**MITIGATING RISKS OF DIVERSION**

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Good morning everyone, and thank you for being here today. I want to thank the EU ATT OP for inviting us to participate in today’s event. Today we’re going to be speaking about diversion, specifically mitigating the risks of diversion during the entire process of an arms transfer- prior to transit, during, and after. As it’s just me here today, I hope I will be able to provide enough interesting examples and case studies to keep everyone interested. As you have questions and comments, please do save them until the end and I’m looking forward to a lively discussion.

To begin, I want to provide a brief overview of my organization, Conflict Armament Research, who we are and what we do in case anyone present is unfamiliar. CAR was founded in 2011 and has worked under 4 EU council decisions, which provide us a political mandate to document and trace illicit conflict materiel, including weapons, ammunition, IED components, and other equipment. We’ve worked in over 25 countries around the world.

CAR partners with local and national security forces to identify illicit arms flows in conflicts.

When security forces recover weapons and ammunition from illicit armed actors, CAR’s investigative teams document the items; recording key, traceable information such as the serial or lot numbers.

We then work to reconstruct the chain of custody for these items, often tracing them back with their country of manufacture. CAR uses a variety of investigative approaches to try and determine how diversion has occurred, and how to help stakeholders to close gaps in the transfer supply chain. Tracing is a key tool when responding to diversion, it not only provides crucial information for states affected by diversion to aide investigations, but it also acts as an early warning for exporters that there may be an issue they weren’t previously aware of.

Since 2011, CAR has documented some 600,000 small arms and light weapons and ammunition units. These items were documented in 27 conflict-affected countries, and constitute more than 14,000 unique chains of custody.

**WHAT IS DIVERSION**

In order to take effective measures to tackle diversion, it is critical to understand how diversion occurs. This is an ongoing process, and requires continued vigilant diversion monitoring as patterns change.

This graphic is a typology of diversion into armed conflicts, derived from CAR’s dataset. CAR identified more than 1,000 unique chains of custody where there was a clear point of diversion, and then grouped together commonalities in how that diversion had occurred. This graphic shows which broad diversion types are most common in CAR’s experience on the ground.

This typology is of course specific to its work in conflict areas: the typology of diversion may be different in other contexts. But the point of this is that weapons and ammunition are at risk of diversion at any point in the transfer chain, including after they have been safely delivered to an intended recipient.

I will highlight a couple of cases from CAR’s archive that illustrate some of these different challenges in tackling weapon diversion, throughout every section of this journey – prior to transfer, during, or after. We’ll examine these through two lenses – the ways in which technical support and policy development can mitigate the risk of diversion.

Most frequently, we document diversion happening at the end of the weapon’s journey – after it has been delivered to its intended end-user. This is of course because we work in conflict zones, where the risks of battlefield capture is high. But I’m going to examine the various ways in which we can mitigate diversion throughout the transfer process of a weapon based on the way it becomes diverted.

**Insufficient PSSM**

The first area to highlight is diversion from recipient stockpiles. The risk of diversion does not end after an item has reached the intended recipient.

Accidental or deliberate leakage from national stocks was the cause of diversion in at least 12 per cent of the cases analysed by CAR in our dataset. It is likely a significant underrepresentation of the issue: it is particularly challenging to link diverted ammunition to specific stockpiles, for example, because of the absence of relevant markings.

*The cases seen by CAR are often small numbers, or low-level leakages from specific facilities, but these can still constitute a large security problem over time, both in the country that suffered the diversion, and in neighbouring countries or even further afield.*

The image on this slide shows a Chinese Type 56-2 assault rifle, which was documented in March 2018 in northern Nigeria, and had been recovered from armed groups fighting in intercommunal violence between pastoralist and agrarian communities. CAR published a report earlier this year on how weapon diversion has been fueling this conflict: I will share a link to this report in the chat here.

CAR documented two of these Type 56-2 rifles in northern Nigeria. Both weapons carried a seven-digit serial number beginning with the digits ’37’.

