

PREVENTING DIVERSION OF SMALL
**PREVENTING DIVERSION OF SMALL ARMS
AND LIGHT WEAPONS: ISSUES AND
PRIORITIES FOR STRENGTHENED CONTROLS**
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REPORT

BITING THE BULLET

This briefing was written by Owen Greene, University of Bradford, and Elizabeth Kirkham, Saferworld. Thanks go to Jacqueline Macalesher and Camilla Volcic for providing research support.



Saferworld

Saferworld is an independent non-governmental organisation working to identify, develop and publicise more effective approaches to tackling and preventing armed conflict. Saferworld aims to foster greater international restraint over transfers of arms – from light weapons to major conventional weaponry – and dual use goods. At the same time, Saferworld aims to work with governments and non-government groups on the ground in regions of conflict in order to better control flows of, and reduce demand for, arms.



University of Bradford

The Centre for International Co-operation and Security (CICS) is an international centre for applied and policy research and training, combined with academic research excellence. CICS works on international and transnational issues in the fields of conflict, security, development and governance (including arms reduction and control, conflict prevention, post-conflict peace-building; conflict-sensitive development; security sector reform; and DDR programmes). It is based in the Department of Peace Studies at the University of Bradford (UK) – itself an internationally recognised centre of excellence in research and teaching on peace and conflict issues. CICS staff have played a prominent international role in researching on SALW proliferation, trafficking and misuse, and on the development and implementation of national, regional and international agreements and programmes to tackle SALW and related issues.

PREVENTING DIVERSION OF SMALL ARMS AND LIGHT WEAPONS: ISSUES AND PRIORITIES FOR STRENGTHENED CONTROLS

Biting the Bullet Policy Report

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Executive Summary

This Biting the Bullet Report examines issues and priorities for improving national controls and regional and international co-operation to prevent and reduce diversion of authorised SALW transfers and holdings. Preventing and reducing diversion of SALW is a major priority for efforts to tackle SALW proliferation and misuse.

In this report, arms diversion is the process by which holdings or transfers of arms (including associated parts, components and ammunition) that are authorised by relevant state(s), and are subject to their legal controls, are acquired by or delivered to unauthorised end-users. There are important linkages between diversion of authorised SALW transfers, due to inadequate arms transfer controls, and diversion from authorised official or civilian SALW holdings, due to inadequate management or security of such holdings. For example, diversion during the transfer process may take place from intermediate storage facilities, while decisions on whether to authorise SALW transfers should also take risks of diversion from the end-user's holdings into account.

Virtually all states have committed themselves to ensure that they have effective national regulations, systems and practices in place to prevent and combat SALW diversion. These commitments are expressed and elaborated in UN agreements, particularly the UN PoA, and in the UN Firearms Protocol, and are further reinforced by national laws and numerous regional agreements and international arrangements. In this area at least, therefore, international norms and obligations relating to SALW are well-established, clear, and widely supported in principle. Unfortunately, implementation of these commitments agreements remains patchy and inadequate.

Diversion of SALW transfers continues to take place at several points of the transfer chain – from the start of the process through to after delivery to the authorised end-user. Each of the stages of the transfer process is complex, and has several potentially vulnerable aspects where loopholes and irregularities can be exploited to allow diversion. Similarly, there are, in practice, many different categories of government or civilian holdings of SALW, and effective systems are required to ensure safe and secure management of each one of these. In too many countries, governments complacently point to their relatively good practices in a few such categories of SALW holdings or storage facilities while neglecting the many other sources of diverted SALW within their jurisdiction. It is particularly important to recognise linkages between different types of controls to prevent diversion, and to avoid risks of approaching them in a piecemeal manner.

It is now timely for the international community to launch (or re-launch) concerted initiatives and measures to strengthen their systems for preventing and reducing diversion of all types of SALW (including ammunition, parts and components) from authorised transfers or holdings. This requires action to address the full complexity of such diversion processes and a combination of actions at national, regional and international levels.

Issues and priorities for key issue areas

Within this framework, this Report focuses on a number of key selected issue areas which are both particularly important and ripe for renewed national, regional and international actions and measures. After clarifying the importance of each specific issue for efforts to tackle SALW diversion, the report examines existing and emerging international norms and standards, assesses current national regulations and practices, and then identifies key issues and priorities for further action, at national, international and regional levels.

Strengthen assessments of risks of diversion prior to authorising SALW transfers

The great majority of states have systems for assessing applications for licences to export or import SALW, and many declare that they include assessments of risks of diversion in their decision making procedures. However, it appears that most states lack even a systematic

framework for properly assessing each of the many aspects of diversion risks and their implications for licensing decisions. Of those that do have such frameworks few appear to have sufficient capabilities to actually conduct thorough diversion risk assessments. Moreover, there appears to be little routine co-operation on risk assessment between states (beyond a few core partners or allies), or to find ways of mitigating such risks.

