building comprehensive controls on small arms manufacturing, transfer and end-use

Briefing 13

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Building Comprehensive Controls on Small Arms Manufacturing, Transfer and End-Use

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Comprehensive and stringently enforced licensing systems controlling manufacture (including licensed production overseas), transfer and end-use of small arms and light weapons are a crucial element in combating the illicit SALW trade.

Licensed production and the proliferation of SALW manufacture

Licensed production overseas is the practice where one company allows and enables a second company in another country to manufacture its products under license. Licensed production – and the concomitant transfer of arms production technology and expertise - is a major factor behind the steady increase in the number of companies and countries which manufacture SALW. At present it is inadequately controlled in many countries.

Existing best practice points to the development of two parallel approaches for control:

i. controlling licensed production via the licensing system of the recipient State

States must ensure that companies in their territory abide by the terms and conditions of licensed production agreements and treat major breaches of such agreements as a form of illicit manufacturing, bringing those responsible to justice. The controls that States have elaborated at national, regional and international levels to combat illicit manufacturing provide a framework for action.

ii. controlling licensed production via the licensing system of the exporting State

The primary basis for the effective control of licensed production must be at the level of national export controls. Governments should introduce legislation that requires companies to seek prior licensed approval for establishing agreements with other companies when establishing SALW production facilities abroad. The criteria used by governments for such export license determinations should be as stringent as for direct SALW exports.

In addition, all licensed production agreements should contain strict limits on the quantities of SALW that can be produced and also contain a clause which prohibits sales or transfers to third countries of either SALW or licensed production technology, without the prior consent of the licensor's government. As with direct export licenses, licensed production agreements should be reported to and scrutinized by a relevant legislative structure.

UN Conference Programme of Action

At a minimum the Programme of Action should contain the following elements:

- Arecognition that inadequate regulation of licensed production agreements contributes to the spread and misuse of SALW and must be urgently addressed.
- At the national level, states should establish control mechanisms requiring prior licensing approval from companies seeking to establish licensed production facilities overseas. The criteria for such government authorization, and the end use control systems should be as stringent as for direct SALW exports.
- Acommitment by states to review, at the first biennial meeting, national approaches to controlling licensed production with a view to establishing best practice and developing effective national, regional and international controls.

Executive Summary

Building controls on SALW transfer and end-use

Truly effective SALW transfer and end-use controls must begin with comprehensive and stringently enforced national controls, but such vital building blocks are not sufficient in themselves. Aregional and international control dimension is required.

Licensing controls

In recent years States have recognized the necessity for trans-national controls. In 1997 the Inter-American Convention and subsequent development of Model Regulations for the Control of the International Movement of Firearms developed a control framework for export, import and transit licensing and authorization. These were subsequently built upon and internationalized by the UN Firearms Protocol against the Illicit Manufacturing of Trafficking in Firearms, Their Parts and Components and Ammunition.

If an international SALW control system is to prove effective in regulating the trade in SALW, it is vital that common standards for licensing transfers of SALW include explicit authorization by the exporting, importing and transit States of the export, import and transit respectively of the SALW. There should be circulation among all these actors of information concerning inter alia the validity periods for certificates and a detailed description (including quantities) of the goods being shipped. Information should also be circulated advising of the dispatch and/or receipt of shipments of SALW. No exports should be made without receipt by the exporting authority of the necessary certification from the importing and transit states. Similarly, authorities in transit States should require receipt of official export and import authorizations before allowing on-shipment. And provision should be made for exporting States to verify the delivery of SALW, including physical inspection within the importing state.

End-Use Controls

Analysis of those States with relatively well developed end-use controls allows the development of best practice, components of which could include the certification requirements of Sweden, the monitoring of transport routes and delivery verification conducted by Belgian authorities and the end-use monitoring procedures of the United States. The issue of end-use monitoring and control has also been taken up at the regional and trans-national level, specifically by the EU and the Wassenaar Arrangement, the latter adopting an “indicative list” of end-use assurances in December 2000.

Building upon such best national and multilateral practice enables States to elaborate the key elements of a harmonised international end-use control regime. An axiomatic component of such controls must be the inclusion of a range of proscribed uses of such equipment together with an express prohibition on the re-export of SALW without the prior authorisation of the original exporting State. In order to ensure that States honour their end-use commitments, effective end-use control must include the post-delivery monitoring of the end-use of SALW. In cases where the diversion or misuse of SALW is uncovered, States should give serious consideration to withholding further exports of military equipment until the factors behind the diversion or misuse are addressed.

Executive Summary

UN Conference Programme of Action:

The Programme of Action should include a commitment to develop model regulations for licensing and best practice in end-use certification and monitoring, ideally by the first biennial meeting, at the latest by the time of the first Review Conference. These model regulations should build on national best practice as well as what has been developed regionally, specifically the OAS Model Regulations. They should include detailed certification procedures on the export and import of firearms and ammunition, in terms of both licensing authorisations and end-use undertakings. Information required for each process is summarised in the table below.

	Licensing/ Authorisation	End-use
Place and date of issuance of licence	✓	
Date of expiration	✓	
Name of exporter; country of export	✓	✓
Details of intermediate and final consignees	✓	
Modes of transportation	✓	✓
Country of import	✓	✓
Final recipient	✓	✓
Description and quantity of firearms, parts, components and ammunition	✓	✓
Description of end-use	✓	✓
List of proscribed end-uses	✓	✓
Requirement not to re-export without prior authorisation	✓	✓

These transfer and end-use controls should apply to all classes of small arms and light weapons and extend to state-to-state transfers, building on agreements on the commercial trade in firearms contained in the UN Firearms Protocol. Only through such harmonisation of measures at an international level will the preventive efforts necessary to stem the proliferation and misuse of SALW be successful.

Introduction

Small arms and light weapons can enter the illicit market at many stages in their lifecycle. From manufacture, to sale/export, to import, and then to final end use, States must establish and enforce stringent and comprehensive licensing and monitoring systems to ensure that small arms and light weapons (SALW) remain under legal control. The UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and ensuing follow-up process provide States with important opportunities to analyse and compare how existing systems governing the manufacture and trade in SALW are working. They further provide the context in which best practice can be agreed and implemented internationally, and for the discussion of how future trends and developments in SALW manufacture and transfer can be more effectively brought within State control.

To this end, this briefing paper covers two separate but closely related issues. The first section of the report will analyse existing State and regional controls on SALW manufacture and examine how international measures, including the UN Conference, can reinforce such controls. In this regard, the growth of licensed production and co-production agreements is highlighted, together with implications for the development of adequate regulations. The second section examines those systems that are currently in place for the authorisation of SALW transfers and for the certification and monitoring of their ultimate end-use. Recommendations for best practice and implications for the UN Conference process are also discussed.