These are part of a series of weapons documented in different countries across the region, all produced by the same factory in China and all carrying very similar serial numbers, starting with ‘37’. The serial numbers are close in sequence, but interleave between different countries, suggesting that they all derive from the same source.

The Chinese government has confirmed to the United Nations that it lawfully exported rifles within this range to Côte d’Ivoire prior to 2004. It is therefore likely that other rifles within this range that were documented in different countries in the region also originated in Ivorian state stockpiles.

In terms of what measures can be taken to address diversion from stockpiles:

Diversion risk assessments are highlighted in Article 11.2 of the ATT, and in the Programme of Action on small arms and light weapons (paragraph 11). This is a critical diversion prevention tool, where exporters assess a range of different factors about the nature of a proposed transfer, and the parties involved.

It is important to incorporate a full assessment of the recipient’s PSSM practices as part of this assessment, and not solely look at risks that might arise during a transfer.

New supplies only compound existing issues, if a recipient has a documented track-record of losses from stockpiles, or accidents relating to insecurity of storage.

Conversely, including stockpile security as an assessment indicator might help to incentivise more effective implementation of PSSM measures by prospective recipients, and limit the extent to which new supplies exacerbate the risk of diversion from unsecured stockpiles.

**State-sponsored diversion**

A second diversion dynamic I wanted to highlight here is referred to in CAR’s typology as ‘State-sponsored diversion’. *This accounted for almost a quarter of the chains of custody that CAR analysed in 2018 for this study.* It covers two types of actions:

Where a state directly supplies weapons and ammunition manufactured in its territory to illicit armed actors in another country.

Where a state retransfers weapons and ammunition that it has imported to armed actors in another country, in violation of commitments made to the exporter that sold them the items legally.

CAR has documented cases where items have been retransferred into countries under regional or UN arms embargoes, like South Sudan, or into active high intensity armed conflicts like in Iraq and Syria.

In one example, on 18 February 2016 CAR documented the missile tube of an anti-tank guided weapon that had been recovered by Iraqi security forces during fighting with Islamic State in the city of Ramadi. CAR was able to trace this weapon back to its country of manufacture, who helped us to confirm that the item had been legally exported to a different state, not Iraq, on 12 December 2015 - just two months before it showed up in the hands of Islamic State.

That original export came with an end-user certificate, containing a non-reexport clause establishing that the recipient would be the sole end-user of the item and would not retransfer without seeking permission first. But, it appears this commitment was either ignored or overlooked; as the item appears to have been rapidly retransferred: at the very most, 59 days after the end-user certificate was formally agreed.

Cases of unauthorised retransfer in CAR’s archive highlight the importance of effective end-user documentation in preventing possible weapons diversion.

End-user documentation is an important tool for export licensing authorities. These are documents provided to an exporter at the start of a proposed transfer, and nominally provide information that enables authorities to conduct pre-export risk assessments, allowing them to verify and authenticate the transfer parties involved; and provide assurances that the goods being transferred are destined for the stated end-user only and will not be diverted.

However, there is no international agreement on the structure and scope of end-user documentation. While a lot of work has been done by different arms control regimes, organizations and standards to develop good-practice guidelines, there is no global consensus on what elements are necessary for inclusion, and what form they should take.

In 2019 CAR analysed a sample of 75 end-user documents in our archive, collated during the course of our investigations into weapons diversion. These documents were issued by authorities in fifteen countries, cover a wide range of conventional materiel, and were issued over a 20 year period between 1998 and 2018. I’ll also provide a link in the chat to this report – our second “Diversion Digest”.

To briefly review our general findings: the majority of documents were submitted on government letterhead and didn’t appear to draw on any kind of official form templates. This typically meant that the information provided was less standardised.

To take one example, one essential element of end-user documents is that they state the name and address of the exporter.

