



THE ARMS TRADE TREATY: **DIVERSION ANALYSIS FRAMEWORK**

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ABOUT THE RESEARCH

Strengthening shared understanding on the impact of the Arms Trade Treaty in addressing risks of diversion in arms transfers is a joint research endeavour by UNIDIR, Conflict Armament Research, and the Stimson Center. The objective of the research is to enhance knowledge and to facilitate dialogue among States to strengthen shared understanding on the impact of the Arms Trade Treaty in addressing risks of diversion in arms transfers, and to identify options and avenues for more effective policies and practices under the Treaty moving forward. The research aims to reflect on the challenges and to generate ideas to strengthen counter-diversion measures within the Treaty's framework. Through a series of issue briefs, the research examines key concepts and thematic issues in preventing and mitigating the risk of diversion. The research will culminate in an assessment of progress made by States parties and their impact in addressing risks and challenges related to diversion in arms transfers. Findings from this research will contribute to tackling the challenges associated with poorly regulated arms transfers at the national, regional and multilateral levels, and to informing the development of good policies and practices to counter diversion under the Treaty's framework and the relevant multilateral instruments.

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NOTE

This Diversion Analysis Framework should be considered a working document subject to changes, additions, edits, and corrections. The authors may in future revise the text, without announcing the edits or issuing a formal notice. As such, users are encouraged to use the most up-to-date version of this publication, as posted on the unidir.org site.

The authors welcome feedback on improving the present framework and building on it for future iterations. This is an analytical tool designed by UNIDIR in cooperation with Conflict Armament Research and the Stimson Center to contribute to ongoing efforts to support implementation of the Arms Trade Treaty and to prevent the diversion of conventional arms and related items.

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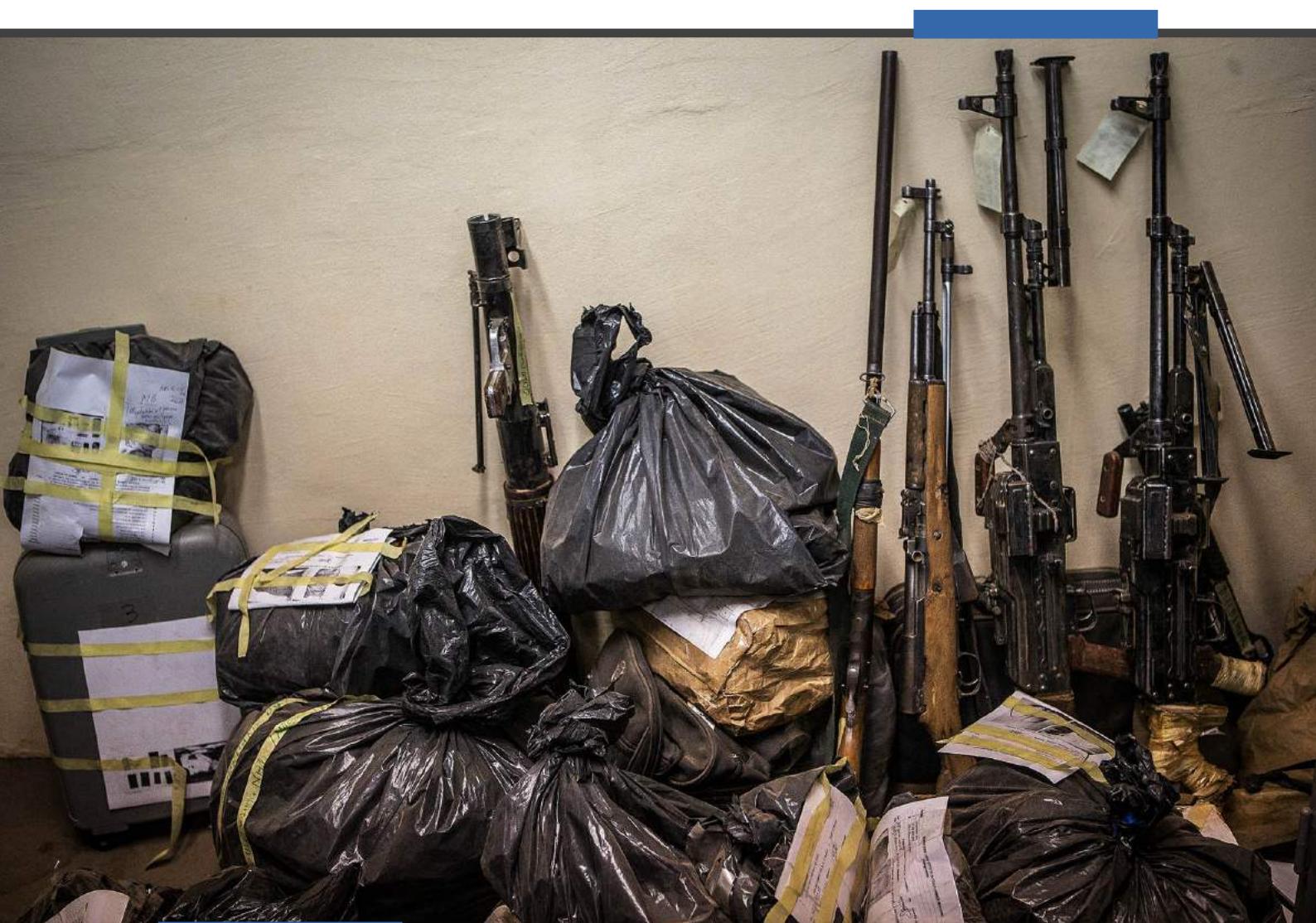
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MALI, 2018

Storage of recovered weapons and
ammunition.

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1. INTRODUCTION

The diversion of conventional arms occurs in settings considered at peace, in armed conflict, or affected by armed violence. Diversion incidents can involve actions by government entities and officials, private persons and companies, and non-State armed groups (NSAGs). Such incidents may be rare or recurrent, and may be deliberate, coerced, negligent, or inadvertent. Diversion can involve large or small amounts of legally manufactured arms and related items being diverted into the hands of unauthorized users or being used unlawfully at any point along the transfer chain or during their life cycle. To identify the most effective ways to prevent such incidents, the key challenge lies in understanding all aspects of the problem and making an accurate context-specific diagnosis.

1.1 PURPOSE OF THIS BRIEFING PAPER

This Issue Brief, the third in a series from UNIDIR, Conflict Armament Research, and the Stimson Center,¹ presents the Diversion Analysis Framework (DAF). The Framework has been designed as an analytical tool for interested States and relevant stakeholders to enhance their ongoing efforts to prevent, detect, eradicate, and address diversion. The goal of the Framework is to unpack the problem to facilitate its analysis, to identify weaknesses in the various stages of the life cycle of arms and ammunition, and to help prioritize efforts

to address the issue in each context. It is hoped that by gaining a better understanding of the problem, appropriate measures can be taken by each State to create an enabling environment to counter, not facilitate, diversion. The Framework has been envisioned with whole-of-government applicability, since addressing diversion requires coordinated action across ministries, government departments, and agencies.

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

¹ The Small Arms Survey was a partner in this joint research endeavor for the first two Issue Briefs.

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

The Framework is divided into three parts. Part 2 explains the methodology for developing the DAF. Part 3 outlines the four elements that make up the DAF. Part 4 contains an illustrative analysis of the Framework in action. This document concludes with part 5, providing guidance on

how to utilize the DAF to assist ongoing efforts aimed at preventing, detecting, eradicating, and addressing diversion. The annex provides reference information describing the elements and concepts of the DAF.

BOX 1. A DESCRIPTION OF DIVERSION³

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

‘Diversion’ is the rerouting and/or the appropriation of a transfer or of already transferred conventional arms or related items contrary to relevant national and/or international law leading to a potential change in the effective control or ownership of the arms and items. Instances of such diversion can take various forms:

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

³ Brian Wood, “The Arms Trade Treaty: Obligations to Prevent the Diversion of Conventional Arms”, Issue Brief no. 1, UNIDIR with Conflict Armament Research, Small Arms Survey, and Stimson, 2020, p. 33, <https://unidir.org/publication/arms-trade-treaty-obligations-prevent-diversion-conventional-arms>.

2. INTRODUCING THE DIVERSION ANALYSIS FRAMEWORK

The DAF can be considered an attempt to provide a broadly illustrative, but not exhaustive list, of the *what, where, how, and who* factors behind diversion. It is a conceptual categorization of four interrelated elements that lead to the diversion of arms and related items, derived from an analysis of detected and well-documented cases of diversion. These four elements are:

- 1.** diversion-enabling factors;
- 2.** points of diversion throughout the transfer stages and life cycle of the arms and related items;
- 3.** methods used at the points of diversion; and
- 4.** actors involved in diversion.

The DAF should be understood as an attempt to unpack the problem of diversion, disentangling a complex and dynamic challenge, in order to identify at-risk scenarios and to detect weaknesses in the transfer chain and life cycle of arms and related items. The findings can be leveraged to determine which counter-diversion measures would be most effective in each context, based on the frequency of the diversion-enabling factors, points of diversion, methods used at the points of diversion, and actors identified. By doing this, interested States can adopt appropriate measures to prevent, detect, eradicate, and address the diversion of arms and related items. In addition, all States involved in international transfers could use the Framework for documenting and analysing diversion cases to inform future diversion risk assessments.