The impact of this situation would be reduced if all governments adopted a highly precautionary approach, and refused to authorise proposed SALW transfers where diversion risks may be significant even where the application appeared otherwise to be acceptable. However, many do not take this cautious approach, and thus, through their lack of capacity and care, they contribute to on-going SALW diversion processes. States thus need to take steps to:

- ensure that their national systems and capacities for import, export or transit licensing provide for thorough assessments of diversion risks (as well as other potential risks) before decisions are taken on authorisation;
- establish mechanisms for information exchange and consultation between relevant governments to facilitate effective and comprehensive risk assessments;
- adopt a precautionary approach if significant diversion risks are identified, including risks after delivery to the end-user (such as re-export or diversion from holdings), and either refuse to authorise the transfer or (if practical) put into place extra controls to eliminate or adequately mitigate such risks; and
- ensure that systems are in place to identify and record cases of diversion where they take place, and to use such information to avoid similar risks in the future.

Preventing diversion through better end-use/end-user controls

The flaws and inadequacies in the SALW end-use certification provisions that are relied on by many states have been well documented. States should ensure that not only the provision but also the authentication of end-use certificates is a central part of the SALW transfer licensing process, and that a full end-use risk assessment is undertaken prior to approving any transfer. The recipient should also be bound by a no re-export commitment. Follow-up checks, including delivery verification and possible on-site inspection should also be a condition of any transfer licence and clear sanctions should apply in the event of a breach of end-use undertakings.

Preventing diversion by SALW brokers

The majority of existing regional and multilateral agreements have illustrated clearly the need for states to implement controls on SALW brokering based on a system of licensing individual transactions. However, the failure of the vast majority of states to institute national controls on SALW brokering continues to offer major opportunities for unscrupulous actors to engage in the illicit trafficking and diversion of SALW. This is disappointing given the now significant quantity of work that has been undertaken – including by the recent Group of Governmental Experts on SALW brokering – to shed light upon, and to develop potential solutions to, the problem.

Preventing diversion of SALW during transit

Despite the importance of transit controls this aspect of SALW transfer controls has yet to become a major subject for international debate. Less than half of all states have legislation with regard to transit, those states that do operate such controls appear to apply widely differing standards. Moreover, the guidance provided by the various multilateral SALW control regimes is neither clear, nor consistent, nor comprehensive. In view of the wide variety of rules and procedures that exist to control SALW transfers in transit, substantial international consultations are needed to exchange experiences and identify good practices or model regulations.

Tracing diverted SALW

Many illicit SALW that are seized or discovered by relevant authorities cannot be traced in a reliable and timely manner due to inadequate marking, poor record-keeping or lack of international co-operation in tracing. The International Tracing Instrument (ITI) is a major international agreement which reinforces and strengthens norms on marking and record-keeping, provides modest arrangements to promote and facilitate implementation, and establishes clear norms and modalities for co-operation in tracing. However, it seems the tracing component in particular is underused and active measures – such as consultation and peer review mechanisms – are required to accelerate effective national implementation of the ITI's commitments in relation to marking and record-keeping and to promote active use of the ITI for tracing lines of supply of diverted SALW to armed groups or to countries that are in or emerging from conflict.

Preventing diversion through re-export of SALW

The extent to which prior authorisation is required for re-transfers of SALW from the original exporting governments will usually depend on the terms of the end-use agreements and understandings. It is very important, therefore, that controls on such delayed re-transfers are fully and clearly specified. All states should investigate and take full account of the risks of re-export in the SALW export licensing process, while licences and/or EUCs need to include clear provisions and commitments relating to controls on re-transfer, with responses and possible sanctions available to be used in the event of any breaches of these undertakings.

Preventing diversion from SALW stockpiles

In every region of the world, the great majority of illicit or unauthorised SALW have been diverted from authorised official or civilian holdings, through loss, theft, corruption or neglect. Diversion of SALW can occur from holdings and stocks prior to a transfer and from the holdings and stocks of the end-user post-transfer. Programmes to ensure effective stockpile management and security at every stage of the transfer process are a critical and integral part of efforts to prevent and reduce diversion of SALW. All states have a responsibility to conduct regular and thorough reviews of their own national systems and practices, and to establish a clear programme to address identified weaknesses. Action is also required at the regional and international levels. This could include moving forward with the development of international best practice guidelines on stockpile management, or of training and awareness-raising in relation to existing well-regarded regional standards. Opportunities to develop inter-regional synergies and to develop mechanisms for more systematic co-operation between members of similar regional arrangements should also be explored.

