

POSSIBLE MEASURES TO PREVENT AND ADDRESS DIVERSION¹

States Parties to the Arms Trade Treaty involved in the transfer of conventional arms have a legal obligation to take measures to prevent their diversion (Article 11(1)). This paper presents a non-exhaustive list of practical measures which States Parties may draw from, where relevant, useful and feasible within the available resources of each State, to prevent diversion as it may occur in their particular national context.

The measures have been drawn from a range of sources, including documents in the “List of possible reference documents on diversion” and input from States Parties and civil society. Some measures relate directly to specific legal obligations or guidance in the text of the Treaty. In these cases, the measures listed are to be understood only as suggested options for implementation of the relevant obligations or guidance. The measures are not intended to reinterpret, add to, or derogate from relevant obligations in any way.

Transfer chain stage 1: Before the transfer/Country of origin/point of embarkation

1. Requiring all conventional arms transfers to be subject to prior authorisation (Article 5).
2. Performing consistent and objective transfer risk assessments that take into account the risk of diversion (Articles 7(1) and 11(2)).
3. Requiring that importing States provide proper documentation (such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances) to the competent authorities in exporting States, upon request (Articles 8(1) and 11(2)).
4. Not authorising the export if a significant risk of diversion is detected (Article 11(2)).
5. Including the following measures in their consistent and objective transfer risk assessments:
 - Establishing the legitimacy and credibility of all parties involved in the transfer, such as the exporter, brokers, shipping agents, freight forwarders/intermediate consignees and stated end-use/r (Article 11(2)).
 - Also examining the risks:
 - Arising from the proposed shipment arrangements.
 - Arising from the potential unreliability of controls in the importing country and the transit country (if applicable).
 - Arising from insufficient resources to allow for effective enforcement of national laws concerning the transfer of conventional arms.
 - Arising from political instability in the importing country.

¹ Annex D to the Draft Report to the Fourth Conference of States Parties (CSP4) ([ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep](#)) presented by the Chair of the Working Group on Effective Treaty Implementation (WGETI).

- That a conventional arms transfer would increase the risks of diversion of the existing holdings of the end-user.
 - Utilising interdepartmental / inter-agency examination of the exportation requests, enabling analysis of diversion risks to be based on reliable information, from diverse sources (diplomatic, customs, intelligence unit, UN experts' reports, information exchanges between States).
 - Maintaining and/or consulting national databases identifying natural or legal persons previously sanctioned and /or involved in illicit trafficking.
6. Conducting a thorough review of the proper documentation (such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances) (Articles 8(1) and 11(2)) provided by importing States, including:
- Authentication of documentation (including checks for forged or inauthentic documentation, including authentication of EUCs through diplomatic channels or the importing country's national authority by using the declared Point of Contact).
 - Verification of contents of the documentation through establishing the legitimacy and credibility of the stated end-use/r.
 - To prevent any falsification risk, importing States could institute national procedures for issuing EUCs for government and private end-users.
7. Including the following details in EUCs (Articles 8(1) and 11(2)), required for the contents of the documentation to be verified for end-use and user, as well as to inform a risk assessment:

Element	Essential	Optional
Parties involved in the transfer	<ul style="list-style-type: none"> • details of the exporter and end-user, such as name, business name, address, phone, etc. 	<ul style="list-style-type: none"> • details of the intermediate consignee and final consignee
Goods to be transferred	<ul style="list-style-type: none"> • description; • reference to contract, purchase order, invoice or order number; • quantity and/or value. 	
End-use	<ul style="list-style-type: none"> • indication of end-user; • undertaking, where appropriate, that the goods will not be used for purposes other than the declared end-use and/or used for Chemical Biological Radiological and Nuclear (CBRN) etc. 	
Location		<ul style="list-style-type: none"> • certification that goods are to be installed at/used at premises of end-user;