Such an evidence-informed approach to combatting diversion could facilitate the work of licensing authorities tasked with transfer authorizations, law enforcement and intelligence agencies in charge of detecting, interdicting, and investigating diversion, and departments responsible for international reporting.

It is worth noting that the DAF does not explore (a) the dimension, scale, frequency, or number of diverted arms and related items, nor (b) the regional specificities or gravity and impact of the elements behind diversion. It does not suggest that the categories are necessarily equal in the aforementioned criteria. The DAF should be understood as an analytical tool subject to reviews and updates, particularly because diversion is a dynamic challenge.

2.1 METHODOLOGY

The DAF seeks to build on the diversion typology set out in the Chair's Paper for the Group of Governmental Experts (GGE) on Problems Arising from the Accumulation of Conventional Ammunition Stockpiles in Surplus (GGE on Ammunition) and Conflict Armament Research's Diversion Digest series.⁴ Consequently, the Framework was designed to assist ongoing efforts aimed at preventing, detecting, eradicating, and addressing the diversion of arms and related items throughout their entire life cycle. Therefore, although intended to support implementation of ATT

⁴ Group of Governmental Experts on problems arising from the accumulation of conventional ammunition stockpiles in surplus, Diversion Typology (GGE/PACAS/2020/3), 2020, <https://undocs.org/GGE/PACAS/2020/3>; Conflict Armament Research Diversion Digest, Issue 1–3, <https://www.conflictarm.com/publications/>.

article 11, it can be applied to cases that some States Parties might consider beyond the scope of that article's provisions.

The DAF was developed after analysing a sample of over 200 diversion cases, extracted from a literature review of public documents. The documents reviewed include the published work of the organizations involved in this research and other reputable sources. Overall, more than 120 documents were consulted and subsequently sorted into the following categories:

- reports of teams, panels, and groups of experts tasked with monitoring the implementation of Security Council resolutions that imposed mandatory arms embargoes;⁵
- Office of the United Nations High Commissioner for Human Rights reports of the Commission on Human Rights in South Sudan;
- United Nations Office of Drugs and Crime Global Study on Firearms and the Case Law Database;
- United Nations Programme of Action 2020 national reports;⁶
- reports from international and regional organizations such as the World Customs Organization and the Organization of American States;
- publications from NGOs, in particular Conflict Armament Research, the Small Arms Survey, and the Stimson Center;⁷ and
- other sources including confidential

briefs, news reports, and social media accounts of experts.

After reviewing these sources, documented diversion cases were extracted and catalogued by points of diversion and by actors.⁸ A subsequent analysis of the documented diversion cases identified and categorized diversion-enabling factors and methods used at the points of diversion.⁹ These four elements constitute the foundation of the DAF. When analysing the documented diversion cases, particular emphasis was placed on uncovering and exposing the risks that lead to the diversion of arms and related items, as opposed to detailing the quantity or volume of arms and related items diverted. The following section describes the four elements laid bare by the analysis of documented diversion cases, as well as their interplay.

5 The reports reviewed include those of Analytical Support and Sanctions Monitoring Team pursuant to Resolutions 1526 (2004) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and the Taliban and associated individuals and entities; Reports of the Panel of Experts on Somalia, and the Security Council Committee pursuant to Resolution 751 (1992) concerning Somalia; Reports of the Panel of Experts on Mali pursuant to Resolution 2374 (2017); and Reports of the Panel of Experts on Libya pursuant to Resolution 1973 (2011).

6 National reports on implementation of the Programme of Action on Small Arms submitted in Arabic, Russian, and Mandarin were not reviewed.

7 The NGOs consulted include Amnesty International, the Federation of American Scientists, and the Flemish Peace Institute.

8 In cases when it was not possible to retrieve the diversion cases verbatim, the essential elements of the narrative account were summarized consistent with the reporting from the source.

9 In order to catalogue each documented diversion case according to the elements in the DAF, the authors utilized the same definitions consistently. Acknowledging the dynamic and overlapping nature of diversion, the authors recognize that, in some cases, other researchers may look at the same information and consider additional, or reach differing yet also valid, classifications. Please note that the authors did not undertake an independent corroboration of the details in the diversion cases extracted from the sources consulted and cast no judgement on the accuracy of such reports. Furthermore, inclusion of a source does not necessarily represent an endorsement, and exclusion of a source does not mean to imply a lack of credibility. Finally, the data collection effort was limited by the language skills of the authors; as a result, the Framework is largely based on diversion cases that were originally documented in English.

3. THE INTERPLAY OF THE KEY ELEMENTS OF THE DIVERSION ANALYSIS FRAMEWORK

The DAF is composed of the interplay between four elements **and their subcategories (see graph 1)**. These elements and subcategories should not be understood as mutually exclusive because diversion incidents can incorporate, and usually do, a combination of several elements in one event. These four key elements can be described in more detail as follows:

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

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

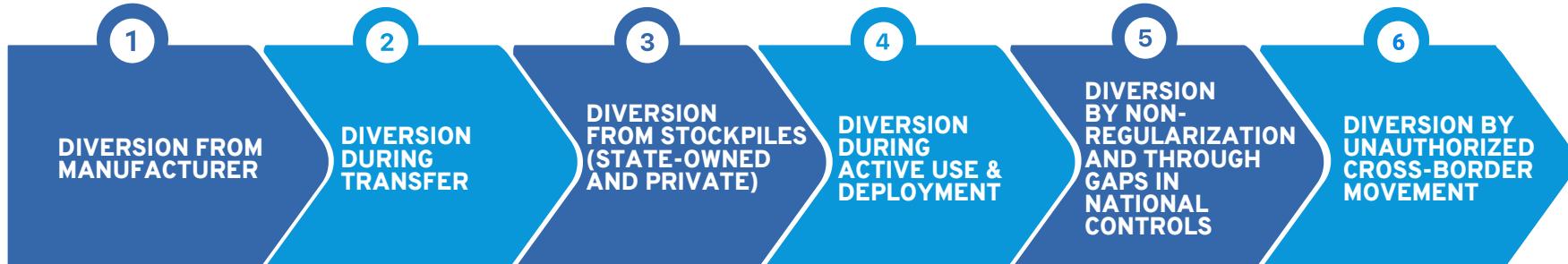
- **Points of diversion** refer to the stages throughout the transfer chain and the life cycle of arms and related items at which diversion can happen. These can also be understood as points of susceptibility where diversion happens.
- **Methods used at the points of diversion** are the means by which acts of diversion are carried out, given the presence of certain diversion-enabling factors. These actions refer to specific methods of how diversion takes place at the points of diversion. Some methods only apply to one point of diversion, whereas others can be used at different points of diversion.
- **Actors** refer to the natural or legal persons that play a role in planning and/or carrying out the diversion of arms and related items. The actors exercise agency in the process of diversion and represent the who behind such incidents.

The complete DAF is presented in the graph 1, below. Diversion is a complex phenomenon, and the Framework underlines this complexity—even while trying to unpack the interplay between these elements to make it easier to understand.

Detailed descriptions of each element in the Framework are provided in annex I.

LIFECYCLE OF ARMS AND RELATED ITEMS

POINTS OF DIVERSION



METHODS USED AT THE POINT OF DIVERSION

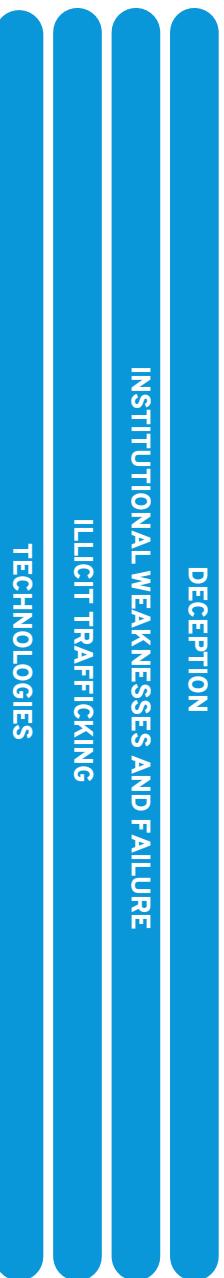
1A Theft and violent capture by external actors	2A Rerouting and/or misappropriation by plane/aircraft	3A Theft and violent capture by external actors	4A Loss through negligence during active deployment	5A Legacy arms	6A Ant trade
1B Illicit removal; distribution; overproduction; and/or unauthorized production by internal actors	2B Rerouting and/or misappropriation by boat/ship	3B Illicit removal by internal actors	4B Defection/Desertion	5B Illicit recirculation of conflict arms and ammunition	6B Drop-off points or drop shipping
	2C Rerouting and/or misappropriation by ground transportation	3C Loss through negligence in stockpile security	4C Surrender	5C Changes in legislation	6C Postal shipments
		3D Unauthorized transfer/sale/trade/gift	4D Abandonment		6D Large shipments
		3E Rental from the authorized holder	4E Violent capture		6E Inadvertent change of jurisdiction
			4F Unauthorized transfer/sale/trade/gift		
			4G Rental from the authorized end user		

ACTORS

GOVERNMENT ACTORS

PRIVATE ACTORS

NON-STATE ARMED GROUPS (NSAGs)



4. THE DIVERSION ANALYSIS FRAMEWORK IN ACTION

This part contains examples of how the DAF can be utilized to map, disaggregate, and summarize the interplay between the diversion-enabling factors, the points of diversion, methods used at the points of diversion, and the role of different actors. **These examples attempt to illustrate the value of unpacking diversion cases to gain a detailed understanding of the dynamics behind the phenomena.** Aggregating the analysis of all documented cases of diversion, from one setting, could yield a comprehensive picture of how diversion is occurring in that setting. Such an analysis could inform the selection of the most appropriate counter-diversion measures. The examples that follow have been chosen for their source reliability, exhaustive documentation (hence the inclusion of historical examples from the 1990s), and contextual specificity. The inclusion of these examples does not suggest that these are necessarily the most common diversion modalities nor the contexts or regions with the highest occurrence in incidents of diversion.¹⁰ After each example, this Brief provides a series of takeaway points. These takeaway points are relevant observations noted by the research team after analysing the information in the case, ranging from underscoring the key diversion dynamics to possible improvements in counter-diversion measures.

