceptional cases, should it be written on the stationary of the relevant company and in such cases additional checks with the authorities should be made.

26. The information pertaining to the arms on the end-use/user certificate should correspond to the order(s) from the purchaser/importer regarding the specific transaction of the arms.

27. The number of officials and institutions authorized to stamp or sign such documents should be kept to a minimum.

28. States and the United Nations Secretariat should consider whether it is feasible to establish a confidential United Nations registry, only for Government use and safeguarded from abuse, with sample end-use/user certificates and a regularly updated list of names/signatures of authorizing officials for each State so that those States lacking administrative capacity and diplomatic missions can make checks to verify the authenticity of end-use/user certificates and assurance statements.

8.2.4 Verification and compliance of delivery and end use/users

29. Not only the authenticity of the documents, but also the security of the transfer and storage, and crucially the legitimacy of the end user and end use, must be verified before an export licence is granted so that if the risk of diversion or of unlawful end use is substantial, the export should not be authorized.

30. Even an original end-use/user certificate should not be accepted at face value by export licensing authorities because the provider of that end-use/user certificate may be acting as an undeclared

agent who acquires arms only to divert them to a proscribed and/or unauthorized end user.

31. Verification of end-use/user documents also involves checking whether the proper authorization has been provided by the importing State and, if relevant, by the transit State. It may also require a general assessment of the effectiveness of end-user and end-use controls in the importing State and its procedures of stockpile management and security in the importing State.

32. When requested to do so, the importing State should assist the exporting State to verify an end-use certificate by providing relevant information on a number of elements. Firstly, the identity and the legal status of the exporter, the end user and the consignee, as well as the intermediate consignee if applicable, must be thoroughly checked. So too must the veracity of the signature of the end user, the accuracy of assurances regarding the end use, end user and re-export, the adequacy of information provided in the end-use/user certificate concerning the contract, transportation and other relevant documents, and the existence of a certification by the authorities of the recipient State.

33. States may require the final consignee of the arms to furnish evidence to verify that the end use of the arms complies with the commitments made in the certificate. This may include agreeing to on-site inspections. Extra checks should be made if the end user's country is not the same as the buyer's or initial importer's country.

34. Before issuing an export licence or authorization, each State may wish to verify that, without prejudice to bilateral or multilateral agreements or arrangements favouring the transit trade of landlocked States, any transit or trans-shipment State has given notice in writing, prior to shipment, that they have no objection to the transit or trans-shipment and that it complies with its international obligations and commitments.

35. Verification of end-use/user certificates may be undertaken by using open-source information such as telephone directories, Internet, media and non-governmental organization resources, and by using diplomatic channels or national contact points. Additional information may be obtained, as appropriate, from

diplomatic missions and other governmental institutions such as customs, police and other law enforcement services as well as those providing intelligence information or through exchange of views among States.

36. Crucially, compliance could be established through the adoption of at least four key verification procedures: (i) before a commercial shipment is loaded or leaves port, the standard cargo manifest could be checked by customs, as a norm, against the relevant export licence and initial end-use/user certificate to which it referred, reporting to the relevant national licensing authorities; (ii) the authorities at transit or trans-shipping ports and airports, including where there is an FTZ or bonded warehouse, must be notified in advance to provide extra security for certain cargoes and open the cargo if they receive an order by law enforcement authorities (in the United Nations Firearms Protocol, States agreed that the information contained in the import licence must be provided in advance to the transit State); (iii) customs clearance of the cargo against the manifest must be notified to the authority undertaking the delivery verification certification and the end-use verification procedure; and (iv) effective arms stockpile management systems should be established according to best practice prior to the cargo being delivered to the end user and should be subjected to validation.

37. Verification may also require an assessment of the risk of diversion during the actual physical transfer, particularly taking into account the possible itinerary, modalities and the transit points. The exporter should inform the exporting State, the importing State and, if relevant, the transit State when the consignment has been dispatched from its territory. In certain circumstances, States may also require that the transfers of arms take place under the supervision and escort of security forces assigned by the relevant national authorities.

38. Modern technologies and sophisticated marking systems should be adapted and deployed wherever possible by the sending authorities to track the arms cargo through all phases of the supply chain until physical verification of delivery to the lawful end user.