Section I: Controlling SALW manufacture

Proliferation of State-authorised small arms manufacture

According to a recent survey of SALW manufacture,[1] between 1960 and 1999 there was an estimated doubling of the number of countries that produce small arms and light weapons and a nearly six-fold increase in the number of manufacturing companies. This is elaborated in the table below.

Small Arms Production 1960-1999[2]

		Africa	Asia/ Pacific	West Europe	East Europe	Middle East	South/ Central America	North America	Total
1990s	Firms	22	31	137	66	13	17	99	385
	States	7	14	15	15	6	5	2	64
1980s	Firms	10	23	88	12	6	15	42	196
	States	5	14	15	7	4	5	2	52
1970s	Firms	2	17	63	12	4	8	36	142
	States	2	10	16	7	2	4	2	43
1960s	Firms	1	7	29	10	2	3	17	69
	States	1	5	14	6	2	2	2	30

It should be noted that the above analysis took a narrow definition of small arms production, concentrating primarily on manufacturers of weapons for military and law enforcement agencies. The recent Small Arms Survey,[3] which took a broader definition including production for State and private ownership, found evidence of 600 companies in 95 countries producing small arms and light weapons. And work for a forthcoming Small Arms Survey/Norwegian Initiative on Small Arms Transfers (NISAT) publication has already identified more than 800 SALW manufacturing companies.[4]

While some of this increase can be explained by factors such as the privatisation of State industries, the creation of more States and the availability of more accurate reporting – the data indicates steady increases in the points of production of small arms, light weapons and related ammunition throughout the past decades. Whilst this does not necessarily mean that the number of guns manufactured is increasing, the diversity of producers makes government monitoring and control of such production increasingly difficult and makes measures such as record keeping and marking more important.

Unauthorised manufacture

The table above only shows part of the story. It portrays those companies that are known to governments and researchers. However, alongside these facilities, there is also an unregulated SALW manufacturing industry, the extent of which is unknown because of its clandestine nature. Such unregulated SALW production has been reported in a wide range of countries including: Brazil, Cambodia, Colombia, East Timor, India, UK/Northern Ireland, Palestine, Pakistan, the Philippines[5] and South Africa.

Unregulated or unauthorised SALW production has in the past resulted in the provisioning of arms to criminal and armed opposition groups. For example of the firearms seized in South Africa by the South African Police Service in 1998, approximately 15% (3066) were home made.[6] Similarly in Kazanluk, Bulgaria, a number of illegal weapon production workshops were discovered in 1998.[7] Whilst much of this production is carried out in small-scale craft workshops, there have been occasions where larger operations have been undertaken. The Khmer Rouge, for example, were reported to have established factories that could produce 500-600 landmines and rocket propelled grenades each day.[8]

Section I: Controlling SALW manufacture

Existing approaches to controlling SALW manufacture

Most States have in place laws and regulations governing the large-scale manufacture of SALW. Moreover, States have attempted to prohibit, or where appropriate bring under State regulation, the activities of small-scale independent unauthorised manufacturers. Certain regions have also attempted to address such unauthorised manufacture on a multilateral basis. Whilst the Organisation of African Unity (OAU)[9] and Organisation for Security and Cooperation in Europe (OSCE)[10] documents on SALW control include elements on combating illicit manufacturing, these agreements remain of a politically binding nature. It is the Organisation of American States (OAS), which has led the way on this issue through the legally binding OAS Convention on the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials.[11] This in turn was built upon and internationalised in the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition adopted in May 2001 by the UN General Assembly.[12] Illicit manufacturing is defined under Article 3 of the Protocol as:

(d) "Illicit manufacturing" shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:

(i) From parts and components illicitly trafficked;

(ii) Without a license or authorisation from a competent authority of the State Party where the manufacture or assembly takes place; or

(iii) Without marking the firearms at the time of manufacture, in accordance with article 8 of this Protocol;

Licensing or authorisation of the manufacture of parts and components shall be in accordance with domestic law.

The Protocol then declares that "State Parties shall adopt such legislative and other measures as may be necessary to establish as criminal offences …(a) Elicit manufacturing of firearms, their parts and components and ammunition." States Parties are also required to keep record, for a minimum of ten years, and to exchange information with other parties on authorized producers of firearms, components and ammunition."[13]

In view of the dearth of binding regional initiatives for the control of the manufacture of SALW, it is imperative that all States sign and ratify the UN Firearms Protocol as soon as possible and begin to implement its provisions, in particular, those which relate to curbing the illicit manufacture in SALW.

Licensed production and the proliferation of SALW manufacture

Whilst there have been concerted attempts by States, regional bodies and the international community as a whole to bring small scale SALW production fully under government control and to prohibit unauthorised SALW manufacture, the issue of the licensed production of SALW overseas has received less attention.

Licensed production overseas[14] is the practice by which one company allows and enables a second company in another country to manufacture its products under license. During such agreements the licensee may receive a range of support from the licensing company such as component parts, machine tools, blue prints, technical drawings, designs and subsequent modification specifications. Technical personnel such as engineers may also be seconded to help establish or modify the licensee's production facilities.

Section I: Controlling SALW manufacture

Licensed production and the proliferation of SALW manufacture

Licensed production – and the concomitant transfer of arms production technology and expertise is a major factor behind the steady increase in the number of manufacturing companies and countries described above. One estimate from 1995 asserted that licensed production was taking place in at least 21 developing countries, 16 of which were also exporting the small arms they manufactured. These countries included Brazil, Chile, Egypt, India, Indonesia, Iran, North and South Korea, Pakistan, Singapore, South Africa and Turkey.[15] According to information compiled by the Omega Foundation, from 1960 to 1999, 14 countries had established small arms and ammunition licensed production agreements with some 46 countries.

The proliferation of licensed production agreements has not been met with the parallel development of effective licensing systems to control such licensed production and related technology transfer.

The dangers of uncontrolled licensed production

The central concern relating to the spread of licensed production agreements is that it establishes alternative centres of production of SALW over which the original licensing authority has little or no control. Beyond this fundamental concern, even when efforts are made by the host government of the licensing company to ensure adequate controls (for example through placing ceilings on production or restrictions on export and/or on end-use) licensed production contracts are liable to be breached with subsequent loss of control.