4.1. THE OTTERLOO INCIDENT AND DIVERSION-ENABLING FACTORS

The following example, known as the ‘Otterloo Incident’, highlights the threat posed by the confluence of diversion-enabling factors in facilitating the rerouting and misappropriation of arms and related items.

SUMMARY OF DAF ELEMENTS IN THE OTTERLOO INCIDENT

Diversion-enabling factors: Deception; institutional weakness and failure; illicit trafficking

Point of Diversion: Diversion during the transfer

Methods used at the points of diversion: Rerouting and/or misappropriation by boat/ship

Actors: Arms dealers; brokers; NSAG; customs; other national authorities; shipping companies

The Otterloo incident

In 1999, 3,000 Kalashnikov-pattern rifles and 2.5 million rounds of ammunition were diverted from Nicaragua to the Autodefensas Unidas

¹⁰ The inclusion of examples in this section does not imply there are not examples of diversion from other regions of the world.

de Colombia (AUC) [NSAG].¹¹ The diversion was possible due to negligent actions from government officials and the criminal deceptive tactics used by two arms dealers Shimon Yelinek and Ori Zoller [Arms dealers]. Yelinek and Zoller, and their partners and operating companies, misled the Nicaraguan government by pretending to be brokers for the Panamanian National Police.

The arms and related items, which were loaded onto the Otterloo ship, never reached Panama. The arms were illegally delivered to the AUC instead [diversion during the transfer; deception; illicit trafficking]. Yelinek and Zoller used a fake purchase order and end-user certificate to make the transfer appear legitimate [brokers; deception]. The captain of the Otterloo ship gave bills of lading to the Mexican and Nicaraguan government authorities, which indicated that Panama was the ship's destination. However, the Otterloo ship arrived at the port of Turbo, Colombia, where it was unloaded, without ever having stopped in Panama [rerouting and/or misappropriation by boat/ship; shipping companies].

Nicaraguan authorities failed to verify whether the Panamanian National Police was indeed the true end user, contrary to the obligations of the Inter-American Convention Against the Illicit Manufacture and Trafficking in Weapons, Munitions, Explosives and Related Materials (CIFTA), to which it is a party [institutional involvement and weakness]. Several Colombian customs agents were likely accomplices of the AUC in allowing the Otterloo ship to land and unload its cargo of arms and ammunition in the port of Turbo [customs; other national authorities].

Key Takeaways

- **Multiple diversion-enabling factors exacerbate risks.** The arms dealers involved in this case were able to successfully employ

several deceptive tactics—use of front companies, illicit brokering, and forgeries of documentation—because of the institutional weakness of several relevant national control systems. The interplay of these various risk factors amplified existing vulnerabilities during the transfer and facilitated diversion.

- **Several actors can take advantage of institutional weaknesses and failure.** Diversion was made possible by the actions—whether due to negligence or an active decision—on the part of various brokers, government officials, customs officials, private companies, and shipping companies, taking advantage of institutional weaknesses. An NSAG was the unauthorized recipient of the transfer and created the demand for diverting arms and related items.
- **Inadequate implementation of control measures enables diversion.** Negligence on the part of the competent government authorities in the exporting State at the pre-transfer stage (due diligence analysing diversion risks and end user assurances) affected the implementation of control measures by competent government authorities during the transfer. The method of rerouting and/or misappropriation by boat/ship took place only after control failures at the earlier stage, including negligence and corruption by officials and deceptive tactics by the brokers. The exact point of diversion occurred when the Otterloo ship was en route—that is, the delivery of the shipment to an unauthorized entity and not the assumed authorized end user. This situation underscores how diversion is enabled by vulnerabilities at different stages in the transfer chain. Appropriate counter-diversion measures, such as CIFTA provisions, can help prevent or detect diversion attempts.

¹¹ The description of the Otterloo incident in this section is based on the following sources: Report of the General Secretariat of the Organization of American States on the Diversion of Nicaraguan Arms to the United Defense Forces of Colombia, 6 January 2003, https://fas.org/asmp/campaigns/smallarms/OAS_Otterloo.htm; Aliaume Leroy, "The Mechanics and Beauties of Gunrunning: The Otterloo Incident", 20 November 2014, <https://www.bellingcat.com/app/uploads/2014/12/The-Mechanics-and-Beauties-of-Gunrunning-Otterloo-Incident.pdf>; and UNODC, "Ship Otterloo—October 2001", https://sherloc.unodc.org/cld/case-law-doc/corruptioncrimetype/col/ship_otterloo_-october_2001.html?lng=en&tmp=sherloc

4.2. DIVERSION TO BOKO HARAM FROM STOCKPILES

This example illustrates how conventional arms that have been transferred and are held in State-owned stockpiles can be a source of arms and related items for unauthorized end users, in this case Boko Haram in Niger.

SUMMARY OF DAF ELEMENTS IN THE CASE OF BOKO HARAM ARMS AND AMMUNITION ACQUISITION

Diversion-enabling factors: Deception; institutional weaknesses and failure; illicit trafficking

Point of Diversion: Diversion from stockpiles (State-owned); diversion during active use and deployment

Methods used at the points of diversion: Unauthorized transfer/sale/trade/gift; theft and violent capture by external actors

Actors: Armed forces; NSAG; internal security forces; terrorist group; State-owned arms manufacturer.

Boko Haram arms and ammunition acquisition

Seizures of arms and related items by the Nigerien forces from members of Boko Haram [terrorist group] provide information on the types of materiel the group is using.¹² A documented sample of what the Nigerien army had seized from members of Boko Haram between 2015 and 2016 included 10 weapons systems and more than 100 rounds of ammunition of various calibres. Weapons systems included Chinese type 56 and type 56-1 assault rifles, several different AK-type/Kalashnikov pattern rifles, Chinese type 80 machine guns, and Bulgarian

and Chinese RPG launchers. Analysis of rounds of 7.62×39 mm ammunition documented in Diffa indicates that Boko Haram obtains materiel from different sources, including national stockpiles from the countries where it operates [diversion from stockpiles (State-owned)]. Among the cartridges documented, the most recent were manufactured in Algeria, China, and Nigeria since 2012. Some of the Chinese ammunition was originally sold to the Nigerien authorities and the Nigerian ammunition was produced by the Defence Industries Corporation of Nigeria's ordnance factory, which was established to produce materiel for the Nigerian Armed Forces [diversion from stockpiles (State-owned); State-owned arms manufacturer; illicit trafficking].

Boko Haram is therefore known to have obtained materiel from Nigerian and Nigerien stockpiles, through corrupt officers but primarily through attacks on security positions [widespread and systematic corruption; diversion during active use and deployment; theft and violent capture by external actors; armed forces]. There is at least one well-documented case of Nigerien officers selling materiel from national stockpiles to members of Boko Haram [unauthorized transfer/sale/trade/gift]. In 2013, for example, a senior security officer in the Diffa region stole and sold on a number of newly acquired Chinese-produced type 56-1 assault rifles after having chiselled away the serial number [diversion from stockpiles (State-owned); unauthorized transfer/sale/trade/gift; deception; internal security forces]. With promises of a share of the profits, the officer recruited three officers from other forces who supplied him with rifles and ammunition. The officers were prosecuted.

Key Takeaways

- **Vulnerabilities in national stockpiles can be exploited by NSAGs.** Boko Haram forces were able to exploit the lack of systematic or effective stockpile management practices. The diversion-enabling factor of institutional

¹² The description of diversion to Boko Haram from stockpiles in this section is based on the following sources: Savannah de Tessieres, At the Crossroads of Sahelian Conflicts: Insecurity, Terrorism, and Arms Trafficking in Niger, Small Arms Survey, 2018, p. 55–57, <http://www.smallarmssurvey.org/fileadmin/docs/U-Reports/SAS-SANA-Report-Niger.pdf>; and Savannah de Tessieres, “Measuring Illicit Arms Flows in Niger”, Small Arms Survey, 2017, p. 5, <http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP1-Niger.pdf>.

weaknesses created a vulnerable stage in the life cycle of arms and related items (the State-owned stockpiles), which a range of actors exploited to divert arms and related items for their own gain. Against a vulnerable context, Boko Haram illicitly obtained arms and related items through attacks on security positions [theft and violent capture by external actors].