39. Post-shipment checks are important to carry out, including through a delivery verification certificate from the final consignee verified by the importing State's customs, to assure the exporting State that the arms have been lawfully delivered. The importing State should, upon request, inform the exporting State of the receipt of the dispatched shipment of conventional arms through the provision of a certified delivery verification certificate.

40. Delivery verification certificates should contain information that at least includes the name and address of the exporter and the importer, the serial number of the import certificate, a description of the goods, the quantity and value, the port of arrival, the name of the carrier company, and the identification number of the vehicle—the IMO number for ships, the manufacturing number for aircraft and the chassis number for trucks and railcars.

41. Additional elements, such as a clause on post-shipment controls, may be included in end-user undertakings, for example by the export authority conducting on-site inspections or checking standards for stockpile security in the importing country.

42. States may wish to establish a precautionary rule to counter corruption whereby applicants for end-use/user certification and for export, import and transit authorizations are required to give an undertaking that in the course of arranging the transfer no public official has been or will be promised, offered or given, directly or indirectly, an undue advantage, for the official himself or herself, or another person, in order that the official act or refrain from acting in the exercise of his or her official duties.

43. Sanctions in national regulations need to be sufficient to punish and deter violations of end-use controls and be based on a mix of civil and criminal penalties, including fines, the confiscation of proceeds from transactions and custodial sentences. Such sanctions should apply to all relevant activities that take place on a State's territory and to both nationals and non-nationals.

8.2.5 International cooperation and assistance

44. With regard to particular exports, imports and transfers of conventional arms, the exporting State and the importing State

should cooperate throughout the end-use control process in order to minimize the risk of unauthorized diversion and illegal use of those arms. In particular, States should cooperate during the pre-licensing risk assessment, the authentication of the end-use/user certificate, the verification of the end-use/user certificate and the delivery and post-delivery verification.

45. In general, States may wish to actively explore ways, including through the United Nations and other intergovernmental organizations, to harmonize end-user and end-use control legislation, end-user and end-use procedures, and end-use documents, or establish end-use documents standard elements.

8.2.6 Sharing of information

46. States may wish to exchange information on end-user and end-use controls, particularly on their national legislation and procedures on such controls; the type and contents of their national end-use documents; methods of authentication; cases of non-compliance with these controls; cases of forgery of end-use documents; verification measures; and post-shipment controls.

47. States are encouraged, subject to their national practices, to enhance, according to their respective legal systems, mutual legal assistance and other forms of cooperation in order to assist investigations and prosecutions in relation to the illicit arms trade.

48. Where appropriate, States and international and regional organizations should cooperate, develop and strengthen partnerships to share specific resources and information on end-user and end-use control violations.

49. Where relevant, States should share information on officials authorized to certify and control end-use documents.

50. Customs administrations along the supply chain must consider customs-to-customs data exchange, in particular for high-risk consignments, to support risk assessment and facilitate release. Such an electronic messaging system could include the exchange of notifications about the export transaction, including the control results, as well as a corresponding arrival notification.

51. States may wish to include national contact points for end-user and end-use controls in their existing list of contact points, on the United Nations Programme of Action on small arms. This information should be regularly updated.

52. Exchanges of information may be undertaken either confidentially or publicly. A State should guarantee the confidentiality of information if requested to do so by the State providing the information. If such confidentiality cannot be maintained, the State that provided the information should be notified prior to its disclosure.

8.2.7 Training and technical assistance

53. Officials should be given sufficient resources and training to enable them to make detailed assessments of different types of end-use documentation and certification, including the recognition of false documentation, and methods of authentication and verification.

54. States, international and regional organizations should also consider assisting interested States in the development and implementation of appropriate systems of laws, regulations and administrative procedures relevant to end-use/user controls on the transfer of conventional arms. Such assistance could include the provision of training and technical assistance relevant not only to end-use/users but also related regulation of intermediary activities such as brokering and transport of conventional arms.

55. Specific resources and assistance to strengthen the arms control systems, including on end-use/user controls in Member States emerging from conflict, could be considered by donor States and the United Nations upon the request of such Member States to ensure the aims of peacebuilding, to re-establish the rule of law and respect for international law, and to bring their systems into compliance with the requirements of international standards.