The licensee may breach aspects of the licensed production agreement by exceeding production levels agreed in the contract. In other cases the licensee continues producing the weapon long after the lifetime of the agreement has expired. A1998 OXFAM briefing reported that production facilities for the Heckler & Koch G3 rifle and the MG3 general-purpose machine gun were arranged in a government-to-government deal between Germany and Iran.[16] In 1991“50,000 Heckler & Koch G3 automatic rifles were reportedly supplied to Sudan, probably via Iran”.[17] Photographs obtained by Human Rights Watch provided further evidence that the weapons were manufactured in Iran.[18] At the time, Heckler & Koch stated that the Iranian licensed production agreement for G3 rifles was no longer current. However it seems that the weapons continued to be produced in Iran and exported to sensitive destinations after the contract expired and without Heckler & Koch’s consent.[19]

Control can also break down when the licensee adapts the initial weapon, in effect producing entirely unauthorised copies of the same or very similar weapons under a new name. Having thus developed their own “indigenous” weapons design and independent production these companies can establish their own export markets. This process can be repeated, leading to greater small arms proliferation in the absence of effective national regulation. The Bonn International Centre for Conversion’s yearbook, Conversion Survey 1997, detailed that the Soviet Kalashnikov assault rifle was adapted by Israel and sold to other countries under the name Galil. Galil in turn was produced under license as the R-4 by South Africa.[20]

There are also a related set of concerns in those cases where the licensee company may be producing SALW in accordance with the terms of the contract, but the licensee’s government may have weak or ineffective export controls which allow the subsequent export of these weapons to sensitive end-users – e.g. countries under regional or UN arms embargoes, regions in conflict, countries with inadequate export and transit controls or countries where the weapons will be used to facilitate violations of international human rights or breaches of humanitarian law. There is therefore a need to address these concerns in parallel with the development of controls of licensed production overseas.

Section I: Controlling SALW manufacture

How inadequate regulation allowed arms shipments to human rights violators

Heckler and Koch is an Anglo-German[21] arms manufacturing company established in 1948. The Turkish State owned company Makina ve Kimya Endustrisi Kurumu (MKEK) has manufactured the Heckler & Koch G3A3 and G3A4 rifles since the 1970s and the MP5A2, MP5A3 and MP5K sub-machine guns since the 1980s.

In a UK TV documentary programme,[22] broadcast on 9th December 1999, MKEK revealed that it had shipped a consignment of 500 MP5 submachine guns to the Indonesian police in the period of late August to early September 1999. This was at a time when widespread human rights abuses were being committed in East Timor by anti-independence paramilitaries allegedly with the complicity of the Indonesian security forces. On 16th September 1999, as the human rights situation was deteriorating, the EU instituted a comprehensive arms embargo.

This embargo meant that either Heckler & Koch in Germany or the UK would have been allowed to export MP5s to Indonesia. However since Turkey was not a EU member and was not covered by the EU embargo, little could be done to stop MKEK from producing Heckler and Koch SALW under license and from continuing to supply these weapons to the Indonesian security forces.

Existing approaches to controlling licensed production

Option one: Controlling the transfer of components or technology

Controlling the transfer of components or technology is illustrated by the United Kingdom, which seeks to control licensed production by controlling the materials and parts required for a licensed production arrangement, rather than controlling the licensed production agreement itself.

Arecent UK government consultation document states “an export license is required under current legislation for the export of the technology required for the development, production or use of military equipment and other equipment which is itself subject to export controls.”[23]

Apotential area of concern with this control model is that under this system individual components or technology transfers required for licensed production, which themselves may appear uncontroversial, may be considered in isolation by the licensing authority without full consideration of the implications in terms of the licensed production agreement as a whole. This concern is further exacerbated if such goods are not themselves controlled. In the UK, for example, multipurpose machine tools or general-purpose components that could be used in the licensed production of controlled goods are not themselves subject to control regulations. In certain cases this has led to the transfer of such components to licensed production operations of concern. Acase, which illustrated the inadequate control over the transfer of European arms manufacturing equipment to Iraq during the 1980s, was highlighted in the UK Scott Inquiry.[24]

The most fundamental concern with this approach is that once a licensed production deal has been established and all the machine tools, blue prints and other components have been transferred to the licensee, the original licensing company and government lose all control of the licensed production process. The licensee company can produce unlimited amounts of the weapon and can ship them to whomever it wishes. This highlights the need for strict national export controls that are consistent with the principles enshrined in international law.

The UK government has recently recognised that further controls on licensed production are required and has initiated a consultation process on this and other elements of its strategic export control regime in the context of a fundamental overhaul of export legislation.

Section I: Controlling SALW manufacture

Existing approaches to controlling licensed production

Option two: Controlling licensed production agreements

Asecond approach is to treat the licensed production process in a holistic manner and to require government authorisation for the licensed production agreement itself rather than just to license the controlled goods. This is the strategy followed by the United States.

In the United States, licensed production (or manufacturing license) agreements are treated as physical exports and require prior approval from the US State Department. Control of licensed production agreements is regulated through the US International Traffic in Arms Regulations (ITAR).[25]

If such licensed production agreements (or any arms transfers) value more than $50 million, the US State Department must notify the US Congress before the agreement is approved. The US licensed production contracts usually limit production levels and prohibit sales or transfers to third countries without prior US government consent.[26] The ITAR further stipulate that this re-export limitation must be incorporated into the licensed production agreement contract.[27]

Regional and multilateral licensing controls

Whilst explicit controls on aspects of licensed production can be found in the national legislation or administrative regulations of a number of States, harmonisation of such controls have not been widely discussed at the regional let alone the international level. However, the need for regional control has been recognised by some governments.

Criterion 7 of the EU Code of Conduct requires that Member States take account of the “risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions”.[28] The UK government has recently stated that it employs such considerations when deciding whether or not to grant licenses for equipment transferred as part of licensed production agreements. It has also signalled its intention to take a lead in EU consultations on this issue and to promote a specific reference to licensed production in the EU Code of Conduct.[29]

One of the few regional agreements that does contain explicit references to controlling licensed production is the OSCE Document on Small Arms and Light Weapons[30] which establishes “criteria to govern exports of small arms and technology related to their design, production, testing and upgrading, which are based on the OSCE document on “Principles Governing Conventional Arms Transfers.”

Furthermore it declares that: “Participating States will make every effort within their competence to ensure that licensing agreements for small arms production concluded with manufacturers located outside their territory will contain, where appropriate, a clause applying the above criteria to any exports of small arms manufactured under license in that agreement.”[31] Whilst these provisions are non-binding, the agreement is nonetheless significant since 55 States, including the majority of major arms manufacturers, have committed themselves to the document.

Section I: Controlling SALW manufacture

Building on current best practice: developing a framework for control

Existing practice for control of licensed production agreements points to the possible development of two approaches for control. These approaches, which are outlined below, are not mutually exclusive; indeed the best way forward may well be to adopt them in parallel.

Controlling licensed production via the licensing system of the recipient State

The control of SALW licensed production is the responsibility both of the government in the country where the licensing company resides, but also of the government where the licensee company is situated and where the actual production will take place.