- **Widespread corruption can embolden actors involved in diversion.** State officials were motivated to sell the stolen weapons after physically removing the serial number of the stolen assault rifles to make tracing more difficult. While it is notable that the officers were prosecuted for their crimes in this example, impunity of corrupt officials makes a significant contribution towards a diversion-enabling environment.
- **Illicit trafficking fuels regional instability.** The security context of the Sahel at the time of these incidents increased the risks of diversion associated to poor physical security and stockpile management practices, corruption, and deception. Weapons circulating on the illicit market in Niger at the time included a mixture of non-regularized arms and related items remaining in unauthorized hands after previous rebellions, diversions from national stockpiles, and materiel smuggled in, generally by land and mainly from neighbouring Chad, Libya, Mali, and Nigeria.

4.3. THE ROLE OF ARMS BROKERS IN FACILITATING UNAUTHORISED RE-EXPORT

The following example documented by the United Nations Panel of Experts on Sierra Leone illustrates the role that arms brokers can play in financing or otherwise facilitating weapons diversion, including to States under United Nations arms embargo.

SUMMARY OF DAF ELEMENTS IN A CASE OF ARMS EMBARGO VIOLATIONS IN WEST AFRICA

Diversion-enabling factors: Deception; institutional weaknesses and failure; government-sponsored unauthorized transfer or retransfer

Point of diversion: Diversion during transfer; diversion by unauthorized cross-border movement

Methods used at the points of diversion: Rerouting and/or misappropriation by plane/aircraft; rerouting and/or misappropriation by ground transportation

Actors: Brokers; arms dealers; NSAG; private shipping companies; armed forces; State-owned arms manufacturers

Arms embargo violations in west Africa

A United Nations Panel of Experts found conclusive evidence of weapons systematically diverted to Liberia while it was targeted by an arms embargo during 1992–2033.¹³ For example, a shipment of 68 tons of weapons supplied by air from Ukraine to Burkina Faso arrived at Ouagadougou on 13 March 1999. The shipment included 715 boxes of weapons and

¹³ The description of the arms embargo violation in this section is based on the following sources: Report of the Panel of Experts appointed pursuant to Security Council resolution 1306 (2000), S/2000/1195, para. 19; in relation to Sierra Leone, para 21; UNODC Firearms programme, 1999, p. 143, <https://www.unodc.org/documents/data-and-analysis/tocta/6.Firearms.pdf>; and Amnesty International, “Dead on Time—Arms Transportation, Brokering and the Threat to Human Rights”, 9 May 2006, <https://www.amnesty.org/en/documents/ACT30/008/2006/en/>.

cartridges, and 408 boxes of cartridge powder, as well as anti-tank weapons, surface-to-air missiles, and rocket-propelled grenades and their launchers. The bulk of the arms and related items that landed in Ouagadougou were transshipped within a matter of days to Liberia, which at the time was subject to a United Nations arms embargo. Most of the shipment was flown to Liberia aboard a BAC-111 aircraft owned by Leonid Minin [diversion by unauthorized cross-border movement: drop-off points; rerouting and/or misappropriation by plane/aircraft; arms dealers; brokers]. Minin was a business partner and confidant of Liberian President Charles Taylor. Law enforcement agencies in several States have documented Minin's involvement in criminal activities ranging from organized crime, trafficking in stolen works of art, illegal possession of firearms, arms trafficking and money laundering. The aircraft involved in this diversion was registered in the Cayman Islands and operated by a company registered in Monaco.

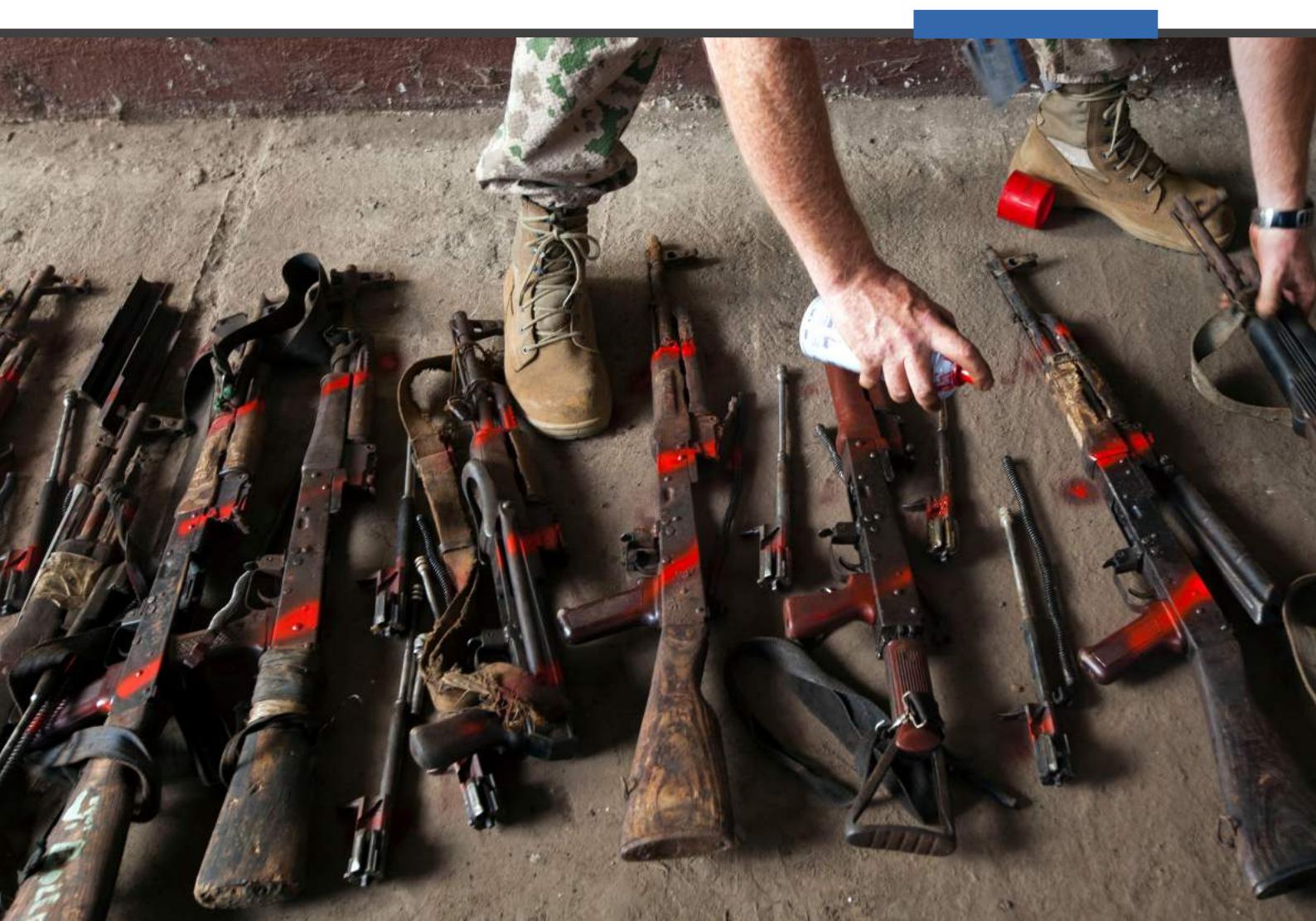
Documentation provided in April and June 1999 by the government of Ukraine to the United Nations Sanctions Committee, as well as court records, show that the weapons were bought from the Ukrainian arms marketing company Ukrspetsexport [a State-owned arms manufacturer] through registered companies in Gibraltar and the British Virgin Islands [shell companies]. The Ukrainian government issued Ukrspetsexport an export licence for conventional arms and ammunition to be delivered to the Ministry of Defence of Burkina Faso. A key factor in the issuing of the licence was the provision of an end-user certificate issued by the Ministry of Defence of Burkina Faso, signed on 10 February 1999. The EUC indicated that a Gibraltar-based company had been authorized to purchase the weapons for the sole use of the Ministry of Defence of Burkina Faso [institutional weaknesses and failure: government-sponsored unauthorized transfer or retransfer]. The document also certified that Burkina Faso would be the final destination of the cargo and the end user of the weaponry [deception]. An aircraft of the British company Air Foyle [private shipping/freight company], acting as an agent for the Ukrainian air carrier Antonov Design Bureau, shipped the

cargo under a contract with the Gibraltar-based company Chartered Engineering and Technical Services to Ouagadougou [deception].

Minin was first arrested in August 2000 near Milan, Italy, and briefly detained. He was then rearrested in June 2001. He was tried in a court, found guilty and fined for possession of illegal diamonds but the court ruled that it lacked jurisdiction in national law to prosecute him for his extraterritorial arms brokering activities.