Conclusion

On the basis of the above findings, it is important to launch or further develop concerted initiatives and measures to prevent and reduce diversion of authorised SALW transfers and holdings *in all of its aspects*. This implies concerted initiatives to comprehensively address all of the factors contributing to diversion that are identified in this report, rather than adopt a piecemeal approach. This whole area is ripe for new, and urgently needed, initiatives and programmes at national, regional and international levels to implement existing commitments and to build on international and regional norms that have already been established, particularly within the last decade.

1. Introduction

The diversion of authorised small arms and light weapons (SALW) transfers or holdings to unauthorised users or uses is a major factor contributing to the massive human suffering and insecurity associated with SALW proliferation and misuse across much of the world.

For at least a decade, virtually all states have not only accepted this but also committed themselves to act in order to prevent and reduce such diversion. This includes co-operative measures to combat diversion through agreements concluded at international and regional levels. At the global level, the *UN Programme of Action on the illicit trade in small arms and light weapons in all its aspects* (UN PoA) provides the main framework for action,¹ complemented by other agreements including the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons' (ITI)² and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (hereafter referred to as the UN Firearms Protocol).³ Most relevant regional organisations have agreed norms and programmes in this area, including the OAS, OSCE, AU and associated sub-regional organisations. Other international arrangements, such as the Wassenaar Arrangement, have developed guidelines to enhance co-operation and controls on SALW transfers.

However, it is clear after several years of implementation of such agreements that much more needs to be done.⁴ The problems of SALW diversion remain massive across much of the world, and it is not clear that the scale of the problem has significantly reduced. Partly, this is because many states have not effectively implemented their existing commitments and some regional agreements have inadequately affected real practices. It is also because many existing policies and commitments are vague or inadequate at a national level and also in relation to real international co-operation.

This Biting the Bullet report examines issues and priorities for improving controls and co-operation to prevent and reduce diversion of authorised official or civilian SALW transfers and holdings to unauthorised users or uses.

The principal responsibility for ensuring effective controls on SALW lies with states, and thus much of this report focuses on implementation and development of existing national policies and commitments. However, regional and international co-operation is also essential for effective action to tackle SALW diversion and, more widely, SALW proliferation and misuse. Thus the report also focuses on issues and priorities for improving the effectiveness of regional and international norms and programmes. Although regional and international agreements are generally distinct at a formal level, in practice there is (and needs to be) a complex interplay between national, regional and international actions. This report also highlights ways in which synergies between these levels can be strengthened.

It is important to examine SALW diversion within a comprehensive framework, which recognises the breadth and complexity of SALW proliferation and misuse, and the wide range of measures that need to be combined to achieve effective controls. SALW diversion also needs to be placed in wider contexts, including processes of conflict, crime, community safety

¹ UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2001, UN Document A/CONF.192/15, <http://disarmament.un.org/cab/poa.html>

² International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (ITI) adopted by the UN General Assembly, 8 December 2005, <http://disarmament.un.org/CAB/Markingandtracing/instdoc.html>

³ Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, UN Document A/Res/55/255, http://www.unodc.org/pdf/crime/a_res_55/255e.pdf

⁴ For a detailed examination of UN PoA implementation See *Reviewing action on small arms: assessing the first five years of the UN Programme of Action*, *Biting the Bullet*, 2006; *International action on small arms: examining the implementing the Programme of Action on small arms*, *Biting the Bullet*, 2005; *Implementing the Programme of Action 2003: action by states and civil society*, *Biting the Bullet*, 2003 http://www.saferworld.org.uk/pages/biting_the_bullet_project.html

and security, and legitimate production and trade. This is now widely accepted internationally, and we follow this principle in this report.

However, it is also important and timely to focus specifically on actions to prevent SALW diversion. All of the basic international and regional norms and commitments are now established. Every state, as far as we know, is unambiguously committed to the principle that it, and all other states, should take full account of the risks of diversion of SALW to unauthorised recipients or uses when considering whether to authorise a SALW transfer or holding and should take effective actions to prevent, reduce or combat diversion wherever significant risks are identified. The problem is that detailed policies and practices are not yet adequate to implement these clear commitments. There is now a positive international atmosphere to strengthen co-operation to implement commitments to prevent and combat SALW diversion. This was illustrated, for example, by the specific reference to the issue of diversion by Ambassador Dalius Ceukolis, Chair of the 2008 UN PoA Biennial Meeting of States, in his opening remarks and by addressing many aspects of the diversion problem in the ensuing Outcomes Document.⁵ The challenge now is to build upon these important statements.