8.2.8 Law enforcement capacity and cooperation

56. States may wish to initiate, develop or improve specific training programmes for their law enforcement personnel, including prosecutors, investigating magistrates, customs personnel and

other personnel charged with the prevention, detection and control of the offences covered by arms export control legislation and regulations. Such programmes may include secondment and exchange of staff and dealing with the recommendations of the United Nations Convention against Transnational Organized Crime.

57. Security and facilitation along the global supply chain require highly trained and motivated staff in customs administration, as well as in all other parties involved in the supply chain. Customs have to ensure that all levels of staff are regularly provided with the necessary training to build and maintain the skills required to perform effective and efficient customs controls and to operate in an electronic environment.

58. States may wish to request that the World Customs Organization (WCO) adapt and apply the principles of the SAFE Framework of Standards[97] to help prevent the international diversion of arms from an intended end user.

59. States may wish to address the lack of capacity to undertake sufficient inspections of cargoes in many countries, especially those that are not marked as dangerous goods under international regulations, bearing in mind that modern international standards for customs administrations also encourage the pre-shipment inspection of higher risk cargoes. In respect of maritime containerized consignments, any such screening, risk assessment and action should be taken prior to loading the container onto the ship.

60. Customs administrations and other competent authorities should be encouraged to introduce programmes to prevent lapses in employee integrity and to identify and combat breaches in integrity. In this respect the WCO Revised Arusha Declaration is the pre-eminent source of guidance for customs administrations to install anti-corruption systems.[98]

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[97] See http://www.mof.go.jp/customs_tariff/trade/international/wco/wakugumieibun.pdf.

[98] See http://www.wcoomd.org/home_cboverviewboxes_valelearningoncustomsvaluation_cbintegritytooloverview.htm.

61. The WCO secretariat, with the committed support of some WCO members, should continue to provide assistance to customs administrations that request it in the form of a programme for sustainable capacity-building (the Columbus Programme).[99] The WCO and the United Nations Secretariat could examine the relevance to better control the arms trade of the WCO customs to business partnership programme and the operation of "Authorized Economic Operator" status to sensitive cargoes, whereby companies can expedite cargo through ports in return for closer mutual cooperation with customs authorities and systematic sharing of their company information with customs.

[99] Since 1 January 2006 the WCO has initiated a number of Capacity Building programmes and activities. The most significant is the Columbus Programme, Aid for SAFE trade. The aim of the Columbus Programme is full implementation of the SAFE Framework of Standards to Secure and Facilitate Global Trade. The SAFE Framework is an instrument to promote standards that provide supply chain security and facilitation to goods being traded internationally. The Columbus Programme also promotes other WCO conventions and instruments, as well as best practices in the area of customs administration. It also aims to prepare member administration for the possible outcome of the WTO negotiations on trade facilitation in Geneva. See http://www.wcoomd.org/home_cboverviewboxes_valelearningoncustomsvaluation_cbcolumbusprogrammeoverview.htm.

Appendix I

Sample of national standards for end-use/user certificates of exporting States compared with the minimum standards agreed by the Organization for Security and Cooperation of Europe, Wassenaar Arrangement and European Union

	1 *Contract number, date*	*2* *Date of issuance, and/or validity*	*3* *Final destination*	*4* *Description weapons*	*5* *Details exporter*	*6* *Details end-user*	*7* *Details other parties*
OSCE	x	x	x	x	x	x	(broker)
Wassenaar		optional		x	x	x	(consignee – optional)
EU	optional	x	x	x	x	x	
Australia				x	x	x	(importer)
Austria		x	x	x	x	x	
Azerbaijan	x	x	x	x	x	x	(importer)
Finland (governmental end user)	x	x	x	x	(name)	x	
Finland (private end user)	x	x	x	x	x	x	
France	x	x	x	x	(name)	x	
Germany		x	x	x	x	x	
Hungary	x	x		x	x	x	
Ireland		x		x	x	x	(importer)
Italy	x	x	x	x		x	
Luxemburg	x	x	x	x	x	x	(importer)
Norway (declaration of use)	x	x		x	(name)	(name)	
Norway (end-user statement)	x	x		x	(name)	(letterhead)	
Portugal		x	x	x	x	x	(importer)
Romania	x	x	x	x	(name)	(name)	
Singapore (end-user statement)		x	x	x	x	x	
South Africa		x	x	x	x	x	
Sweden (declaration of use)	x	x	x	x	(name)	(name)	
Sweden (certificate by end user)	x	x		x	(name)	(name)	
Switzerland (end-use/user certificate for war material)		x	x	x	(name)		
Switzerland (statement of end-use)		x	x	x	(name)		
United Kingdom		x	x	x	x	x	(importer)
United States (non-transfer and use certificate)	x	x	x	x	(name)	(name)	