Key Takeaways

- **Authorised recipient States can facilitate diversion via unauthorised re-export.** The Panel of Experts reported that virtually all weapons shipped to Burkina Faso were diverted on delivery to Liberia in violation of United Nations sanctions.
- **The role of air transport and air cargo in supply chains.** Liberia relied upon aircraft for the supply of arms and related items in violation of the United Nations arms embargo, although weapons were occasionally shipped by sea. The point of diversion, diversion during transfer and the method of rerouting and/or misappropriation by plane/aircraft underscores how diversion tends to happen at a point in the transfer stage of heightened vulnerability.
- **Illicit criminal activities and networks can finance diversion.** The Leonid Minin case illustrates how international criminal activity carried out by brokers and their associated network of transport and finance providers can aid large-scale acts of diversion, including through the use of shell companies. Minin's involvement in criminal activities ranging from organized crime, trafficking in stolen works of art, arms trafficking, and money laundering financed the operations which made diversion of arms and related items possible. The Panel of Experts found the registration of aircraft in Liberia to be connected to illegal activities, in which minimal regulations in air transport are taken advantage of—further highlighting institutional failures.



LIBERIA, 2012

Marking where engineers should cut
decommissioned weapons.

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5. GUIDANCE ON HOW TO USE THE DIVERSION ANALYSIS FRAMEWORK

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

For ATT States and Signatory Parties:

- States and Signatory Parties to the ATT and other relevant multilateral processes and bodies¹⁴ could discuss the adaptation, adoption, or use of the DAF, or certain elements thereof, to enhance diversion monitoring and diagnostics, as well as to promote multilateral dialogue on the problem of diversion.

- States and Signatory Parties to the ATT could use the DAF to structure reporting and to standardize the data presented to the [Diversion Information Exchange Forum](#). Standardizing the data shared on detected cases of diversion will facilitate the information-sharing process.¹⁵

For All Member States:

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

¹⁴ Relevant processes include the Arms Trade Treaty, the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and its accompanying International Tracing Instrument, the Group of Governmental Experts on problems arising from the accumulation of conventional ammunition stockpiles in surplus, and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms.

¹⁵ For the types of information that States are encouraged to share and exchange visit the the DIEF Terms of Reference, see [https://thearmstradtreaty.org/hyper-images/file/ATT_DIEF%20Terms%20of%20Reference%20\(stand%20alone\)_EN/ATT_DIEF%20Terms%20of%20Reference%20\(stand%20alone\)_EN.pdf](https://thearmstradtreaty.org/hyper-images/file/ATT_DIEF%20Terms%20of%20Reference%20(stand%20alone)_EN/ATT_DIEF%20Terms%20of%20Reference%20(stand%20alone)_EN.pdf)

based on the recurrence of diversion-enabling factors, points of diversion, methods used at the points of diversion, and actors identified. Specific counter-diversion strategies could be targeted according to a national analysis of findings. The dynamic nature of diversion underscores the importance of a whole-of-government prevention strategy to combat diversion and the need for consistent monitoring and established feedback loops.

- Further, as the DAF can help catalogue diversion incidents into various categories, States could consider sharing, when appropriate and necessary, the counter-diversion measures that seem most effective in mitigating identified risks.
- All States may use the DAF to assist in information-gathering and data collection to inform future transfer risk assessments.
- States could also use the DAF to structure the provision of information to sanctions committees and panels of experts on United Nations arms embargo violations. The use of a standardized approach for sharing material on such cases could facilitate the preparation of Implementation Assistance Notices that provide guidance on diversion and embargo evasion patterns and risk indicators.

the Framework provides a structure to document the specific dynamics that lead to diverted arms and related items. An analysis of documented cases could produce quantitative results indicating the more common ways in which diversion occurs in a particular setting.

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

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

For All Interested Organizations

- All interested organizations could use the classification in the Framework to unpack systematically the documented cases of diversion and to determine the most recurrent points of diversion and weak points for each stage in the transfer chain and life cycle of arms and related items. The classification in

ANNEX 1. DIVERSION INFORMATION REFERENCE

This annex outlines the diversion-enabling factors specified in the DAF and provides conceptual descriptions for the other elements. It is important to underscore that the four elements and the subcategories within each element should be understood as mutually interdependent (or non-exclusive), meaning that diversion cases can incorporate, and usually do, a combination of several elements in one event.

DIVERSION-ENABLING FACTORS

- **Deception**

States, intermediaries and private actors, groups and other entities can use deception during any of the life cycle stages, in combination with methods used at diversion points, to facilitate the misappropriation of arms and related items. Specific deceptive tactics include, but are not limited to, fake, forged, or altered import or export licenses and end use/r documentation, the use of front companies (also known as shell companies), and improper use and exploitation of legitimate documents to acquire arms and related items for diversion purposes.

- a. *Fraudulent use of documentation*

Diversion of arms and related items by falsifying documentation, partially or completely, or misrepresenting information in otherwise legitimate documentation.

- b. *Use of front companies*

Diversion by purchasing arms and related items through a front company with the intent to disguise or obscure the actors behind the operation or ultimate owner and end user of the items.

- c. *Illicit broker activity*

Diversion of arms and related items using an intermediary, including shipping and transport companies or consignees, to disguise or obscure the other actors behind the unlicensed operation or unauthorized end user, or illicit removal by the intermediary, whether partial or complete, of a transfer.

- d. *Physical alteration*

Changing the physical characteristics of arms and related items, especially firearms/small arms, and their marking requirements to avoid identification or tracing in contravention of domestic legislation, transforming a less-lethal device into a live-firing firearm, or

reactivating an antique or deactivated firearm by substituting parts or components without appropriate authorization.

Similarly, the illicit reloading of spent ammunition cartridges, pellets, slugs, projectiles, and/or parts and components of ammunition (such as primers) from legitimate stockpiles, holdings, or ownership to distribute the items to unauthorized user or unlawful use for the ensuing assembly of live-firing ammunition in contravention of domestic regulations.

- **Institutional weaknesses and failure**

Widespread processes whereby government institutions and/or decisions by government authorities within those institutions play a role, deliberately or due to negligence, in the diversion and unauthorized distribution of arms and related items, whether domestically or internationally. In such cases, it is often difficult to determine where the weakness ends, and the failure begins.

- a. *State collapse or fragmentation*

State collapse or fragmentation is the total or partial breakdown of the governing structures and authority in a given country resulting in the dissolution or splintering of the security forces, including their command structures and oversight mechanisms. State collapse could lead to the substantial loss or illicit transfer of State-owned arms and related items. State collapse is a diversion-enabling factor because a breakdown of the governing structures and authority will negatively affect all controls over the transfer stages and oversight of the life cycle of arms and related items.

- b. *Downsizing/dissolution/reorganization of security forces*

Government policy or practice for the reorganization of security forces, whether downsizing, dissolving, or creating informal, parallel, or paramilitary armed structures, without corresponding regulatory changes, can lead to the diversion and possession, intentional or otherwise, of State-owned arms and related items by unauthorized or unlawful users.

- c. *Government-sponsored unauthorized transfer or retransfer*

A process by which a government deliberately authorizes the transfer or retransfer of conventional arms and related items to an unauthorized user or for unlawful users in another State. A government-sponsored unauthorized retransfer in violation of end-user control assurances can occur without the items arriving in the intended country of destination, immediately following arrival in the country of destination, or years after the items were transferred. It can also happen in contravention of international commitments and sanctions, including arms embargoes.

- d. *Widespread and systematic corruption*

Acts of corruption include a range of offences and corrupt behaviours as established in the United Nations Convention against Corruption, a legally binding universal anti-corruption instrument which defines acts of corruption. The mandatory provisions of the Convention address bribery of national and foreign public officials, embezzlement, misappropriation, or other diversion of property by a public official, abuse of functions, illicit enrichment, money laundering, concealment, and obstruction of justice.¹⁶ National legislation may establish other offences in addition to those established under the Convention.

¹⁶ OECD, *Corruption: A Glossary of International Criminal Standards*, <http://www.oecd.org/corruption/anti-bribery/39532693.pdf>.

In the context of the diversion-enabling factors considered for the DAF, corruption refers to the range of offences committed by public officials that facilitate the transfer of arms and related items to unauthorized or unlawful users. Impunity is often a driver of corruption, since perpetrators reap personal gains from acts of corruption but do not suffer, or expect to suffer, legal repercussions. Corruption can be a driver of armed violence and conflict, as a system in which corruption is rampant exacerbates violence by facilitating the diversion of arms and related items, which are the tools that enable lethal outcomes.

e. *Grey areas and ineffective regulation of financial systems*

Grey areas and the ineffective regulation of financial systems enable monetary flows that fund illicit arms transfers and diversion. So-called ‘grey areas’ are areas of ambiguity in legal or financial systems, in which an act is not clearly distinguished as illegal or a loophole may exist (including loopholes by design). Relatedly, ineffective regulation might occur when there is a strong law by design, but insufficient capacity to implement or enforce it. Such vulnerabilities risk that an entity or individual will exploit ‘grey areas’, loopholes, or ineffective enforcement to evade regulations.

Diversion is, by its very nature, an illicit activity carried out in the shadows of inadequately regulated markets. Underlying fragilities and ineffective regulation of financial markets can facilitate illicit acts, and even help create the illusion of legality. For example, in combination with deception and/or corrupt practices, grey areas and ineffective regulations facilitate the financial flows that fund diversion and create an environment that permits illicit transactions to avoid detection. As such, grey areas and ineffective regulation of financial systems can be considered an institutional weakness enabling diversion. This diversion-enabling factor emphasizes the importance of Sustainable Development Goal 16.4, which in part aims to “significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime” by 2030.¹⁷

¹⁷ See <https://unstats.un.org/sdgs/metadata/?Text=&Goal=&Target=16.4>.