Moreover, it is sometimes forgotten how strategic the task of preventing SALW diversion is to the overall objectives of the UN PoA and associated national and regional agreements. Properly framed, it closely relates to virtually all other aspects of SALW proliferation and misuse and of UN PoA commitments adopted to tackle them. It is important to mobilise international action on this issue, alongside important complementary efforts to broaden and strengthen international norms in other issue areas, such as: the scope and character of 'existing responsibilities under relevant international law' for SALW controls; officially authorised misuse; international assistance and resource mobilisation; weapons collection and destruction/disposal; community security; firearms controls; and many others. *Biting the Bullet* and its partners have addressed such complementary issues in previous publications; here we focus on SALW diversion issues and priorities.

The next section briefly outlines the scope of the SALW diversion issue and maps the range of processes by which it takes place. This section aims not only to provide a framework for our subsequent analyses in later sections, but also to clarify how SALW diversion links with wider issues of SALW proliferation and misuse.

The main focus of our analyses throughout is upon existing SALW of all categories, including parts, components and ammunition:⁶ all types of SALW need to be subjected to rigorous controls to prevent and reduce diversion, and the control systems required for transfer controls and stockpile security are very similar in principle. However, ammunition raises some specific issues, both in terms of international norms and practical controls, and these are distinctly addressed where they are most relevant.

Section 3 briefly describes and analyses the main existing international and regional commitments and programmes designed to help prevent, reduce and combat SALW diversion. It further outlines efforts in recent years to strengthen and develop these commitments, to provide a context for our examination of future priorities in later sections.

It is clear in principle and from experience that it is better, wherever possible, to prevent SALW diversion rather than to respond to diversion once it has taken place. This implies careful risk assessment before decisions are taken on whether to authorise SALW transfers or holdings, followed by effective risk avoidance or reduction measures. Such risk reduction measures could include, for example, conditions or proactive measures to greatly reduce identified risks (for example by imposing constraints on transit routes, or programmes to ensure adequate stockpile security), or taking a carefully precautionary approach by refusing to authorise the proposed SALW transfer or holding.

⁵ See <http://disarmament.un.org/cab/bms3/1BMS3Pages/1thirdBMS.html>

⁶ From this point onwards in this Report, unless otherwise specified, SALW shall be used to denote all categories of small arms and light weapons, their parts, components and ammunition.

Within this framework, the report then considers a number of specific issue areas for controls to prevent and reduce SALW diversion. As will be clear, this does not address every key issue area in detail, but rather examines issues and priorities for improved controls in a number of selected policy areas where enhanced controls are likely to be particularly important and possible.

Section 4 examines issues and priorities for ensuring responsible and thorough assessment of risks of diversion relating to a proposed SALW transfer, prior to decisions on authorisation by the relevant exporting and importing states. It explores the needs and opportunities for regional and international co-operation to support and facilitate such assessments. It then discusses guidelines and measures for using such assessments in order to prevent diversion.

Section 5 then examines priorities and opportunities for improving end-use and end-user controls. Section 6 focuses on reducing risks of diversion by controlling brokering activities. Section 7 addresses measures to reduce risks of diversion during transit and transshipment. Section 8 examines measures to enhance tracing of illicit SALW, particularly through enhanced use of the International Tracing Instrument. Section 9 examines ways of reducing risks of diversion through re-transfer of authorised SALW imports. Section 10 examines and identifies opportunities for reducing diversion from authorised holdings of SALW, particularly through improved stockpile security and management.

For each of Sections 5 to 10 key weaknesses and problems that need to be addressed by enhanced control measures are identified, recent efforts to address these weaknesses are examined, and priorities and opportunities for improved controls and international co-operation are analysed.

The report ends with conclusions and recommendations. This and the previous sections address not only national authorities but also regional and international organisation and agreements, and the interplay between these levels.

2. Mapping factors contributing to SALW diversion and its prevention

Introduction

The vast majority of illicit or uncontrolled SALW in the world have been diverted from authorised legal transfers or holdings. There are relatively few SALW that have been illicit throughout their existence – from production to illicit end-user/use – although such arms are a significant problem in some contexts.

For our purposes, arms diversion is the process by which holdings or transfers of arms that are authorised by relevant states (and are subject to their legal controls) are delivered to unauthorised end-users, or are put to unauthorised uses by authorised end-users. Actions to ensure effective and responsible controls on legal SALW transfers and holdings must be central to any international or regional action to prevent, reduce or combat the uncontrolled or illicit proliferation and misuse of SALW (and its ammunition, parts and components). In practice, this implies comprehensive action to ensure and develop controls on all aspects of SALW transfers and holdings. Diversion occurs at ‘weak links’ in the chain of controls: if any aspects are neglected, these will become the focus for arms diversion activities (as discussed below).