	8	9	10	11	12	13
	Description end use	*Assurance about end use*	*Non-re-export clause*	*Certification by relevant Government authority as to authenticity of end user*	*Delivery verification*	*Post-shipment inspection*
OSCE	x	x	x	x	optional	optional
Wassenaar	x	x	optional	optional	optional	optional
EU	x	if appropriate	where appropriate	optional	optional	
Australia			x			
Austria	x	x	x			
Azerbaijan	x	x	x			
Finland (governmental end user)	x	x	x		x	
Finland (private end user)	x	x	x	x	x	
France	x	x	x	x		
Germany	x	x	x			
Hungary	x		x			
Ireland	x	x	x			
Italy			x			
Luxemburg	x	x	x			
Norway (declaration of use)		x			x	
Norway (end-user statement)	x		x		x	
Portugal		x	x			
Romania	x	x	x		x	
Singapore (end-user statement)	x		x			
South Africa	x	x	x	x		
Sweden (declaration of use)		x	x		x	
Sweden (certificate by end user)		x	x		x	
Switzerland (end-use/user certificate for war material)	x	x	x		x	
Switzerland (statement of end-use)	x	x	x			
United Kingdom	x	x	x			
United States (non-transfer and use certificate)			x			

Appendix II

Countries that have specifically adopted the Convention relating to legalization of documents by Apostille

The following countries are all members of The Hague Convention and have entered into force Convention 12 of 5 October 1961, Abolishing the Requirement of Legalization for Foreign Public Documents. These countries will therefore accept the Apostille Certificate in place of any further legalization. Countries not listed will often still require an Apostille but will then also require further legalization via their embassy.

Albania
Andorra
Antigua and Barbuda
Argentina
Armenia
Austria
Australia
Azerbaijan
Bahamas
Barbados
Belarus
Belgium
Belize
Bosnia and Herzegovina
Botswana
Brunei Darussalam
Bulgaria
China (Hong Kong)
China (Macao)
Colombia
Cook Islands
Croatia
Cyprus
Czech Republic
Denmark
Dominica
Dominican Republic
Ecuador
El Salvador
Estonia
Fiji
Finland
France
Georgia
Germany
Greece
Grenada
Honduras
Hungary
Iceland
India
Ireland
Israel
Italy
Japan
Kazakhstan
Korea, Republic of
Latvia
Lesotho
Liberia
Liechtenstein
Lithuania

Luxembourg
Malawi
Malta
Marshall Islands
Mauritius
Mexico
Monaco
Mongolia
Montenegro
Namibia
Netherlands
New Zealand
Niue
Norway
Panama
Poland
Portugal
Republic of Korea
Republic of Moldova
Romania
Russian Federation
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Samoa
San Marino
Sao Tome and Principe
Serbia
Seychelles
Slovakia
Slovenia
South Africa
Spain
Suriname
Swaziland
Sweden
Switzerland
The former Yugoslav Republic of Macedonia
Tonga
Trinidad and Tobago
Turkey
Ukraine
United Kingdom
United States of America
Vanuatu
Venezuela