A CLOSER LOOK I: ARMS EMBARGO VIOLATIONS

The diversion of arms and related items in contravention of a United Nations or other multilateral arms embargo often highlights the way in which deception can be used to exploit institutional weaknesses and failures, combining two diversion-enabling factors.

There have been several high-profile United Nations arms embargo violations in which a senior government political or military official has been directly involved in facilitating the diversion of an international transfer of arms and related items in contravention of a United Nations or regional arms embargo (see section 4.3). The senior government official can play a key role at the export, import, transit, or re-export stage of an international transfer that leads to the arms and related items reaching unauthorized or unlawful users. It is often the case that these government representatives operate in partnership with private operators, such as arms brokers and those engaged in arranging transportation and finance, to circumvent the arms embargo and to cover up their activities via the use of fraudulent documentation, shell companies, complex financial arrangements, and circuitous delivery routes.

Such deceptive tactics work to circumvent embargoes when institutions fail to undertake appropriate measures to ensure the application of national transfer control systems to prevent and detect diversion and efforts to evade multilateral arms embargoes. The partial lifting of arms embargoes has also, at times, been exploited to contravene the spirit of the control regime; as such, maintaining oversight, monitoring, and prevention measures is essential.

Arms embargo violations, however, are not limited to direct government-sponsored unauthorized transfers or retransfers. Embargoes can also be violated by brokers, private companies, transfers to proxy groups or transfers for illicit recirculation, among other combinations of actors and methods of diversion, enabled by deception and institutional weaknesses and failure.

The gravity and complexity of the challenge underscores the importance of the role of sanctions committees and panels of experts and the significance of timely reporting and the issuing of Implementation Assistance Notices with information on deceptive tactics used to evade sanctions.

- **Illicit trafficking**

Illicit trafficking can be described as the import, export, trans-shipment, acquisition, sale, delivery, movement or transfer of arms and related items from or across the territory of one State to that of another State if any one of the States concerned does not authorize it or if the arms are not marked in accordance with article 8 of the UN Firearms Protocol.¹⁸

Illicit arms trafficking is included in the diversion-enabling factors because the unauthorized movement of arms and related items across national borders creates an international market and incentives for diversion. That is, in some circumstances, cross-border illicit trafficking is a secondary movement of arms and related items that have already been diverted in domestic settings, and the former situation is the one characterized as a diversion-enabling factor. Illicit trafficking exacerbates the problem of diversion because it can present an economic incentive for diverted arms and related items. Illicit trafficking also complicates domestic investigations, tracing, and recovery efforts. In certain contexts, illicit trafficking is characterized by the

¹⁸ Definition based on the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime; see https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-c&chapter=18&clang_en.

concealment of arms and related items alongside other types of smuggled items, such as drugs and cigarettes.

For a more detailed discussion on the connection between diversion and illicit trafficking, see **A Closer Look II**, below.

- **Technologies**

Technology can sometimes be misused to disrupt or undermine established national and international controls and can facilitate the acquisition of arms and related items by unauthorized users. It is important for national authorities to monitor the misuse of technological developments because of their potential to reduce the efficacy of existing controls or to render them obsolete. The intent here is not to hamper technological development or the use of technology, but rather to adapt measures and regulations to prevent and/or address unauthorized users from misusing technological advancements.¹⁹ The following technologies can be used individually or in combination to facilitate diversion of arms and related items:

- a. *3D printing*

3D printing can facilitate the production of arms and related items in contravention of national legislation by circumventing licensing, registration, or marking requirements. Print patterns and 3D-printed arms and related items are already produced and traded legally, but if transferred illegally or by taking advantage of regulatory loopholes the consequences are that such arms and related items can end up being diverted to unauthorized or unlawful users. Advances in 3D printing of specific parts and components or ammunition is an area that should also be monitored, and regulations and oversight systems need to be adapted to reflect the evolving reality.

- b. *Modularity and parts and components*

Modularity refers to arms and related items that can be assembled in a non-industrial setting by putting together parts and components that can be acquired separately. This presents a challenge because components can circumvent national controls with more ease than fully assembled arms, and attention to parts and components can sometimes highlight grey areas in national regulations. This diversion-enabling factor is particularly linked to unauthorized cross-border movement using postal or courier shipments.

- c. *Internet*

The Internet, and in particular social media and the dark web, can serve as a platform for practices that contravene national legislation pertaining to arms and related items. This can include facilitating and obscuring the connections between demand and illicit supply or disseminating information on creating, diverting, or reconfiguring arms and related items. The use of the dark web or social media can incentivize diversion by offering a marketplace for illicit activities that is hidden from law enforcement. It could also facilitate the transfer of intangible items, such as knowledge transfers that may violate export controls.

¹⁹ ‘Intangible transfers’ can support the illicit production of arms and related items and as such constitute a pathway for unauthorized actors to access arms. In this pathway, technology is used to transmit information that leads to unauthorized acquisition.

POINTS OF DIVERSION AND METHODS USED AT THE POINTS OF DIVERSION

1. Diversion from manufacturer

The negligent or deliberate supply of arms and related items from private or State-owned manufacturers, or private or State-owned assemblers, to unauthorized users can occur directly from the point of production or from on-site storage, and could result from insufficient security or accountability measures, whether from negligence or from an illicit scheme.

1a. Theft and violent capture by external actors

External actors, not employed by or associated with the manufacturer or assembly plant, who illicitly remove arms and related items from the production line or from on-site storage. Theft by external actors includes the use or threat of violence to remove arms and related items by unauthorized or unlawful users.

1b. Illicit removal; distribution; overproduction; and/or unauthorized production by internal actors

Employees, directors, contractors, and anyone that is authorized to have direct access to items produced by an arms manufacturer can facilitate illicit distribution or theft from the point of manufacture or assembly by illicitly exploiting a position of power or by illicitly removing or transferring arms and related items. Arms manufacturers can divert arms and related items through:

- » deliberate unauthorized production;
- » overproduction of arms and related items, without authorization from national authorities, in contravention of laws and regulations; and
- » by manipulating legitimate licenses to levels above the authorized quantities with the intent to distribute items to unauthorized users.

At the individual level, there can be the misappropriation of arms and related items for unauthorized personal possession or to redistribute to other unauthorized holders.

2. Diversion during transfer

The partial or complete loss, leakage, theft, and/or unauthorized rerouting of arms and related items through deliberate and covert action, coercion by unauthorized persons, negligence, or accident, during the transfer (transport, transit, transloading or trans-shipment), inclusive of temporary storage sites, and prior to receipt by the authorized end user. Diversion during transfer also includes the case of an apparently licit transaction on paper that then does not result, partially or completely, in a physical transfer of the items, as the arms and related items disappear to an unknown destination.

2a. Rerouting and/or misappropriation by plane/aircraft

The act of diverting arms and related items during or in preparation for a flight, by airdropping items to unauthorized users or by illicitly removing them while the cargo is in the air, on the airport runway, or while the cargo is in temporary storage awaiting transfer.

2b. Rerouting and/or misappropriation by boat/ship

The act of diverting arms and related items during or in preparation for transport by boat/ship by illicitly removing items from the consignment or by transloading, trans-shipping, or dropping off the consignment to unauthorized users, while the vessel is at sea or is at port, or while the cargo is in temporary storage awaiting transfer.

2c. Rerouting and/or misappropriation by ground transportation

The act of diverting arms and related items during or in preparation for ground transportation, by either rerouting the cargo or partially removing items while the cargo is on the road or in temporary storage awaiting transfer.

3. Diversion from stockpiles (State-owned and private)

Diversion of arms and related items from stockpiles represents a primary source for the illicit arms trade. This includes all stockpiles (operational, reserve, etc.) inclusive of cases where items designated as surplus or earmarked for destruction, stored as evidence in criminal investigations, or seized and collected as part of public security efforts or disarmament, demobilization and reintegration processes are diverted to unauthorized end users. Diversion from stockpiles can be a result of insufficient security, oversight, or accountability measures. Diversion due to ineffective physical security and stockpile management can occur at State-owned as well as private stockpiles and stocks in peace operations. Private-owned stocks include those of private dealers, companies, traders, or private end users, including armed private security companies.

3a. Theft and violent capture by external actors

External actors, not employed by nor associated with the stockpiling authority, illicitly removing arms and related items, either recurrently or as a one-off event, from the point of storage, outmanoeuvring physical security and management measures.

Theft by external actors includes the use or threat of violence to remove arms and related items by unauthorized or unlawful users. Such violent capture could be a by-product of fighting, or from an attack that could have been planned around the objective of capturing arms and related items from the point of storage. Stocks may be taken from the possession of military forces, police and security forces, private security companies, and/or authorized private end users.

3b. Illicit removal by internal actors

Employees, directors, contractors, and anyone that is authorized to have direct access to the stockpiling facilities, facilitating theft from the point of storage, either recurrently or as a one-off event, by illicitly removing or transferring the arms and related items themselves or in association with external actors.

3c. Loss through negligence in stockpile security

The finite and discrete forfeiture or disappearance of a number of arms and related items that were stored in stockpiles not to the standard of sound physical security and stockpile management measures, including temporary storage.