States have proven themselves willing and able to combat unauthorised SALW manufacture perpetrated by individuals or non-government entities. If SALW proliferation and misuse is to be effectively combated, States must also ensure that illicit manufacture by companies breaching licensed production arrangements is also prohibited. States must ensure that companies in their territory abide by the terms and conditions of the licensed production agreement; governments must treat major breaches of such agreements as a form of illicit manufacturing and act accordingly by bringing those responsible to justice. The controls that States have elaborated at national, regional and international levels to combat illicit manufacturing provide a framework for action.

Controlling licensed production via the licensing system of the exporting State

The primary basis for the effective control of licensed production is at the level of national export controls. Building on existing best practice, governments should introduce legislation that requires companies to seek prior approval through export licenses for setting up agreements with other companies when establishing SALW production facilities abroad. The criteria used by governments for such export license determinations should be as stringent as for direct SALW exports. Specifically, export licenses for such contracts should not be given:

1. Where an export license application for a direct SALW transfer would be refused;
2. Where the recipient State cannot demonstrate sufficient accountability in terms of end-use control; or
3. To States that have a record of violating UN and other international arms embargoes.

In addition, these licensed production agreements should contain limits on the quantities of SALW that can be produced under contract and also must contain a clause which prohibits sales or transfers to third countries of either SALW or licensed production technology, without the prior consent of the licensor's government. As with direct export licenses, licensed production agreements should be reported to and scrutinised by a relevant legislative structure.

Where it is not possible to regulate on a case-by-case basis, a second possible method of control to be considered is that of a memorandum of understanding between the licensing and licensee/recipient/partner government. Under this system the two governments would agree a list of destinations to which exports of resultant SALW would be permitted.[32] This list of destinations should be based on pre-arranged criteria, which are made publicly available. It should be subject to review on at least an annual basis, with the licensor's government retaining the right to conduct ad hoc reviews where necessary, if for example there is deterioration in the human rights or political situation in a country. Where the host government allowed the licensed manufacturer to export SALW to destinations not subject to agreement, the licensed production agreement should be revoked. Under this system, the list of approved destinations should be scrutinised by a legislative structure and also be made available to the public.

Section I: Controlling SALW manufacture

The UN 2001 Conference Programme of Action and Opportunities for Control

The failure of the international community to recognise the dangers resulting from the spread and inadequate control of SALW through licensed production is reflected in the Programme of Action, which contains no specific reference to controlling licensed production arrangements. However, there are sections of the Programme of Action (A/CONF.192/L.5) that deal with illicit manufacture and could be applied to or adapted to aid the control of licensed production arrangements. Of particular importance are:

Section II, paragraph 2, requires States to put in place "adequate laws, regulations and administrative procedures to exercise effective control over the production … export, import, transit or retransfer of SALW" in order to prevent unauthorised manufacture of and illicit trafficking in SALW. In paragraph 3, States are required "to ensure that those engaged in such [illicit] activities can and will be prosecuted under appropriate national penal codes."

And Section II, paragraph 9, which requires States to ensure comprehensive and accurate records are kept for as long as possible on the manufacture, holding and transfer of SALW within their jurisdiction.

These paragraphs are important provisions, crucial for effective State control of SALW manufacture. At a minimum they must be retained in the final document and ideally should be strengthened and elaborated further to specifically cover licensed production agreements.

Aprohibition of re-export of SALW is also necessary to prevent the proliferation of SALW through licensed production. This should be clearly stated in the Programme of Action.

Whilst the aforementioned articles must be retained in the Programme of Action, they are not enough to adequately address current trends in SALW manufacturing. If the international community is going to grasp the opportunity to begin to control licensed production, then the Programme of Action should establish a mechanism whereby the following elements can be discussed and agreed by States:

- Recognition in the Programme of Action text that the inadequate regulation of licensed production agreements contributes to the spread and misuse of SALW and is a problem that needs to be urgently addressed by the international community;
- At the national level, States should establish control mechanisms requiring prior licensing approval from companies seeking to establish licensed production facilities overseas. The criteria for such government authorisation, and the end-use control systems should be as stringent as for direct SALW exports; and
- In Section IV, follow on and implementation, a commitment by States to review, at the first biennial meeting, national approaches to controlling licensed production with a view to establishing best practice and developing effective national, regional and international controls.

Section II: Building controls on SALW transfer and end-use

Two other related aspects can play an important role in preventing and combating the illicit trade in SALW. These are provisions for export/transfer licensing and for end-use monitoring and control.

Building in controls on SALW export licensing and end use will help to ensure that this trade remains under government control and is not diverted to illicit markets or end users. The Programme of Action for the UN Conference contains elements upon which controls on the trade in SALW could be built. As this section will demonstrate, there are a range of ways in which these controls can be further developed. Countries have a wealth of experience in national licensing systems; with many in the past ten years reviewing and strengthening their arms export control systems. This experience has translated into the adoption of international and regional measures to regulate the trade in SALW and some of these go farther than what is currently proposed in the Programme of Action.

International and regional approaches to authorising SALW transfers

The increasing concern among many States that much of the illicit trade in SALW stems from the legal arms trade has prompted international measures to agree common standards on the licensing of SALW transfers. Licensing and authorisation are recognised as one way to prevent diversion during the sale, transfer and receipt of SALW. The most recent initiative is the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition. The Protocol, supplementary to the UN Convention on Transnational Organised Crime, was adopted by the UN General Assembly on 31 May 2001.

UN Firearms Protocol

The UN Firearms Protocol, whose purpose is to promote, facilitate and strengthen cooperation among State Parties to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, includes measures to be taken in the licensing and authorisation of firearms transfers.[33]

An important consideration in the development of the Protocol was for the inclusion of measures that would *prevent* the further trafficking of small arms, in addition to measures to respond to the existing problem. These prevention steps, including licensing and authorisation systems, are important and similar responses should be developed in other fora, such as the UN Small Arms Conference.

The Protocol requires State Parties to:

- Establish or maintain an effective system of export and import licensing and authorisation, as well as of measures on international transit.
- Before issuing export licenses or authorisation, verify:
    - That the importing States have issued import licenses or authorisations; and
    - That States… have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.[34]

Section II: Building controls on SALW transfer and end-use

International and regional approaches to authorising SALW transfers

In addition, the Firearms Protocol identifies information that must be contained on the license and other documentation, including:

- Place and date of issuance
- Date of expiration
- Country of export
- Country of import
- Final recipient
- Description and quantity of the firearms, parts, components and ammunition
- and, where there is transit, the countries of transit.[35]

The identification of transit points and end-users are important in efforts to prevent the diversion of SALW from authorised recipients. In particular, the information on transit points will assist in efforts to trace weapons that have gone astray. Although some States have raised concerns about the feasibility of identifying transit States during the licensing process, due to the ways in which goods are moved internationally, such concerns will need to be addressed in order to further efforts to combat illicit arms trafficking.