In virtually every part of the world, the two most important factors contributing to diversion of SALW to unauthorised or illicit uses or users are:

- diversion of authorised SALW transfers, due to inadequate arms transfer controls; and
- diversion from official or authorised holdings of SALW, due to inadequate management or security of such holdings.

In this context, we understand any unauthorised SALW holder or end-user to be illicit. We recognise that some existing national regulations are vague and contestable on this point, but this is highly undesirable and part of the problem to be tackled.

The issue of legitimate authorisation also arises. In relation to holdings, there is normally only one state able legitimately to authorise holdings of SALW within their jurisdiction. However, in cases where arms are held by armed forces or other security forces deployed internationally, for example, authorisation requires approval by both the state where they are deployed and the state responsible for the security forces concerned. For SALW transfers, authorisation is required by both the exporting and importing state, and also by relevant transit and brokering control authorities in other states. Moreover, in the cases of ECOWAS member states, legitimate authorisation of a SALW transfer also depends on prior consent by regional neighbours through compliance with established ECOWAS procedures.

It is also useful to clarify our understandings of authorised end-users and end-uses in this context. Authorisation of civilian SALW holdings should relate to specific individuals or legal entities, such as a company, and specify permitted uses. Similarly, authorised official holdings of SALW should be specific to the intended agency for authorised purposes. Diversion from holdings can thus occur, for example, if SALW are delivered to other companies, other official bodies or alternative individuals without due authorisation.

Similarly, we consider that the authorised end-users for a SALW transfer are the specific government agency, company or individual referred to in the application for transfer authorisation. Transfer to other end-users, even to other security agencies under the same government, can constitute diversion, particularly if they would probably have caused concerns to be raised if they had been named on the transfer application (for example, secret police rather than border guards). Likewise, the authorised end-uses of transferred SALW are those stated in the licence application. Other end-uses are unauthorised, and can constitute diversion, particularly if they refer to uses that are very distinct from the purposes for which the transfer was justified (for example, ‘riot control’ rather than ‘national defence’).

There are obviously grey areas in such understandings of diversion. This is exacerbated by the fact that, in practice, many SALW transfers and holdings are authorised which are excessively vague about permitted end-uses and end-users; this is undesirable and part of the present problem. However, the principles are hopefully clear. Effective national controls on SALW holdings and transfers require adequate specificity about authorised holders and permitted uses. Substantial unauthorised changes in possession and uses are part of SALW diversion processes.

Diversion of SALW transfers

The number and types of authorised transfers of SALW range widely. Major agreements for SALW transfers for national military forces can often involve tens of thousands of SALW and tens of millions of rounds of ammunition. These may be shipped in bulk, or divided into several small shipments (sometimes during the transfer process). On the other hand, some security-related transfers may involve relatively few weapons or modest quantities of ammunition, parts or components.

It is important to be aware that the authorised end-users for many SALW transfers are not confined to national military forces, but rather can be police, customs, various provincial or local law-enforcement or civil defence agencies, or authorised private contractors or agencies providing security-related services. Beyond this are the wider categories of civilian SALW transfers, between manufacturers, wholesalers, authorised gun-dealers, sporting clubs, and individual citizens.

Diversion of SALW transfers can take place at several points in the transfer chain: during export/embarkation; during transit/transshipment; on arrival at the importing state; during delivery to the authorised end-user; and through subsequent (post delivery) acquisition by unauthorised persons.

Each of the phases of SALW transfer is complex, and has several potentially vulnerable aspects where loopholes and irregularities can be exploited. For example:

- exporting states often issue export licences without adequate checks or risk assessment, on the basis of false or misleading documentation, or with inadequate specification or restrictions on transit and end-uses/users;
- a properly authorised SALW transfer may be lost, stolen or diverted to an unauthorised destination during transit and transshipment. SALW transfers may have a complex shipment route - involving transshipment and transit through several countries – providing several opportunities for loss of control and for deliberate diversion;
- inadequate security at intermediate storage sites and transshipment points can enable diversion during the transfer process – an area where policies to ensure effective stockpile management and security directly contribute to efforts to prevent diversion from SALW transfers;
- importing states may have import licensing systems that are vulnerable to forgery or corruption;
- importing states sometimes issue import licences without adequate checks or assessments of the end-user, including their real legitimate SALW requirements, track-record of responsibility or compliance with regulations, or capacity to hold the weapons safely and securely;
- importing states often have inadequate systems for checking and controlling imported cargoes, and for ensuring that these are delivered in their entirety to the authorised end-user; and
- authorised end-users are sometimes complicit in allowing some or all of the SALW shipment delivered to them to be diverted to unauthorised persons, for example through 'grey-market' sales, re-export, theft or loss.