3d. Unauthorized transfer/sale/trade/gift

Deliberately and permanently transferring, selling, gifting, or trading of arms and related items from authorized institutions or individual holders to unauthorized users or unlawful uses institutions or unlawful users/uses, from the point of storage, for financial or material gain or otherwise. The change of possession and/or ownership from the authorized holder to unauthorized end users/uses, whether in a domestic or international context, constitutes a diversion of the items. This unauthorized change of possession happens in contravention of end-user/use assurances agreed upon before the transfer, or in contravention of domestic regulations and/or international conventions.

3e. Rental from the authorized holder

The diversion of arms and related items by the authorized holder through a rental

agreement with an unauthorized user for a fixed period or on an ongoing basis, for financial or material gain or a criminal act. The arms and related items become illicit once they leave the possession of the authorized holder, even if temporarily so.

4. Diversion during active use and deployment

Diversion of arms and related items during active use and deployment can be due to the partial breakdown or fracture of an armed unit, units or custodians, or the surrender of individuals within those units. This situation results in the unauthorized change in ownership, partial or complete, of their arms and related items. Diversion during deployment can also happen due to the unauthorized use, sale, trade, or rental of the arms and related items by the authorized end user while outside of a secure storage facility.

4a. Loss through negligence during active deployment

The finite and discrete forfeiture or disappearance of several arms and related items that belong to authorized active forces or end users without a clearly established intent to divert these arms and related items to unauthorized users or uses.

4b. Defection/desertion

Individuals who give up allegiance or abandon their positions and, consequently, transfer the ownership of arms and related items in their possession to unauthorized users. In cases of desertion, the formerly authorized user should no longer be considered as authorized

4c. Surrender

The individual or collective submission of active forces and consequent transfer in ownership of the arms and related items in their possession to unauthorized users.

4d. Abandonment

Diversion due to active forces discarding, deserting, or leaving behind arms and related items, whether in retreat or otherwise, and the ensuing change in possession of the arms and related items to unauthorized users.

4e. Violent capture

The use or the threat of violence to seize arms and related items by unauthorized or unlawful users. Capture could be a by-product of fighting, or an attack could have been planned around the objective of capturing arms and related items. Arms may be taken from the possession of military forces, police and security forces, private security companies, and/or authorized private end users. Violent capture during active use and deployment (i.e. battlefield capture) is common in conflict-affected settings.

4f. Unauthorized transfer/sale/trade/gift

Deliberately and permanently transferring, selling, gifting, or trading of arms and related items by an end user in lawful possession of the arms and related items to an unauthorized end user for financial or material gain or otherwise. The change of possession and/or ownership from the authorized end user to an unauthorized end user, whether in a domestic or international context, constitutes diversion.

4g. Rental from the authorized end user

The diversion of arms and related items by the authorized end user through a rental agreement with an unauthorized user for a fixed period or on an ongoing basis, for financial or material gain or a criminal act. The arms and related items become illicit once they leave

the possession of the authorized end user, even if temporarily so.

5. Diversion by non-regularization²⁰ and through gaps in national controls

The situation in which persons, groups, or entities possess arms and related items as a result of unforeseen events. Some cases of diversion by non-regularization occur after the death of the original legal holder and the arms reach a new unauthorized holder. Other instances of diversion arise from historic legacies, such as when arms from armed conflict and caches remain in the possession of ex-combatants without appropriate authorization, or arise from changes in legislation, such as new permit requirements when holders fail to apply for reauthorization.

5a. Legacy arms

This refers to arms and related items remaining or inherited in a family or community in the absence of the legal owner, but not subsequently regularized in law through a new registration and/or authorization.

5b. Illicit recirculation of conflict arms and ammunition

This refers to arms and related items illicitly recirculating from one conflict to a different theatre, remaining in the hands of ex-combatants, or being stored in the surrounding environment after the cessation of hostilities, whether done purposefully in violation of a disarmament process or as an incidental by-product of demobilization. Illicit recirculation can include conventional arms and/or ammunition. In the case of ammunition, when unexploded, these can be used to manufacture improvised explosive devices.

5c. Changes in legislation

Amendments to existing statutes that regulate ownership of arms and related items in a domestic context that render illicit certain owners and/or users until they surrender their arms and related items or complete the regularization process under the new legal regime.

6. Diversion by unauthorized cross-border movement

The situation in which a person, group, or entity possesses, controls, or owns arms and related items in line with domestic legislation but the items are diverted when these are physically moved, deliberately or through negligence, across borders without appropriate authorization. The arms and related items are legally held in the jurisdiction of origin, but not in the jurisdiction to where they are moved or smuggled; hence, the cross-border movement constitutes the point of diversion.

20 Non-regularization is the situation in which: (i) persons, groups or entities possess ammunition or its explosive components as a result of historic legacies, gaps or events, such as a recent armed conflict, without appropriate national authorization; or (ii) persons, groups or entities have not applied for the necessary authorization after a change in legislation. See GGE/PACAS/2020/3. Definition based on that provided by Project Divert of the Flemish Peace Institute. See <https://vlaamsvredesinstituut.eu/en/divert/>.

A Closer Look II: Unpacking the connection between diversion and illicit trafficking

When arms and related items are legally held in the originating State and not legally held in the State where the arms and items are moved to, then the cross-border movement becomes both the point of diversion and part of a case of illicit trafficking. In certain contexts, this type of diversion is characterized by the concealment of arms and related items alongside other types of smuggled items.

It is important to reiterate that, in other circumstances, illicit trafficking is just a secondary movement of arms and related items that have already been diverted in domestic settings; this latter situation is characterized as a diversion-enabling factor (not as a point of diversion since the diversion already occurred). To be clear, this means that when the arms and related items are illicitly held in one State and then moved across borders, then it is a case of illicit trafficking; but, when these are legally held in the State of origin, then the cross-border movement represents both a point of diversion and a case of illicit trafficking.

6a. 'Ant' trade

The deliberate and recurrent movement of small amounts of arms and related items across national borders that, over time, results in large numbers of arms and related items in the hands of unauthorized or unlawful users.

6b. Drop-off points or 'drop shipping'

The deliberate act of depositing arms and related items at a physical location for unauthorized or unlawful users to collect later in violation of customs and border controls.

6c. Postal shipments

The deliberate act of shipping arms and related items or parts and components to unauthorized or unlawful users across borders through mailed consignments in violation of customs and border controls.

6d. Large shipments

Large amounts of arms and related items moved illicitly across borders at once or in a single shipment, usually with a certain degree of organization and carried out in violation of customs and border controls.

6e. Inadvertent change of jurisdiction

The situation in which individuals or collective actors inadvertently change their jurisdiction from one in which the possession of arms and related items is authorized to one in which they are not authorized to possess and carry such items; hence, the possession of the arms and related items will be deemed to be unauthorized once moved between jurisdictions, even if accidental.

ACTORS

The actors section provides descriptions for the different entities that can play a role in facilitating diversion. This is a non-exhaustive list of the actors involved in diversion.

Government actors: Officials working for a political body within a State. Such actors can include, but are not limited to, Heads of State and ministers, as well as employees of government departments, ministries, and agencies, State-owned arms producers, and State-owned arms trading companies.

- **Armed forces:** Article 1 of the Hague Regulations provides that the laws, rights and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling four conditions: 1) to be commanded by a person responsible for their subordinates; 2) to have a fixed distinctive emblem recognizable at a distance; 3) to carry arms openly; and 4) to conduct their operations in accordance with the laws and customs of war.²¹
- **Former government employees:** Former government employees refers to persons who have completed a period of service as an employee of a government, including former heads of State and ministers.²²
- **Internal security forces:** All officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.²³ The police force is the department of a government or State concerned with maintaining public order and safety, and enforcing the law.²⁴
 - » **Customs officials:** Officials of the government department that collects taxes or duties on goods entering a country or area at a seaport, airport or border where goods, luggage and other items are examined and customs duties levied.²⁵ Customs is responsible for the administration of customs law and the collection of duties and taxes and also has the responsibility for the application of other laws and regulations relating to the importation, exportation, movement or storage of goods.²⁶ The DAF distinguishes customs from other security forces in order to have more specificity in understanding diversion dynamics, in particular border controls, while recognizing that customs is usually part of law enforcement, and in some cases may perform similar duties.
 - » **Intelligence agents:** Employees of national entities authorized to lawfully gather and analyse information considered relevant for the maintenance of national security.
- **Licensing authorities:** Employees of the national body or bodies designated or otherwise recognized by a government for licensing and regulatory purposes in connection with the manufacture of arms and related items.²⁷
- **Other public authorities:** Other public authorities include: (a) any government or other public administration, including public advisory bodies, at the national, regional, or local levels; and (b) any natural or legal person performing public administrative functions under national law, including specific duties.²⁸
- **State-owned arms manufacturers (and State-owned arms marketing companies):** Arms manufacturers owned by the State (see the entry below for ‘arms manufacturers’ for further details.). This category also includes State-owned arms assemblers and arms marketing

²¹ ICRC, “Rule 4. Definition of Armed Forces”, IHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rule4.

²² Adapted definition for the DAF, based on information from the Legal Information Institute, <https://www.law.cornell.edu/cfr/text/5/2641.104>.