		<ul style="list-style-type: none"> • agreement to on-site inspections.
Documentation	<ul style="list-style-type: none"> • signature, name, title of consignee/end-user representative; • original or legally-certified copy. 	<ul style="list-style-type: none"> • signature and certification by government of final consignee/end-user and only by specific representatives of that government; • unique identifier/number provided by the government authority; • validity terms and date of issue; • kept with conventional arms all along the transfer
Re-export / diversion		<ul style="list-style-type: none"> • an undertaking not to re-export/transship at all, or at least not without notification or express permission from original exporting state's competent authorities
Delivery verification		<ul style="list-style-type: none"> • provide a Delivery Verification Certificate / proof of arrival

8. Encouraging all parties involved in conventional arms transfers (exporters, freight forwarders/intermediate consignees, brokers (Article 10), shipping agents, and end-users) to be registered with national authorities.

9. Applying the following measures when they are transit, trans-shipment, or importing States in an international transfer:

- Requiring prior authorisation for the transit and importation of conventional arms through and to their territory (Article 9).
- Requesting or providing documents that indicate whether the transfer has been authorised or is subject to any objection (Article 11(3)).

10. Requiring particular conditions to be met prior to export authorisation, such as:

- Provision of information related to transport prior to the grant of the exportation authorisation: mode of transport, name of the transporter, nationality, route to be taken.
- Agreement to specific conditions on storage facilities (location, conditions, specific management measures and security).
- Verification through physical inspections of the adequacy of the recipient's storage facilities.

- Enforcement of technical conditions to secure conventional arms, such as systematic marking and implementation of systems preventing use by non-authorized persons.
- Agreement to particular disposal requirements (e.g. conditioning the sale of new small arms and light weapons on the verified destruction of old stocks).

11. Including concrete, unambiguous suspension or cancellation clauses in the wording of all conventional arms contracts other relevant documentation / inter-governmental agreements.

12. Encouraging parties involved in conventional arms transfers to introduce internal export control compliance programs to assist them in complying with national export control legislation and regulations, and increase awareness and mitigation of diversion risks.

- Internal compliance programs could include provisions for parties to conduct their own risk assessments, record-keeping on international commercial operations, and cooperation and information sharing with competent authorities (e.g. regular reporting on licences used, cooperation with compliance visits by government agencies etc.).

Transfer chain stage 2: During the transfer / En route to the intended end-user / In transit

1. Ensuring close cooperation and information sharing, pursuant to their national laws, where appropriate and feasible, with the governments of transit States (Article 11(3)).

2. Requiring or encouraging delivery notification by any transit countries (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Article 11(3)).

- Note that in the case of delivery by air, the exporter may be required to provide a 'certificate of unloading' to confirm delivery.

3. Monitoring and protecting conventional arms shipments, in cooperation with industry parties involved (e.g. freight forwarders/intermediate consignees, transporters etc) from the time the arms leave the warehouse in the exporting state until the intended end-user receives them (and verifies delivery), including through:

- Physically accompanying the shipment or remote monitoring via satellite.
- Stringent physical security requirements (such as ensuring that arms and ammunition are transported in separate vehicles, the use of alarm systems on transport vehicles and container seals, and physical inspection during transit and at the point of delivery).
- Scrutiny of arms shipments and documentation by customs agents in all the States involved in the transfer (exporting, transit, and importing States).

Transfer chain stage 3: At or after importation / Post-delivery

1. Requiring or encouraging delivery notification by the importing State (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Articles 8(1) and 11(3)).

- Note that in the case of delivery by air, the exporter may be required to provide a ‘certificate of unloading’ to confirm delivery.
2. For exporting States: conducting post-delivery checks in cooperation with competent authorities in the importing State to verify compliance with end-use conditions, such as the condition that no re-export can take place without prior notification to the country of origin, including through:
 - Checking end-use certificates by, for instance, checking delivery signatures against the list of authorised signatories by directly contacting such signatories using contact information provided in advance of the certificate.
 - Organising regular on-site visits to verify the ongoing use(r) of the arms.
 - Conducting physical inventories of exported conventional arms to ensure they are properly accounted (Article 12(1)).
 - Investigating suspected violations of end-use and re-transfer conditions agreed to by the end-user.
 3. For importing States: registering and maintaining records of conventional arms entering their national territory, as well as the secure transfer of these to the authorised end-user (Article 12 (2)).
 4. For exporting and importing States: initiating and responding in a timely manner to tracing requests, including through utilisation of existing tools such as the INTERPOL Illicit Arms Records and Tracing Management System (iARMS).