Inter-American Convention and Model Regulations

The 1997 Inter-American Convention contains provisions on export, import and transit licensing and authorisations, which were subsequently built upon in the UN Firearms Protocol. It requires State Parties to:

- Establish or maintain an effective system of export, import and international transit licenses or authorisations for transfers of firearms, ammunition, explosives and other related material;
- Not permit the transit of firearms until the receiving State Party issues the corresponding licenses or authorisation;
- Ensure that the importing and in-transit countries have issued the necessary licenses or authorisations before releasing shipments of firearms;
- And upon request, the importing State Party shall inform the exporting State Party of the receipt of the firearms.[36]

In parallel with negotiations on the Inter-American Convention, the Organization of American States (OAS) Inter-American Drug Abuse Control Commission drafted Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components, and Ammunition in 1997.[37] These Model Regulations, which are not binding, provide information on:

- Detailed procedures on the export and import of firearms and ammunition, including the issuance of an export or import certificate and the information to be contained;
- Steps to be followed for in-transit shipments, including the receipt of both the import and export certificates by the country being used for transit and the preparation of an in-transit authorisation form;
- General information on validity periods for certificates, authorised quantities of shipments, steps to ensure the authenticity of certificates; and
- Responsibilities of OAS Member States, including record-keeping, information exchange, training, technical assistance and processes to be undertaken if an irregularity is identified in the import, export or transit documentation.

Section II: Building controls on SALW transfer and end-use

International and regional approaches to authorising SALW transfers

The Model Regulations are limited to classes of commercially traded firearms, excluding State-to-State transactions or transfers for the purposes of national security. Anumber of States in the OAS region have adopted the Model Regulations, including Argentina, Belize, Canada, El Salvador, Panama and the USA. The influence these regulations have had can be judged by the additional requirements on licensing and authorisations in the UN Firearms Protocol and the discussions on licensing and end-use certification within the Wassenaar Arrangement.

OSCE Document on Small Arms and Light Weapons

The OSCE Document on Small Arms and Light Weapons, adopted in November 2000, includes recommendations on steps that States should take to make common import, export and transit procedures and documentation. These measures include:

- Ensuring that SALW imports and exports are subject to effective national licensing or authorisation procedures which allow adequate control to be retained over the transfers and prevent the diversion of SALW to unauthorised recipients;
- Require the exporter to receive an import license or other official authorisation and ensure that the exporter obtains transit authorisation where required;
- Provide information on the dispatch of the weapons from the exporting State and receipt by the importer;
- Request authorisation for re-transfer of arms from the original exporting State;
- Establish procedures to allow the exporting State to verify the delivery of the SALW, including a physical check at point of delivery; and
- Agree to enhance the coordination of policy and cooperation in SALW import, export and transit procedures.

The OSCE Document, which is politically binding in nature, does not extend controls as far as those in the UN Firearms Protocol. This is especially evident with regard to the establishment of SALW transfer controls in transit States. In the OSCE Document such control is voluntary with the transit State only having to indicate whether or not it requires measures in place to effect control over the weapons while they are on its territory. As the diversion of SALW to unauthorised end-users has been identified as occurring during transit on a number of occasions, the development of common measures on import, export and transit procedures should be seen as an area for urgent government action.

Licensing controls: international standards

The instruments examined above reflect a growing awareness of the need to establish an internationally agreed system of licensing controls. If such a system is to prove effective in regulating the trade in SALW, it is vital that common standards for licensing transfers of SALW include explicit authorisation by the exporting, importing and transit States of the export, import or transit of the SALW. There should be circulation among all these actors of information concerning, *inter alia*, the validity periods for certificates and a detailed description (including quantities) of the goods being shipped. Information should also be circulated advising of the dispatch and/or receipt of shipments of SALW. No exports should be made without receipt by the exporting authority of the necessary certification from the importing and transit States. Similarly, authorities in transit States should require receipt of official export and import authorisations before allowing on-shipment. Finally, provision should be made for exporting States to verify the delivery of SALW, including physical inspection within the importing State.

Section II: Building controls on SALW transfer and end-use

National approaches to end-use control

Concerns regarding the proliferation of SALW and the ease with which exports of these weapons can be diverted or misused has prompted increasing levels of debate on the end-use issue in recent years. Nevertheless it remains the case that there are wide differences in end-use policies and practices amongst exporters of SALW. Some discussions have occurred at the multilateral level – notably at the Wassenaar Arrangement – however agreement on best practice, drawing on the experiences of different states, has yet to be reached.

The United States

Unites States law places strict controls on the end-use of exports of defence articles or services. Exporters must submit a "Non-Transfer and Use certificate"[38] with their export license application, although end-use assurances can be documented in other ways, such as a diplomatic note or an official letter. Although this certificate does not require notification of specific prescribed or proscribed uses, there is a general stipulation that use must comply with US law, or be confined to those purposes specified in defence agreements or treaties between the US and recipient governments. Exporters must provide full details concerning the articles or data being exported, and of the foreign consignee, end-user and government, each of which must give an undertaking not to re-export US-sourced defence articles or services without the prior approval of the US government.[39] This obligation also extends to States that receive retransferred US weapons.

Since 1990, the US has had in place a systematic end-use pre-export screening and post-export monitoring programme for commercial sales of controlled items. The "Blue Lantern" programme, administered by the State Department, uses a system of 20 specific criteria or "red flags" (for example the requested equipment does not match the known requirements or inventory of the foreign end-user) and reporting by embassies, intelligence and law enforcement agencies to highlight risks of diversion. Over 4,000 checks have been made since the programme's inception, with 360 initiated in 1999.[40] Of those, typically five to ten per cent result in "unfavourable results"[41] (eight per cent in 1999), which may lead to denials or revocations of licenses, the imposition of sanctions or prosecution of export law violators. State Department officials believe Blue Lantern has a significant deterrent effect on would-be diversion. However within the State Department the functioning of Blue Lantern is hampered by under-resourcing, with the units involved in its implementation "chronically understaffed."[42]

The US Department of Defence has a legal obligation to establish a similar programme for government-to-government sales, but has experienced difficulties in carrying out the required end-use checks and complying with its reporting requirements.[43]

Germany

For exports to former COCOM States[44] and to a small number of other destinations (for example Slovakia and the Czech Republic), Germany uses International Import Certificates (IIC) to manage the end-use of controlled exports. IICs, a remnant of the COCOM regime, consist of a description of the goods in question and an undertaking by the importing State to maintain control of those goods. Exports to other destinations require an end-user certificate, the details of which will differ according to the nature and destination of the items and the value of the sale. All end-user certificates place an obligation on the importer to request approval from the German government before re-export. They also include a description of the goods, along with their quantities and values. Where intermediaries are involved, additional documentation is required. The German government plans to rationalise the system of end-use certification before the end of 2001 by introducing a range of ten to twelve standard forms designed to cover all types of exports of controlled items.