²³ OHCHR, Code of Conduct for Law Enforcement Officials, article 1, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>.

²⁴ MOSAIC 01.20, Glossary of Terms, Definitions and Abbreviations.

²⁵ Ibid.

²⁶ General Annex, ch. 2 of the revised Kyoto Convention; WCO, “Glossary of International Customs Terms”, <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/glossary-of-international-customs-terms.aspx>.

²⁷ MOSAIC 01.20, Glossary of Terms, Definitions and Abbreviations.

²⁸ Definition derived from the European Commission, <https://inspire.ec.europa.eu/glossary/PublicAuthority>.

companies. State-owned arms marketing companies are included because some State-owned arms firms are only marketing firms and not themselves manufacturers.

- **State-owned shipping companies:** State-owned companies which operate a ship or ships between advertised ports, or which handles freight (maritime, air, and surface), on a regular basis and offers space for goods in return for freight based on a tariff of rates.²⁹

Private actors: An entity or person, natural or legal, involved in the international trade in arms and related items.³⁰ Such actors can include, but are not limited to, defence manufacturers and other commercial entities and persons such as agents, dealers, brokers, shippers, and freight forwarders.

- **Arms collectors:** An entity or person that gathers and keeps arms and related items in order to preserve them for their historical, technical, cultural, artistic, educational, heritage or monetary value, or for use in research.³¹
- **Arms dealers:** An entity or person involved in retailing and wholesaling, buying and selling quantities of arms and related items obtained from producers according to the demand of users and which operate under national legislation and jurisdiction.³² Such activities may be closely associated with brokering in arms and related items, but do not necessarily in themselves constitute brokering activities, and might be undertaken by brokers as part of the process of putting a deal together to gain a benefit.³³
- **Arms manufacturers:** An entity or person that engages in manufacturing of arms and related items.³⁴ Manufacturers are those that design, develop, produce, produce under license, assemble, repair, maintain or modify arms and related items.³⁵ For the purposes of the DAF, arms manufacturers can be classified as private or State-owned. State-owned arms manufacturers are classified as Government actors.
- **Brokers:** An entity or person acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of arms and related items in return for some form of benefit, whether financial or otherwise. Within the context of these intermediary activities involving arms and related items, a broker might serve as a finder of business opportunities to one or more parties; put relevant parties in contact; assist parties in proposing, arranging or facilitating agreements or possible contracts between them; assist parties in obtaining the necessary documentation; and assist parties in arranging the necessary payments. Some activities closely associated with brokering in arms and related items that in themselves do not necessarily constitute brokering might be undertaken by brokers as part of the process of putting a deal together to gain a benefit. These activities may include, for example, acting as dealers or agents in arms and related items, and providing technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security, and other services.³⁶
- **Consignees:** The party to which arms and related items are addressed.³⁷ The entity or person

²⁹ See UNTERM, <https://unterm.un.org/unterm/display/record/unog/na?OriginalId=67222>.

³⁰ GGE/PACAS/2020/3.

³¹ MOSAIC 01.20, Glossary of Terms, Definitions and Abbreviations.

³² 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/PC/33, 11 May 2001, p. 19.

³³ MOSAIC 01.20, Glossary of Terms, Definitions and Abbreviations.

³⁴ MOSAIC 01.20, Glossary of Terms, Definitions and Abbreviations.

³⁵ 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, p. 21.

³⁶ Report of the Group of Governmental 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), 30 August 2007.

³⁷ B. Wood and P. Danssaert, "Study on The Development of a Framework for Improving End-Use and End-User Control Systems", UNODA, 2011, p. 12.

that is the intended recipient of a consignment.³⁸

- **Individual criminal actors:** In the context of the Rome Statute, individual criminal responsibility applies to natural persons who commit a crime within the jurisdiction of the International Criminal Court, who is individually responsible and liable for punishment, regardless of whether the crime was committed individually or jointly with another person.³⁹ For the purposes of the DAF, individual criminal actors include natural persons who violate national laws.
- **Licensed individuals:** Private citizens in possession of regulated arms and related items, with the corresponding authorization from domestic authorities in line with national regulations.
- **Private security companies:** Non-governmental entities that offer physical protection services in return for a fee and whose employees (some or all) possess, carry and use arms and related items in the course of their work.⁴⁰ For the purposes of the DAF, private security companies encompass all companies, including private military companies, that provide security services, irrespective of how they describe themselves. Examples of security services can include (but are not limited to) guarding and protection of persons and objects and any kind of training activities with a security application.⁴¹ It is important to note that The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict, contains a compilation of relevant international legal obligations and good practices intended to promote respect for international humanitarian law and human rights law whenever private military and security companies are present in armed conflicts, as well as provisions relating to responsible transfer and physical security and stockpile management.⁴²
- **Shell companies:** Limited liability entities having no physical presence in their jurisdiction, no employees and no commercial activity. It is usually formed in a tax haven or secrecy jurisdiction and its main or sole purpose is to insulate the real beneficial owner from taxes, disclosure or both. Shell companies are also referred to as international business companies, personal investment companies, front companies, or ‘mailbox/letterbox’ companies.⁴³
- **Shipping companies:** Companies that operate a ship or ships between advertised ports, or which handles freight (maritime, air, and surface), on a regular basis and offers space for goods in return for freight based on a tariff of rates.⁴⁴

Non-State Armed Groups (NSAGs): Armed groups of actors distinct from the armed and security forces of a State, and without authorization from the State in which they are based or operate to possess and use conventional arms.

For the purposes of the DAF, NSAG is used as an umbrella term to characterize various types of groups that are armed without authorization from the State. NSAG is used here as a synonym for armed non-

³⁸ MOSAIC 01.20, Glossary of Terms, Definitions and Abbreviations.

³⁹ Article 25 of the Rome Statute of the International Criminal Court.

⁴⁰ MOSAIC 01.20, Glossary of Terms, Definitions and Abbreviations.

⁴¹ United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), “Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context”, 2016, p.10 https://www.dcaf.ch/sites/default/files/publications/documents/COMPRESSED_DCAF%20UNLIREC_Armed-Private-Security-in-Latin-America-and-the-Caribbean_Oversight-and-Accountability-in-an-Evolving-Context-2016.pdf.

⁴² The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict, ICRC, 2009, <https://www.montreuxdocument.org/pdf/document/en.pdf>

⁴³ Definition from Transparency International, <https://www.transparency.org/en/corruptionary/shell-company>.

⁴⁴ See UNTERM, <https://unterm.un.org/unterm/display/record/unog/na?OriginalId=67222>.

State actor (ANSA).⁴⁵ The various subgroups that could be categorized as NSAGs often have overlapping operational characteristics and could qualify in more than one of the subcategories contained in the DAF. The list contained below is a compilation of terms describing actors that could be considered ANSAs, based on the Harvard Law School Program on International Law and Armed Conflict.⁴⁶

- Armed groups
- Armed elements
- Armed rebel groups
- Armed movements
- Armed national liberation movements
- Armed forces of a de facto governing authority
- Armed vigilante groups
- Armed units
- Armed terrorist groups
- Armed opposition groups
- Belligerents
- Dissident armed forces
- Factions
- Foreign elements
- Gangs
- Guerrillas
- Illegal armed groups
- Insurgents
- Organized armed groups
- Organized criminal groups
- Political armed opposition groups
- Rebel groups
- Terrorist groups

⁴⁵ Geneva Call defines ANSA as “Organized armed entities that are primarily motivated by political goals, operate outside effective State control, and lack legal capacity to become party to relevant international treaties. This includes non-State armed groups, national liberation movements and de facto governing authorities. ANSAs are usually engaged in armed struggle against State forces or other ANSAs in the context of non-international armed conflict or other situations of violence”. See <https://www.genevacall.org/wp-content/uploads/2019/02/Armed-non-State-actors-and-displacement-in-armed-conflict1.pdf>.

⁴⁶ Jessica S. Burniske with Naz K. Modirzadeh and Dustin A. Lewis, “Armed Non-State Actors and International Human Rights Law: An Analysis of the Practice of the U.N. Security Council and the U.N. General Assembly”, Harvard Law School Program on International Law and Armed Conflict, 2017, https://pilac.law.harvard.edu/ansas#_ftn10. The terms marked with an asterisk (*) were added by the authors of the DAF.

THE ARMS TRADE TREATY: **DIVERSION ANALYSIS FRAMEWORK**

The diversion of conventional arms occurs in settings considered at peace, in armed conflict, or affected by armed violence. To identify the most effective ways to prevent such incidents, the key challenge lies in understanding all aspects of the problem and making an accurate context-specific diagnosis. This Issue Brief, the third in a series from UNIDIR, Conflict Armament Research, and the Stimson Center, presents the Diversion Analysis Framework (DAF). The Framework has been designed as an analytical tool for interested States and relevant stakeholders to enhance their ongoing efforts to prevent, detect, eradicate, and address diversion. It is hoped that by gaining a better understanding of the problem, appropriate measures can be taken by each State to create an enabling environment to counter, not facilitate, diversion. The objective of this joint research endeavour is to enhance knowledge and facilitate dialogue among States to strengthen shared understanding on the impact of the ATT in addressing risks of diversion, and to identify avenues to further promote effective policies and practices under the Treaty.



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