Only a third of the documents analysed by CAR clearly named an exporter, but some of those that did so, did not refer to the entity as an exporter, but used other terms such as ‘supplier’ or ‘applicant’. On some documents the end-user actually named a broker as the applicant, instead of the exporter, while some named both an exporter and a broker.

The second main finding is that a lot of the documents were missing key elements.

Some essential elements were present across all the documents that CAR analysed: they all named an end-user, and all provided some form of end-use commitment, although this was often very broadly stated.

The absence of key elements is most clear in relation to document identifiers.

It is important that end-use documents are marked with unique identifiers if an export authority is to have full confidence that each document is specific to this particular request and to this particular end-user. Identifiers include: a contract number, a date of issue, and a signature from a named end-user.

Fewer than half of the documents analysed by CAR had a clear contract number. All of them were signed by the end-user, but not all of them included the name and title of the signing individual. All of the documents had a full date of issue apart from one, that only gave the year of issue rather than a precise date. Only two documents had expiry dates that stated when the document would cease to be valid, the others at face value were all open-ended.

Other important identifiers, that aren’t regarded as essential in the majority of guidelines, include a stamp from the government of the importing country, and a unique reference number for each end-user document.

Again, neither of these were uniform across our sample: 36 of the 75 documents CAR analysed didn’t appear to have this unique reference number, and 11 didn’t have an official verification stamp.

**Inconsistent re-export clauses**

This issue of an absence of standardization is also found in the area of non-retransfer clauses. While all bar one of the documents reviewed by CAR contained this clause, the shape and content varied greatly, and a wide diversity of commitments were made in practice, each one covering slightly different behavior, or else leaving room for mixed interpretations by the different parties involved.

This is an example of a typical re-export clause. They usually consist of three sections:

What type of activities are prohibited under the clause:

What the scope of the clause is (in terms of who will not receive the item)

What permissions or exceptions there might be, and what level of consent from the original exporter is required.

Looking only at this first part, covering the activities prohibited in the clause: in the sample of 75 documents that CAR looked at, we identified 19 variations in how end-users expressed their re-export commitments.

This is an area where there is lots of ambiguity where clarity is required: It highlights the complexity of determining exactly what assurances are in fact being provided to the exporter.

To highlight an example, see number 3 on this list

Some documents do not appear to cover all forms of re-export, at least at a plain reading. They say they will not ‘export for sale’. This leaves open the possibility that other forms of transfer like gifting, or loans, are not covered. This may not be the intent of the importer, and there may be a mismatch in how the transfer parties see the commitment being made.

One document CAR saw only asserts not to re-export a shipment of small arms ‘in the same form they were received’. This again leaves open the possibility that they might be shipped onwards as separate components. This may not be the intent of the importer at all, but this formulation, and others, create ambiguities in the mind of the exporter that make it harder to be sure that the proposed export will not be subject to diversion.

**Possible Red Flags in EUCs**

The term ‘red flag’ is an eye catching one, and could be applied to any case where information that an export authority requires is missing or inadequately provided in end-user documentation.

In our report on EUCs, we used the term to refer to instances where there were particular patterns or inconsistencies with a document, which if detected might alert an exporting authority of a need to follow up.

To give one example from the report, during the course of analysis CAR noticed that two documents, issued by the same end-user authority five years apart, had the same identical ‘unique’ reference number. These two documents were issued to two different export authorities, one in 2009, and one in 2014. CAR has confirmed that other documents, as recently as 2018, have continued to be issued with this same number.

There isn’t necessarily indicate an intent to divert or mislead. To be clear, even where this analysis has identified shortcomings in end-user documentation practice, that does not mean that the documents in CAR’s sample are directly linked to any act of diversion. Often, as our first Digest showed, diversion in our cases has taken place later in the supply chain, and aren’t related to the stage at which these documents apply.

However, if an export authority had received multiple applications carrying the same ‘unique’ identifiers, this might be an alert that there should be further follow-up as part of a diversion risk assessment.