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National approaches to end-use control

For exports outside of the EU, a delivery verification certificate is required. The ability of the German government, however, to ensure that end-use undertakings are honoured is limited by the fact that no provision is made for post-export monitoring. The system should therefore be effective in ensuring that diversion en-route to the intended destination without the permission of the recipient is discovered, but is vulnerable to deliberate diversion by the importer.

German companies are expected to inform their government where they suspect recipients may not honour their end-use obligations. They are also required to appoint, from their executive board or someone at managing director level, a "Person Responsible for Exports" who is accountable within the company for end-use and can be held accountable for any foreseeable diversion.

Sweden

The Inspektionen för Strategiska Produkter (ISP) is responsible for administering export controls in Sweden. They require that in all cases an end-use certificate be supplied for the export of controlled goods. Exporters must use one of a number of different certificates, depending on the identity of the customer and the nature of the items being exported.[45] A "Declaration by End-User", printed on special banknote-quality paper and bearing a unique number, is required for exports of military equipment for combat purposes to the armed forces in the recipient country. This type of certificate is sent by the exporter to the end-user, who upon completion delivers it to the Swedish embassy in the country of end-use. The embassy must verify that the request and the signature are legitimate before the export is authorised. However, this level of control is not applied to all exports.

Included in the certification process is a commitment by end-users not to re-export without permission. Requests to re-export are routed through the ISP, which applies similar criteria to such requests as it does to direct exports. There is also an undertaking to confirm receipt of articles when asked by the Swedish government, and in those cases where it is known that end-use undertakings have been broken, Sweden reserves the right to halt further contracted supplies. However, requests to verify delivery are very rarely made. Furthermore, there is effectively no provision made for post-export monitoring; even where serious concerns are raised about end-use, the Swedish government has no formal avenue through which it can pursue enquiry or inspection.

Belgium

In Belgium end-use certificates include a written guarantee by the importing agency that they will not re-export the arms without the prior written consent of the exporting country. They also state that the recipient will not use the arms for proscribed purposes, including committing human rights abuses or breaches of international humanitarian law. Particularly noteworthy is that three months after the goods are exported, the Belgian government monitors the process and requires proof of delivery, including details of the transit routes and travel plans.

Section II: Building controls on SALW transfer and end-use

Regional and multilateral approaches

The European Union

The European Union (EU) has acknowledged the need to develop closer cooperation over end-use issues. Since an initial exchange of views in 1997, which identified wide variations in the systems of end-use certification and enforcement then in operation across the EU, the EU Working Party on Conventional Arms Exports (COARM) has had a number of discussions on the subject. To date little progress has been made, though there are currently efforts underway to develop a set of common minimum standards.

Wassenaar Arrangement

The report of the December 2000 meeting of Participating States in the Wassenaar Arrangement notes that States "reaffirmed the importance of responsible export policies towards, and effective export controls over, small arms and light weapons to prevent destabilising accumulations."[46] The thirty-three States in the Wassenaar Arrangement, who make up the majority of global arms manufacturers and exporters, have adopted an "indicative list" of end-use assurances, which participating States may use at their discretion. This list recommends information to be incorporated in end-use assurances, including:

- Parties involved in the transaction, giving the exporter's, intermediate consignee's, final consignee's and the end-user's full name and address;
- Provide a detailed description of the goods and includes quantities and values;
- Describe the end-use of the goods and provide assurances that the goods will not be used for other than stated purposes;
- Undertake not to re-export or tranship the goods covered without approval from the originating government;
- To not divert the goods;
- To provide proof of importation upon request;
- Require the signature, names and title of final consignee and signature and end-use certification by the final consignee's/end-user's government, including a unique identifying Certificate number and the original End-user Certificate.[47]

The Wassenaar States have also identified "best practice" on effective enforcement. This suggestion includes the examination of goods and documentation at point of export, the detention of suspect shipments and the seizure of unauthorised or illegal exports, including those passing in-transit,[48] and extend to monitoring arrival at destination, through documentation or on-site verification.

Although the indicative list of end-use assurances and the best practice on effective enforcement are a useful indication of how international controls should develop, they are non-binding and are likely to have limited impact without follow-up. Whilst there is currently little enthusiasm to return to the question of enforcement, there are hopes that the next plenary will mandate further consultations on end-use certification. The focus, after a recent Swiss study into current national certification systems which revealed wide disparities and inconsistencies, is likely to be on working toward the harmonisation of documentation. Given the extent of the differences among national regimes however, discussions are expected to be protracted and swift progress is not anticipated.

Section II: Building controls on SALW transfer and end-use

Regional and multilateral approaches

It should also be noted that, notwithstanding the discussions on the end-use, SALW are not the primary focus of the Wassenaar Arrangement. Reporting and information exchange is restricted to dual-use items and major conventional weapons, and efforts to extend this to SALW have not been successful. Any further agreement on end-use controls within Wassenaar would be welcome in that it would help to develop norms in this area. However, until the provision of information exchange is extended to include SALW, the prospect of Wassenaar proposals on end-use controls being applied to transfers of SALW would appear remote, although individual countries may choose to adopt such measures.

Building on best national and multilateral practice

From this brief survey it is clear that even among States recognised as having relatively extensive end-use controls, no one country can be seen to have a fully effective system. The system in place in the US is the most comprehensive, but nevertheless suffers from a lack of resources and the fact that SALW issues are not prioritised, despite the significant risks of diversion and misuse that accompany exports of these weapons. This underlines the importance of establishing effective cooperation, including information sharing on risks of diversion and misuse, amongst relevant actors. If the US, the world's largest military exporter, has difficulties resourcing this area, other, less affluent States will find operating alone even more problematic.

Elements from different countries' controls that could be seen as "best practice" include the certification requirements in Sweden, end-use monitoring by the US and the details required by the Belgian authorities with regard to transport routes and delivery verification. States should develop more effective systems based on this best practice in terms of pre-export checks, end-use certification and follow-up provisions.

However, since many importing States appear concerned that allowing for post-export end-use monitoring is in effect a threat to their sovereignty, it is therefore essential to establish international standards on the control and monitoring of exports of SALW. Fora such as the Wassenaar Arrangement or the Inter-American Convention are important in this regard, but the UN Conference, with the unique worldwide legitimacy it commands, is an ideal platform from which to advance proposals for improving international end-use controls, including those which focus on end-use monitoring.