Appendix III

Tables illustrating variations in end-use/user certificates

Table 1. Formats of end-use/user certificates required by exporting States

Country	*Form / Letterhead*	*End-use/user certificate*
Australia	Form	End-user and Non-Transfer Certification
Austria[a]	Combination[b]	Statement of End-Use by Ultimate Consignee (Form end-use/user certificate-ML BMWFJ 09/2009)
		End-use certificate (as presented to the Organization for Security and Cooperation in Europe)
Azerbaijan	Form	End-user certificate
Canada	N/A	End-use certificate
		End-use statement
Denmark	N/A	End-user certificate
Finland	Form	End-user certificate
France	Form	End-use certificate
Germany	Combination[c]	End-use certificate
Hungary	Form	End-user certificate
Ireland	Letterhead	End-use assurance
Italy	Letterhead	End-user certificate
Lithuania	Letterhead	End-user certificate
Luxembourg	Letterhead	End-use certificate
Norway	Letterhead	Declaration of Use (Government)
		End-user statement (company or organization)
Portugal	Form	End-user certificate
Romania	Form	Non-Transfer and Use Certificate
Singapore[d]	Not available	End-user certificate
		End-user statement
South Africa	Form	Non-Transfer and end-use certificate
Spain	Form	End-user certificate
Sweden	Banknote paper	Declaration by End user
	Letterhead	Declaration of Use
Switzerland	Letterhead	End-use certificate for War Material
		Statement of End-use for specific military goods
United Kingdom	Form + cover letter	End-user Undertaking

Country	*Form / Letterhead*	*End-use/user certificate*
United States	Form	Non-Transfer and use certificate (commercial sales) End-use certificate (DoD surplus/Government to Government)

[a] Austria has presented two different types of end-use/user certificate one sample end-use/user certificate sent in to the Organization for Security and Cooperation in Europe in April 2009 and another on the website of the export control authority–form dated September 2009.
[b] Form "EUC-ML BMWFJ 09/2009" to be presented on letterhead of the end-user.
[c] Germany requires a specified format to be presented on the letterhead of the end-user.
[d] Based on the Singapore Government's Handbook on the Strategic Trade Scheme.

Table 2. Body that certifies the non-re-export clause

Country	*Certification done by*		
	Consignee	*End user*	*Foreign Government*
Australia	X	X	X
Austria[a]		X	
Azerbaijan	X	X	X
Finland		X	
France	X	X	X
Germany		X	
Hungary	X	X	X
Ireland		X	
Italy	X	X	X
Luxembourg		X	
Norway		X	
Poland	X	X	X
Portugal	X	X	X
Romania	X	X	X
South Africa		X	
Spain		X	
Sweden		X	
Switzerland		X	
United Kingdom	X	X	
United States	X	X	X

[a] Form EUC-ML BMWFJ 09/2009.

Table 3. Examples of non-re-export clauses included in end-use/user certificates required by the following exporting States

Austria[a]	**Re-exporting the goods is definitely excluded.** (as presented to the Organization for Security and Cooperation in Europe) We certify that we will not re-export the goods to third countries without the approval of the Federal Ministry of Economy, Family and Youth. Re-exports to the following countries do not require any approval of the Federal Ministry of Economy, Family and Youth: Australia, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, United States of America. (Form end-use/user certificate-ML BMWFJ 09/2009)
Azerbaijan	1. **Certification of foreign importer**: We certify that we are importing the articles listed in item 6 to be delivered to the end user named in item 4. We undertake not to sell, lend or deliver to any party, other than specified in item 8 under any conditions whatsoever, with or without compensation, temporary or permanently the goods listed in item 6, including the equipment and spare parts delivered in connection with the after-sales support, documentation and operating manuals, without the prior written approval of the Azerbaijani authority (Ministry of Defence Industry of the Azerbaijan Republic); 2. **Certification of foreign end user**: We certify that we are the end user for the goods listed in Item 6 and that we intend to use them for the following purposes: We undertake not to sell, lend or deliver to any party, other than specified in item 8 under any conditions whatsoever, with or without compensation, temporary or permanently the goods listed in item 6, including the equipment and spare parts delivered in connection with the after-sales support, documentation and operating manuals, without the prior written approval of the Azerbaijani authority (Ministry of Defence Industry of the Azerbaijan Republic); 3. **Certification of the end user governmental authority**: We undertake not to sell, lend or deliver to any party, other than specified in item 8 under any conditions whatsoever, with or without compensation, temporary or permanently the goods listed in item 6, including the equipment and spare parts delivered in connection with the after-sales support, documentation and operating manuals, without the prior written approval of the Azerbaijani authority (Ministry of Defence Industry of the Azerbaijan Republic).
Finland	Will not be exported or re-exported without prior written consent of the Government of Finland.
Ireland	The goods will not be diverted to another destination; and, the goods will not be re-exported without informing the Irish Department of Enterprise, Trade and Employment and, in the event of goods being so re-exported, the export will be conducted in accordance with the regulations of the national licensing authority in [insert name of country].