While diversion can take place during the transfer process it can also take place after the approved transfer has been completed. Even when the diversion takes place towards the end of the transfer process, it has often been planned from the beginning – even before the

application for an arms transfer licence is submitted. Such diversion can take the form of re-transfer by the end-user to unauthorised entities (either inside or outside the country of importation). It can also take the form of declared loss or theft from holdings, in which the end-user can sometimes be complicit; for our purposes this can be considered to be a diversion from the SALW transfer process, particularly if it takes place within a year of delivery or before the arms have been extensively used for their authorised purposes.

There is obviously an area of significant overlap between diversion from authorised SALW transfers and holdings. For clarity of discussion, we broadly distinguish diversion of SALW transfers after delivery, as outlined above, from diversion from holdings that may take place through loss or theft once the SALW shipment has become an established part of the end-user's authorised stockpiles.

In many cases, SALW transfers have been diverted through exploitation of weaknesses in controls over just one of the above phases. This is facilitated by the fact that a large number of states still lack proper legal and operational control systems for one or more of these phases in the arms transfer process.⁷

Even where all concerned governments do have an adequate system of controls, diversion of SALW transfers can take place because of a lack of consistency, communication or co-ordination between each of the authorities responsible for each phase of the transfer. Unscrupulous brokers, shipping agents, buyers and sellers have often become expert in identifying and exploiting weaknesses or inconsistencies in government regulations and controls on arms transfers.⁸

Diversion of SALW holdings

Drawing on our overall definition, diversion of SALW holdings occurs when authorised holdings of SALW (or their ammunition, parts and components) are acquired by unauthorised end-users, or are put to unauthorised uses by the authorised holder of the arms. In this regard, diversion of authorised holdings of SALW (and ammunition) can take place in several ways. Weapons that are legally held may be diverted to unauthorised users through: loss, theft, corrupt or illicit sale/rent, or unauthorised transfers to other users within or outside their country. Officials or civilians who are authorised to hold weapons for specific purposes may also put them to unauthorised uses.

In appreciating the risks of diversion from domestic holdings, it is important fully to recognise the range of categories of authorised SALW holdings that exist in most countries, because they each pose particular opportunities and challenges for ensuring effective controls against diversion.

Types of SALW holdings

Overall, authorised SALW within a state can broadly be divided into two categories: 'national stocks' and 'civilian holdings'. Both of these are complex and important. There are over 600 million SALW in the world today with roughly one third of these held in military and other government stockpiles across the world, and two thirds of this total held by civilians. In most countries, substantial quantities of SALW and ammunition are legally held by the armed forces, police, other various government agencies or contractors, manufacturers, wholesalers, shops, clubs, private security companies and individual civilians.⁹ Each year, large amounts of SALW and ammunition in authorised holdings are diverted to unauthorised users and uses, contributing to all of the problems associated with uncontrolled SALW proliferation and misuse.

⁷ See *Reviewing action on small arms: assessing the first five years of the UN Programme of Action*, Biting the Bullet, 2006, *Ibid*.

⁸ See, for example, the Reports published by successive UN Panels of Experts, available via the UN Sanctions Committees webpage <http://www.un.org/sc/committees/>

⁹ See <http://www.smallarmssurvey.org/files/portal/issueareas/inventories/inventories.html>

National stockpiles of SALW are held at many different types of sites. Manufacturers often stockpile SALW awaiting sale or transfer. Perhaps best known are the major military arms and munitions depots, which often contain many thousands of SALW and tens of millions of rounds of SALW ammunition. In many countries, these are often inadequately managed and secured and pose massive diversion risks. Even in countries where military storage sites are managed and secured in line with international best practices vulnerabilities remain. All risk some level of loss/misplacement each year and require regular reviews and enhancements of controls to safeguard against security breaches. In many countries, substantial stockpiles of SALW are also held in depots managed by the police, border guard, and local and provincial security forces. Security standards vary, but are often substantially lower than for major military stockpiles.