Licensing requirements, end-use controls and the UN 2001 Conference

Establishing an effective international system for licensing and authorising arms transfers and for controlling end-use is critical for two reasons. First, States may be discouraged from operating a strict unilateral regime for competitive reasons. Second, arms transfers may be routed through a number of transit countries and often involve many different actors (e.g. agents, brokers, transportation companies, intermediate consignees), of which few will fall within the authority of the exporting State and all of which can play a role in any potential diversion.

The UN Conference provides an important opportunity to develop such controls, and to build on the agreements in the UN Firearms Protocol, as well as other international and regional measures, such as those in the OSCE Document on SALW or those adopted by Wassenaar States. The OAS Model Regulations could provide a starting point for the development of international model regulations for the trade in SALW.

Section II: Building controls on SALW transfer and end-use

Licensing requirements, end-use controls and the UN 2001 Conference

Currently the draft Programme of Action (A/CONF.192/L.5) contains measures that States should take at the national level to regulate the trade in SALW. Section II, paragraph 12 says that States commit to "put in place adequate laws, regulations and administrative procedures to ensure the effective control over the transfer of small arms and light weapons, including the use of authenticated end-user certificates, and enhanced legal and enforcement measures."[49] This paragraph sets important markers for action by States, however more specificity on what adequate laws and regulations are, as well as detail on the type of information that should be included in licensing and authorisation procedures is required. International agreement on the type, quality and amount of information to be provided on licenses and authorisations would assist not only in the development of future legally binding agreements on issues such as tracing, but would also improve controls over the legal trade in SALW and reduce the likelihood of SALW being diverted or used for purposes contrary to those for which the license was issued.

Paragraph 12 also includes a call for authenticated end-user certificates, while paragraph 13 says that States should "make every effort, without prejudice to the right of States to re-export small arms and light weapons that they have previously imported, to advise the original exporting State before the retransfer of those weapons." It is unclear however from where "the right of States to re-export small arms and light weapons" derives. Accordingly, this assertion should be modified to prohibit re-export without prior authorisation from the original exporting State. The Programme of Action also should stipulate in greater detail the information that end-use certificates are expected to contain. At a minimum, this should include details regarding the identity of the ultimate recipient, a clear statement of the proposed end-use, a commitment not to use the SALW for a list of proscribed end-uses, and a commitment not to re-export the SALW without the express authorisation of the original supplying State. These recommendations are in line with best practice and the procedures set out in the indicative list of end-use assurances in the Wassenaar Arrangement. In addition, in order to ensure that States honour their end-use commitments, the Programme of Action should establish that effective end-use control procedures include the post-delivery monitoring of the end-use of SALW.

The Programme of Action should build on commitments on licensing contained within the UN Firearms Protocol and, at a minimum, ensure that these apply to all categories of SALW and to transfers of these weapons between States.

Section II, paragraph 30 of the draft Programme of Action includes reference to developing appropriate regional measures to enhance transparency. Explicit mention should be made of the need to include in these measures the exchange of information on the risks of diversion or misuse of SALW. Moreover, as the unauthorised retransfer of SALW occurs not just across the borders of contiguous States but also across continents, similar information-sharing mechanisms should be established at the global level.

Section II: Building controls on SALW transfer and end-use

Licensing requirements, end-use controls and the UN 2001 Conference

Ultimately the Programme of Action should include a commitment to develop and elaborate model regulations for licensing and best practice in end-use certification and monitoring, ideally by the first biennial meeting, and at the latest by the time of the first Review Conference. These model regulations should build on national best practice as well as what has been developed and agreed regionally and include:

- Authorisations and end-use undertakings provided on official paper of exporting authorities and the importing authorities or company; and
- Detailed certification procedures on the export and import of SALW and ammunition, in terms of both licensing authorisations and end-use undertakings.

Information required for each process is summarised in the table below.

	Licensing/ Authorisation	End-use
Place and date of issuance of licence	✓	
Date of expiration	✓	
Name of exporter; country of export	✓	✓
Details of intermediate and final consignees	✓	✓
Modes of transportation	✓	✓
Country of import	✓	✓
Final recipient	✓	✓
Description and quantity of firearms, parts, components and ammunition	✓	✓
Description of end-use	✓	✓
List of proscribed end-uses	✓	✓
Requirement not to re-export without prior authorisation	✓	

In addition, States should agree on a range of supporting measures, including:

- Steps to be followed for in-transit shipments, including the receipt of both the import and export certificates by the country being used for transit in advance of the shipment and the preparation of an in-transit authorisation form;
- Provision for ensuring that States are honouring their end-use undertakings, including follow-up checks;
- Acommitment to keep adequate records of SALW exports for at least 50 years and to exchange information with other States in cases of suspected diversion or misuse; and
- Acommitment to provide assistance and training for countries with underdeveloped capacity for licensing and end-use monitoring.

In cases where the diversion or misuse of SALW is uncovered, States should give serious consideration to withholding further exports of military and security equipment until the factors behind the diversion or misuse are addressed. Should it prove impossible to agree on the elaboration of norms and standards in these areas within the UN Conference Programme of Action itself, the document must, at the very minimum, provide for the establishment of provisions whereby international best practice can be identified and elaborated upon. This should further provide a basis for model regulations and the establishment of an international instrument regulating the manufacture, licensing and end-use of SALW. Only through such harmonisation of measures at international level will the preventive efforts necessary to stem the proliferation and misuse of SALW be successful.

Conclusion

Comprehensive and stringently enforced licensing systems which control the manufacture, transfer and end-use of small arms and light weapons are a crucial part of efforts to combat the illicit trade in these weapons. The UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects provides governments with an important opportunity to set in progress agreement on norms, standards and mechanisms based on best practice which will reinforce, co-ordinate, strengthen and harmonise existing licensing regimes and help prevent the diversion and misuse of SALW. As part of this process, governments must also address the increasingly important role of licensed production agreements in the spread of SALW sites of production. Unless stringent controls in this area are agreed upon and implemented, the danger exists that licensed production agreements will increasingly undermine government export control mechanisms and will continue to facilitate the proliferation and misuse of SALW.

Endnotes

1 Table originally compiled from the following sources: *Jane's Infantry Weapons, Jane's Security & Counter Insurgency Equipment, British Defence Equipment Catalogue, International Defence Equipment Catalogue*, technical and advertising brochures from law enforcement equipment manufacturing companies and the Omega Foundation's database of military, security and police companies. Table appeared in Manufacturing Trends: Globalising the Source, Abel in Running Guns, edited by Lumpe, Zed Books, 2000, page 83.

2 Ibid.

3 *Small Arms Survey 2001: Profiling the problem*, Oxford Press, 2001, page 10.