Transfer chain stage 4: Post-delivery storage / National stockpiles

1. Establishing and maintaining robust stockpile management procedures for the safe storage of conventional arms and ammunition, including by:
 - Establishing and conducting inventory management and accounting procedures (including centralized record-keeping, which entails storing records of transactions made by all departments in a single, central authority).
 - Controlling access to stockpiles.
 - Applying physical security measures (such as fencing and locking systems).
 - Ensuring the security of stockpiles that are in transport.
 - Destroying all surplus arms and ammunition in accordance with international norms and standards.
 - Ensuring appropriate staff training in safe and secure stockpile management procedures.
 - Note useful guidance provided in the ISACS Module on ‘Stockpile management’ and the International Ammunition Technical Guidelines (IATG).

2. Ensuring adequate border controls and patrols.

Other comprehensive measures applicable across the transfer chain

1. Establishing a strong national control system for of the authorisation of international transfers of conventional arms (including transit and trans-shipment), and the enforcement of national laws and regulations (Articles 5 and 14).
2. Ensuring that when a diversion is detected, appropriate legal and administrative measures are taken to address the diversion, enabling the competent national authorities to seize the illicit conventional arms (Article 5).
3. Ensuring close cooperation and information-sharing with other States involved in the arms transfer chain, including information on: weapons transportation providers; denials of export and import licences export/import, transit/trans-shipment licence/authorisation; end-user certificates data; international trafficking routes; illicit brokers, sources of illicit supply and methods of concealment (Articles 8(1), 11(3), 11(4), 11(5), and 15(4)).
4. Sharing information with other States on measures taken that have been proven effective in addressing the diversion, including through: the ATT Secretariat; other mechanisms such as the Working Group on Effective Treaty Implementation; and databases for information exchange such as the ATT website (Article 13(2)).
5. Taking the following measures when a diversion is detected:
 - Alert potentially affected States Parties.
 - Examine diverted shipments of conventional arms.
 - Take follow-up measures through investigation and law enforcement, including the establishment of criminal offences and the capacity for sanctioning violators in relation to diversion detected during post-delivery checks or at any time during an arms transfer (Article 11(4)). It is recommended that available sanctions should be both administrative (including confiscation of conventional arms) and criminal (sufficiently high to serve as deterrents).
6. Ensuring that officers responsible for administering the national control system are trained in the detection of fraudulent behaviour across the different stages of the transfer chain.
7. Maintaining open communication and cooperation across licensing, customs, law enforcement, intelligence and other government agencies domestically and amongst States.
8. Providing sufficient resources to national authorities, especially customs authorities, to ensure they have effective control over conventional arms flows into and out of their territory.
9. Pursuing cooperation through regional and sub-regional groups, such as the EU.
10. Ensuring effective legislation for investigating and punishing theft, corruption, and other diversion-related offences.
11. Running industry outreach programmes (such as with industry associations) to share diversion risk assessment guidance and encourage industry to play a cooperative role in risk assessment and management.

12. Reinforcing cooperation between national authorities and the private sector (armament industry, transporters, banks, etc.) to ease the detection and the interception of the illicit flows.
13. For both exporting and importing States: jointly developing and agreeing programmes to identify challenges identified, which may take various forms depending on the challenges identified (Article 11(2)).
 - For example, the exporting and importing States could collaborate on measures to improve the security of stockpiles and the disposal of surplus stocks, or to eradicate organised criminal activity and combat corrupt practices
14. Ensuring transparency through communicating information on authorised or completed- legal transfers of conventional arms in annual reports (Article 13(3)).