Italy	1. **Certification of foreign importer**: We certify that we are importing the articles listed in item 5 for delivery to the end user in item 2. We undertake not to sell lend or deliver to any third party under any conditions whatsoever with or without compensation temporarily or permanently, these articles including equipments and spares delivered in connection with the after- sales support documentation and operating manuals without the prior written approval of the Government. 2. **Certification of foreign end user**: We certify that we are the end user of articles listed in Item 5. We undertake not to sell lend or deliver to any third party under any conditions whatsoever with or without compensation temporarily or permanently these articles including equipments and spares delivered in connection with the after-sales support documentation and operating manuals without the prior written approval of the Government. 3. **Certification of foreign Government**: We certify that the end user in item 2. is authorized to import articles listed in item 5. We undertake not to authorize the re-export resale or other disposition of these articles, including equipments and spares delivered in connection with the after sales support documentation and operating manuals outside the country in item 3 without the prior written approval of the Government.
South Africa	**The consignee/buyer** hereby confirms that the item(s) will not be transferred to any country and or entity against which a United Nations Security Council Arms Embargo has been imposed or who have been identified as a terrorist organization. Neither the item(s) nor derivatives will be transferred to any other party without the prior written consent of the South African Government Representative(s). **The consignee/buyer** undertakes not to alienate, resell or dispose of in any manner any of the item(s) as purchased/obtained from the CONSIGNOR/SELLER or CO-MANUFACTURER without the prior written consent of the South African Government Representative.
Sweden	The equipment will not be exported or re-exported.
Switzerland	**End-Use Certificate for War Material** We certify that we will not re-export, sell, lease out, let, lend or donate the goods, whether in whole or in part, to any third country without the prior written consent of the State Secretariat for Economic Affairs (SECO) of the Swiss Confederation.
	Statement of End Use for Specific Military Goods We certify that we will not re-export, sell, lease out, let, lend or donate the goods, whether in whole or in part, to any third country without the prior written consent of the State Secretariat for Economic Affairs (SECO) of the Swiss Confederation. However, no consent is necessary for the re-export to the following countries: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Great Britain, Hungary, Ireland, Italy, Japan, Luxemburg, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Spain, Sweden, Turkey, Ukraine, and the United States of America.

United States	1. **Certification of foreign consignee**: We certify that we are importing the articles/data listed in item 5 for delivery to the end user in item 3. Except as specifically authorized by prior written approval of the United States Department of State, we will not re-export, resell, or otherwise dispose of any of those articles/data (1) outside the country in item 4 above, or (2) to any person, including the end user, if there is reason to believe that it will result, directly or indirectly, in disposition of the articles/data contrary to the representations made in this certificate by any party.... **AND** 2. **Certification of foreign end user**: We certify that we are the end-user of the articles/data in item 5. Except as specifically authorized by prior written approval of the United States Department of State, we will not re-export, resell, or otherwise dispose of any of those articles/data (1) outside the country in item 4 above, or (2) to any other person. If the end user is a foreign Government, we certify that we will observe the assurances contained in item 8.... **AND** 3. **Certification of foreign Government**: We certify that we will not authorize the re-export, resales or other disposition of the articles/data authorized in item 5 outside the country in item 4 without prior written approval of the United States Government. If the articles/data are for use by our "armed forces" (i.e., army, navy, marine, air force, coast guard, national guard, national police, and any military unit or military personnel organized under or assigned to an international organization), we certify that we will use the authorized articles/data only: (a) for the purposes specified in the Mutual Defense Assistance Agreement, if any, between the United States Government and this Government; (b) for the purposes specified in any bilateral or regional defense treaty to which the United States Government and this Government are both parties, if subparagraph (a) is inapplicable; or (c) for internal security, individual self-defense, and/or civic action, if subparagraphs (a) and (b) are inapplicable.