4 Telephone interview with NISATstudy author.

5 Making a living in fake Smith & Wessons, San Jose Mercury News, Russell Working, 4 March 2001.

6 *Firearm Use and Distribution in South Africa*, edited by Chetty, National Crime Prevention Centre, for the Secretariat of Safety and Security, Government of South Africa, 2000, as cited in Domestic Gun Markets: The Licit-Illicit Links, Cukier and Shropshire, Running Guns, Op cit.

7 Illegal Weapon Producing Shops Discovered in Kazanluk, FBIS Daily Report, 3 April 1998, as cited ibid.

8 "Notorious killer's changed role", Bangkok Post, February 1998, as cited in Abell, Op cit.

9 The Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of SALW, UN A/Conf.192/PC/23, December 2000.

10 OSCE Document on Small Arms and Light Weapons, UN A/Conf.192/PC/20, November 2000.

11 Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, OEA/Ser.P, AG/RES. 1, XXIV-E/97, Organisation of American States, 13 November 1997.

12 UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organised Crime, UN Document reference: A/55/383/Add.2, 20 March 2001.

13 Article 5, ibid.

14 Licensed production agreements are also commonly referred to as licensed manufacturing agreements, co-production agreements or technology transfer agreements.

15 Light Weapons Diffusion, Klare, in Light Weapons and International Security, Pugwash Conference on Science and World Affairs, 1995.

16 Out of Control, Oxfam, December 1998, Section 3, page 6.

17 Janes Defence Weekly, 9 May 1992.

18 As cited in Out of Control, Op. cit.

19 Ibid.

20 BICC, Conversion Survey 1997 as cited in Arms Control Orphans, Renner, Bulletin of the Atomic Scientists, January/February 1999.

21 In the spring of 1991 Heckler & Koch was purchased by the UK BAE Systems subsidiary, Royal Ordnance. Whilst most of the licensed production agreements for the Heckler & Koch G3 rifles and MP5 sub-machine guns were signed before the Royal Ordnance purchase it is unclear what current services or expertise Heckler & Koch continues to provide licencee companies in relation to these ongoing contracts and what financial remuneration it receives.

22 "Licensed to Kill" Dispatches, Channel 4 television (UK), 9 December 1999.

23 Licensed production overseas of military equipment, Export Controls, Consultation on Draft Legislation: The Export Control and Non-Proliferation Bill, UK Department of Trade and Industry, CM 5091, March 2001.

24 Scott Report on Arms to Iraq Inquiry, HM Stationary Office, February 1996.

25 ITAR (International Traffic in Arms Regulations) on the State Department site. www.pmdtc.org/itar2.htm. See in particular Section 120.9 defining defense articles and Section. 124.1 covering manufacturing license agreements and technical assistance agreements.

26 Abel, Op. cit.

27 See ITAR Section 124.8: Clauses required both in manufacturing license agreements and technical assistance agreements.

28 Criterion seven, European Union Code of Conduct for Arms Exports, June 1998. See SIPRI Yearbook 1999, page 503.

29 CM 5091, Op. cit.

30 A/Conf.192/PC/20, November 2000, Op. cit.

31 Ibid.

32 The memorandum of understanding system has been used in the past by Germany which outlines a list of proposed export markets. This approach is similar to that taken by governments in other arms cooperation agreements, for example the Framework Agreement between France, Germany, Italy, Spain, Sweden and the United Kingdom "concerning measures to facilitate the restructuring and operation of the European defence industry" which was agreed on 27 July 2000. See SIPRI website: http://www.projects.sipri.se/expcon/loi/indrest02.htm.

33 UN Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, A/AC.24/4/Add.2/Rev.6, Articles 3 and 11. See also, G O'Callaghan and S Meek, UN Firearms Protocol, Biting the Bullet Briefing 4, 2000.

34 A/AC.24/4/Add.2/Rev.6, Article 11, paras 1 and 2.

35 Op. cit, para 3.

36 Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Material, Article IX.

37 The Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components, and Ammunition, were adopted by the OAS General Assembly in June 1998, OAS document reference: AG/RES.1543 (XXVIII-O/98).

38 Copies of this certificate (DSP-83) are available at http://www.pmdtc.org/forms/dsp83.pdf.

39 There are certain exceptions to this requirement. For example, prior permission need not be sought for retransfers among NATO members for cooperative projects.

Endnotes

40 "End-Use Monitoring of Defense Articles and Defense Services", Congressional Budget Justification for Foreign Operations, Fiscal Year 2001, US Department of State, 15 March 2000, available at http://www.State.gov/www/budget/fy2001/fn150/forops_full/150fy01_fo_supporting-d.html.

41 First Annual Report on the Implementation of a Comprehensive Program to Monitor the End-Use of Defense Articles and Services, and to Prevent the Diversion of Technology Incorporated in Defense Articles, Sold, Leased, or Exported under the Arms Export Control Act and the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), 18 August 1997.

42 "End-Use Monitoring of Defense Articles and Defense Services", Op. cit.

43 General Accounting Office, "Foreign Military Sales: Changes Needed to Correct weaknesses in End-Use Monitoring Program" (Letter Report, GAO/NSIAD-00-208), 24 August 2000, pp. 6-7.

44 COCOM (Coordinating Committee of Multilateral Export Controls) was from 1949 to 1994 the institutional framework within which most NATO States and several like-minded allies sought to restrict the export of "sensitive" technologies to communist countries.

45 Copies of these certificates can be found on the ISPwebsite at http://www.isp.se/KM/blankettkm.htm.

46 Public Statement, 6th Plenary of the Wassenaar Arrangement, http://www. Wassenaar.org/docs/press_5.html.

47 Wassenaar Arrangement, End-use Assurances Commonly Used Indicative List, http://www.wassenaar.org/docs/Annexcto.htm.

48 Public Statement, 6th Plenary of the Wassenaar Arrangement, "Best Practices for Effective Enforcement" http://www. Wassenaar.org/docs/press_5.html.

49 A/CONF.192/L.5, Section II, para. 12.

50 Ibid, para. 13.

Biting the bullet: Advancing the agenda for the UN 2001 Conference on the Illicit Trade in Small Arms and Light We apons in All Its Aspects is a joint project between BASIC, International Alert and Saferworld. The project seeks to facilitate a wide-ranging and well-informed debate among governments and between governments and civil society. We expect that such debate will help generate support among governments for the advancement of a progressive agenda during the UN 2001 negotiating process and for the pursuit of a comprehensive and integrated approach to the problems of small arms and light weapons.

The project will publish a series of policy briefings between February 2000 and the UN conference in 2001. As well as focusing on those elements of the small arms and light weapons control agenda that are likely to be addressed by the conference (eg marking of small arms), the research papers will also address elements (eg security sector reform) which, while relevant, are less likely to feature on the UN 2001 agenda.

In addition, we will hold regular seminars and maintain a website that will provide background information, event information and the published briefings. For more information on this project, please contact one of the three organizations.

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