SALW and ammunition stocks for operational units of security and law enforcement forces are often distributed relatively widely, in barracks, police stations, border stations and such like. Each storage site may contain only up to a few dozen weapons, with requisite ammunition. Effective stockpile management and security requires customised controls and effective operation by a relatively large number of officials across many sites. Available evidence indicates that these types of storage sites are often highly vulnerable to diversion.¹⁰

Finally within the category of national stockpiles there are the weapons that are issued to individual military, police or other law enforcement or official security personnel. There is wide evidence of the risks that these are lost, stolen, sold, rented, or otherwise diverted to unauthorised users. Similarly, individual authorised holders may put their weapons to unauthorised uses, for example in crime or while ‘moonlighting’ in private security roles.

The hundreds of millions of authorised **civilian holdings of SALW** are similarly stored in a variety of ways. Just as for military stocks, manufacturers of ‘civilian’ SALW often store large numbers of arms or ammunition awaiting sale or distribution. Wholesalers of civilian SALW similarly often have depots containing thousands of firearms. Descending through the distribution chain, in many countries substantial holdings are held at gun-dealers and gun-shops, and also at sports shooting facilities.

Firearms and ammunition held by individual citizens are mostly stored at home: often with minimal security. Even in countries where licensed civilian gun-owners are obliged to use relatively secure cabinets or rooms, large numbers of firearms are stolen from homes each year. Most countries’ systems for licensing and controlling firearms possession by individual civilians have major weaknesses that can be exploited by irresponsible or criminal gun-shops or individual licence-holders.¹¹

Processes whereby SALW holdings are diverted

Diversion from both national stocks and civilian holdings of SALW can take place through a variety of means, including the following:

- Loss of authorised stocks: given the massive scale of authorised SALW holdings globally it is not surprising that many are apparently lost or misplaced each year. Even a tiny loss rate would add to millions overall. Although many reported ‘losses’ are actually due record-keeping errors or to theft or illicit or corrupt sale, in many countries controls are sufficiently lax that it is plausible that many SALW are simply lost, and later come into the hands of unauthorised users.
- Theft: many SALW are stolen from authorised stocks without any direct involvement of those authorised to hold them (apart from their inadequate security). This is a particularly large factor for individual or small scale holdings, held by individual personnel or in homes, gun-shops, clubs or small depots (such as those of police stations, barracks or private security companies). In addition to burglary, there are

¹⁰ As reflected for example, in NATO standards, OSCE guidelines, and SEESAC standards for SALW stockpile management and security, and also evaluations of diversion risks in a variety of developed, developing, transitional and conflict prone countries.

¹¹ See, for example, Chapter 2 of Small Arms Survey 2008: Risk and Resilience, Cambridge University Press 2008.

many reported instances of armed attacks on small depots (including police stations) to acquire arms.

- Loss through corruption, neglect or illegal sale: in practice, thefts from authorised civilian or national stocks can often involve those authorised to hold them, including the individual holders, employees or owners of establishments maintaining SALW stocks, and corrupt officials. This is in practice a major factor in thefts or losses from sites containing substantial numbers of weapons, where unauthorised physical access is relatively difficult without inside help. Such diversions from national stocks appear to have taken place on a vast scale in some countries including Albania, Papua New Guinea and the Ukraine since 1990, particularly in a context of conflicts or major political crises or transitions.
- Acquisition during conflicts: in the context of armed conflicts, SALW stocks are often captured, and thus diverted to unauthorised users and uses. Combined with loss, theft and corruption, this has resulted in a situation in which rebel forces have often primarily acquired their arms from the stocks of the governments that they are fighting.
- SALW diversion in the context of interventions in fragile or war-torn states: inadequately controlled supplies of SALW to emergent national forces in the context of 'peace support' missions are vulnerable to diversion. For example, over 190,000 of the arms supplied by the US DoD to the Iraqi national security forces now appear to be unaccounted for.¹² A different but related issue is for arms authorised for covert supply to overseas rebels for a particular purpose, which have tended to be diverted (sooner or later) to unauthorised users and uses, as illustrated for example by experience with Afghanistan and Bosnia-Herzegovina.

To summarise, the main mechanisms and concerns relating to SALW diversion from authorised stocks vary according to the types of: authorised holder; storage facilities; SALW or ammunition; diversion mechanism(s); country; and context. The phenomenon of SALW diversion from authorised holdings is highly complex and much remains unknown. The Small Arms Survey Yearbook 2008 provides a good review of available research on this topic. A number of findings emerge from this review, and from similar studies, including:

- diversion from authorised stocks is largely a self-inflicted problem stemming from poor controls and negligence by many states military and security forces, as well as state and civilian organisations; and
- diversion from national stocks and civilian holdings can equally contribute to all types of human rights violations, crime, insurgency, terrorism, or war – depending on the specific context.¹³

Linkages between diversion of transfers and holdings

As noted, there are important linkages between the processes of diversion of SALW transfers and SALW holdings. Together, they are a central part of the dynamic that contributes to SALW proliferation and misuse, and the many associated problems.