[a] Austria has submitted an end-use/user certificate to the OSCE that is very different from end-use/user certificate found on the website of the export control authority.

Table 4. End-use/user certificate and international import certificate required for end use of small arms and light weapons exports

	Requirements for end-use/user certificate	*Requirements for international import certificate*
Austria	Can be requested	Can be requested
Belgium	For exports to non-European Union (EU)/ North Atlantic Treaty Organization (NATO) States	For exports to EU/NATO States
Brazil	Can be requested	Can be requested
Canada	Can be requested	Can be requested
China	Can be requested	Can be requested
Germany	For military small arms and light weapons (SALW)	For non-military SALW
Italy	For exports to non Western EU/NATO States	For exports to Western EU/NATO States
Japan	No (ban on its military exports)	Not known
United Kingdom	Can be requested	For export of non-military small arms to EU States
United States	For military SALW	For non-military SALW

Reference: Small Arms Survey 2008.

Table 5. Format of end-use/user document required by importing States

Country	*Form/letterhead*	*End-use/user certificate*
Albania	Form	End-use certificate
Armenia	Form	End-user certificate
Azerbaijan	Form	End-user certificate
Belarus	Form	End-user certificate
Brazil	Form	End-user certificate
Bulgaria	Form	End-user certificate
Canada	Form	International Import Certificate[a]
Croatia	Form	End-user certificate
Czech Republic	Form	International Import Certificate[b]
Estonia	Form	End-use certificate
FYRO Macedonia	Form	End-user certificate
Georgia	Letterhead	End-user certificate
Greece	Form	End-user certificate
Italy	Not available	End-user certificate
Kazakhstan	Form	End-user certificate
Kyrgyzstan	Form	End-user certificate
Latvia	Form	End-user certificate
Moldova	Form	End-user certificate
Poland	Letterhead	End-user statement
Russian Federation	Letterhead	End-user certificate
Slovakia	Form	End-user certificate
Slovenia	Form	Non-transfer and end-use certificate
Ukraine	Form	End-user certificate
United States[c]	Not available[d]	End-use certificate

[a] No reference made to the use of end-use/user certificates for arms imports.
[b] No reference made to the use of end-use/user certificates for arms imports.
[c] United States Department of Defense Directive 2040.3.
[d] In 2003, the United States Government did submit an "End-user Certificate" on letterhead to the Bosnia and Herzegovina Government.

Table 6. A sample of end-use/user certificates used for actual weapons deliveries

Country	*Letterhead*	*End-use/user certificate*
Afghanistan	Letterhead[a]	End-user certificate
Burkina Faso	Letterhead	End-user certificate
Chad	Letterhead	Certificate[b]
DR Congo	Letterhead	End-user certificate
Kuwait	Letterhead	End-user certificate
Namibia	Letterhead	End-user certificate
Rwanda	Letterhead	End-user certificate
Tanzania	Letterhead	End-user certificate
Uganda	Letterhead	End-user certificate

[a] Issued by the United States Department of the Army.
[b] "Attestation" in French.

Table 7. Responsibility for certifying non-re-export clauses in selected importing States

Country	*Specimen*	*Certification*		
		Consignee	*End user*	*Government*
Albania	Generic			X[a]
Armenia	Ministry of Defence		X	
Azerbaijan	Ministry of Defence; Ministry of Internal Affairs		X	
Belarus	Generic		X	X
Bulgaria	Generic	X	X	
Croatia	Generic		X	
Estonia	Generic		X	
FYROM	Generic		X[b]	
Georgia	Generic		X	
Greece	Ministry of Defence		X	
Kazakhstan	Generic			X
Kyrgyzstan	Generic			X
Latvia	Generic	X[c]		
Moldova	Generic		X	
Poland	Generic	X	X	X
Russian Federation	Generic			X
Slovakia	Generic	X[d]		

Country	*Specimen*	*Certification*		
		Consignee	*End user*	*Government*
Slovenia	Generic	X	X	X
Ukraine	Generic		X	

[a] The Albanian Government issues end-use/user certificate and certifies it, but the application for an end-use/user certificate is certified by the end-user.
[b] End-use/user certificate states that the importer or ultimate consignee need to certify non-re-export clause.
[c] Importer.
[d] Importer.