And it certainly undermines the purpose of providing a unique reference number if it isn’t actually unique, and thus the exporter doesn’t have that necessary assurance

**DURING TRANSFER**

In the case of intermediary entities such as brokers or shippers, it is important to question not only whether the entity itself has been involved in such cases, but also if the organisations’ shareholders or directors have previously engaged in illicit activities.

CAR has reported on several cases in different contexts where companies acting as brokers of arms transfers were run or owned by individuals that had previously named in public reporting, including by the UN Panels of Experts, as having been involved in diversion to sanctioned entities.

Again, end-user documentation should be a key tool to guide the focus of diversion risk assessments in this regard, by clearly identifying the role and responsibilities of different transfer parties. In CAR’s experience however, these documents sometimes fail to provide clear and transparent information to export authorities, and the document might even represent a red flag themselves

In the examination of 75 EUCs I discussed, many contained incomplete or otherwise inadequate information that would limit a licensing authority’s ability to carry out effective due diligence. For example, five of the analysed documents did not state the quantity of items that would be transferred while others did not provide an address or contact details for a named intermediary to facilitate further checks.

It is important to note in this conversation that export authorities will likely struggle to identify potential red flags if information is not clearly provided in the documentation that is intended to provide them with a means of accountability and assurance.

To touch finally on one other finding of this study that relates to another important measure to tackle diversion:

End-user documents can include a clause in which the end-user agrees to provide the exporter with proof of delivery – a delivery verification certificate. These clauses are not regarded by all good practice as essential elements to include in end-user documentation, and only 11 of the documents CAR analysed contain this commitment, explicitly (although you can see in the graph that more did provide DVCs, but it wasn’t something that made its way into the end-user document).

Another optional element for end-use documents is a provision allowing for on-site, post-shipment verification by the export authority. This did not appear in any of CAR’s sample. However, this is an area that states are increasingly exploring in the ATT framework, and there may be value in discussion about how to include clear ‘delivery verification’ and ‘post-shipment’ clauses in end-use documentation and work to develop some standardised options for what form these clauses might take.

End-user documents can include a clause in which the end-user agrees to provide the exporter with proof of delivery – a delivery verification certificate. Good practice guidelines currently do not list DVCs as among the essential elements of end-user documents.

Only 11 of the documents CAR analysed contain this DVC commitment. However, in another 21 cases, while this DVC commitment wasn’t in the end-user document, CAR has seen that a DVC was actually issued by the end-user, so it seems just that these commitments don’t always make it into the original assurances required by exporters at the time a license is issued.

Another optional element for end-use documents is a provision allowing for on-site verification by the export authority. This did not appear in any of CAR’s sample.

As states explore the potential of post-shipment verification to facilitate diversion mitigation and detection, they may decide to call for the inclusion of ‘DVC’ and ‘post-shipment’ clauses in end-use documentation.

I will end today’s presentation with some potential recommendations of actions that can be taken to mitigate diversion risk throughout the -shall we say – life cycle of a weapons movement.

We should conduct robust risk assessments and due diligence prior to exporting items—and it’s essential that this includes an assessment of PSSM in the recipient state to prevent the diversion of materiel through loss or theft. Including this as an assessment indicator might help to incentivise more effective implementation of PSSM measures by prospective recipients, and limit the extent to which new supplies exacerbate the risk of diversion from unsecured stockpiles.

Establishing and maintaining a central, searchable registry of end-user documents within each export authority so that possible ambiguities or sudden changes in language and terminology might be flagged up more easily, and finding ways to link these supply-side control tools more closely with end-use monitoring. This might include more common use of a ‘DVC’ clause, or a clause that would allow for post-shipment verification activities by the exporter.

Finally, national export licensing authorities attempting to conduct due diligence exercises may face challenges in identifying accessible information relating to diversion risks. This underscores the importance of monitoring and diagnostic activities including the utilisation of public resources such as those provided by CAR’s EU-funded iTrace database.