Table 8. A sample of end-use/user certificates used for actual arms deliveries by importing States

Country	*Samples*	*Certification*		
		Consignee	*End user*	*Government*
Afghanistan	United States Army[a]	X		
Burkina Faso	Ministry of Security		X	
Chad	Ministry of Defence		X	
DR Congo	Ministry of Defence		X	
Kuwait	Ministry of Defence		X	
Namibia	Ministry of Defence		X	
Tanzania	Ministry of Defence		X	
Uganda	Ministry of Defence		X	

[a] The United States Army, on behalf of the Afghan Ministry of Defence, certifies that military items will not be resold.

Table 9. Brazil's two different formats for end-use/user certificates to import arms

Brazilian end-use/user certificate, dated December 2008 (not numbered)	*Brazilian end-use/user certificate, dated December 2008 (numbered)*
Imported from Italy	Imported from United States
1. Final Destination	1. Final Destination
2. Details End user	2. Details End user
3. Details Exporter	3. Details Exporter
4. Details Importer	4. Details Importer
5. Description Goods	5. Description Goods
6. Final Use of Goods	6. Final Use of Goods
7. Non-re-export clause	7. No Non-re-export clause
	8. Contract Number (reference to international import certificate)

Table 10. Examples of variations in the non-re-export clauses included in end-use/user certificates of importing States

Country	*Extract from non-re-export clause*	*Variation*
Azerbaijan	"... goods will not be exported, sold, rented and will not be transferred to third countries or third persons... without permission of the [name of exporter country] authorized state agency"	Consent needed from export control agency exporting State before re-export.
Belarus	"... will not be re-exported or transferred to third countries without permission of the State Military-Industrial Committee of the Republic of Belarus and consent of an authorized body of the exporting country; The State Military-Industrial Committee of the Republic of Belarus hereby acknowledges the obligations of the end user of specific goods (works, services) to use the above specific goods (works, services) for the declared purposes, not to re-export them and not to transfer to third countries without permission of an authorized export control body of the exporting country"	Consent needed from export control agency importing and exporting State before re-export.
Croatia	"... The export of these goods to another destination will not be done except with the licence of the Ministry of Economy, Labour and Entrepreneurship in accordance with Act on the export and import of military and non-military lethal goods"	Consent needed from export control agency importing State before re-export.
Greece	"... will not be sold to any third country"	No re-export allowed.
Slovenia	1. "Certification of Slovenian applicant/consignee: We certify that we are importing the articles/data listed in item 6 for delivery to the end user in item 3. Except as specifically authorized by prior written approval of Slovenian Ministry of Defense, we will not re-export, resell or otherwise dispose of any of those articles/data outside Slovenia, or to any other person, including the end user... 2. Certification of end user: We certify that we are the end user of the articles/data in item 6. Except as specifically authorized by prior written approval of the Slovenian Ministry of Defense, we will not re-export, resell or otherwise dispose of any of those articles/data outside Slovenia, or to any other buyer in Slovenia. 3. Certification of Slovenian Ministry of Defense: We certify that we will not authorize any re-export, resale or other disposition of the articles/data listed in item 6 outside Slovenia without the written consent of the producing state."	Written consent needed from export control agency importing and exporting State before re-export.

Table 11. Main types of free zones

Type	*Description*	*Type*	*Description*
CZ	Customs Zone	FTZ	Free Trade Zone
CFZ	Customs Free Zone	IEPZ	Industrial Export Processing Zone
DFEPZ	Duty Free Export Processing Zone	IFZ	Industrial Free Zone
EFZ	Export Free Zone	IPZ	Investment Promotion Zone
EPFZ	Export Processing Free Zone	JEZ	Joint Enterprise Zone
EPZ	Export Processing Zone	MQ	Maquiladora
FTZ	Foreign Trade Zone	PEZ	Privileged Export Zone
FECZ	Free Economic Zone	SEZ	Special Economic Zone
FEPZ	Free Export Processing Zone	TFTZ	Tax Free Trade Zone
FEZ	Free Export Zone	TFZ	Tax Free Zone
FPZ	Free Production Zone	ZJE	Zone of Joint Entrepreneurship