Moreover, in most affected countries, it is the combination of diversion from SALW holdings and SALW transfers that largely accounts for excessive and uncontrolled availability of SALW and associated ammunition. Where countries are severely affected, the diversion of SALW may have arisen from inadequate or partial government controls on authorised SALW across several states, including the government of the affected state itself as well as those of some neighbouring states and exporting and importing states elsewhere in the world.¹⁴ For example, often illicit flows of arms that were diverted in neighbouring or transit states

¹² See US Government, General Accounting Office Report, *Stabilizing Iraq: DOD Cannot Ensure That U.S.-Funded Equipment Has Reached Iraqi Security Forces*, July 31, 2007 <http://www.gao.gov/new.items/d07711.pdf>

¹³ Small Arms Survey, *Ibid.*

¹⁴ See, for example, M Bourne, *Arming Conflict: proliferation of small arms*, Palgrave, Basingstoke, 2007.

exacerbate uncontrolled supplies of SALW diverted within the affected state itself. Although there will always be a risk of diversion in the context of strong national controls, at present most states have gaps and weaknesses in their controls on SALW transfers and holdings that facilitate these processes.

More specifically, risks of diversion of SALW transfers and holdings link importantly in the following ways:

- Assessments of risks of diversion by the exporting and importing state authorities prior to authorising a SALW transfer should systematically and carefully assess the risks of diversion from holdings once they have been received by the authorised end-user; it should also assess the risks of diversion from intermediate transshipment facilities during the transfer process.
- Measures to avoid or mitigate risks of diversion before authorising a SALW transfer may include measures to improve stockpile security of the end-user, the importing state more widely, or at identified transshipment points.
- Once a SALW transfer has been authorised, security of holdings needs to be ensured at embarkation points, and transit control systems need to include measures to ensure security of storage through each stage of the transit process, including during transshipment.

Agendas for preventing and reducing SALW diversion

Thus far, this section has focussed on briefly mapping out the main dimensions of the problem of diversion of SALW to unauthorised users or uses, and the factors that facilitate or contribute to such diversion. This will help to frame and locate discussions in subsequent sections of this report, which focus on issues and priorities for preventing and reducing SALW diversion. In this context, we conclude this section with a brief review of the types of policies and measures that are directly relevant to these challenges.

Preventing diversion of SALW transfers

The significant potential that exists for the diversion of authorised transfers of SALW means that efforts to prevent this diversion will require effective national controls in relation to each of the following areas:

Assessing applications for SALW transfer authorisation to prevent diversion, including: conducting checking of documentation; checking that the proposed arms transfer does not include arms diverted from authorised holdings; careful assessment of risks of diversion alongside other obligations under national and international law; and refusing to issue transfer licenses in cases where risks of diversion and other negative consequences are judged to be significant.

Imposing conditions when issuing licences for SALW transfers in order to reduce diversion risks, including: disclosure of, and restrictions on, brokering and transportation agents, transshipment points and shipping agents, authorised end-users and end-uses; provision for end-user/use verification; and restrictions on re-transfer.

Pre-shipment controls on authorised SALW transfers to prevent diversion, including: documentation requirements and checks; reporting of, and restrictions on, transportation routes, transportation and freight-forwarding agents; pre-notification of shipments to relevant authorities of transit and importing states.

Controls during transit to prevent diversion, including: relevant measures that are implemented by the authorities of transit/transshipment countries; shipment tracking by exporting state authorities; checks and controls by importing state to ensure full delivery to authorised end-user.

Controls to check and ensure continued possession and authorised end-use by authorised end-user, including: importing state controls to ensure security of SALW holdings; end-user and end-use verification.

Measures to identify and respond to diversion points, including: confiscation of SALW shipments where evidence of diversion risks emerges during shipment; penalties or sanctions on those involved in diversion; tracing of confiscated illicit SALW to identify diversion points; measures to reduce and combat identified diversion points. Further, records need to be kept of any possible complicity in diversion, or associated irresponsible actions or inadequate control systems, and the information should systematically be taken into account when considering future transfer applications. There should be a presumption of denial of future transfers involving any party that has been implicated in past diversion processes – whether by commission or omission.

Mechanisms for international information exchange and consultation on diversion risks, in order to share information relevant to assessments of risks of diversion or possible implication in past diversion processes. These would best include a combination of routine information exchanges and mechanisms to facilitate confidential consultations relating to identified diversion points and lines of supply of illicit or uncontrolled SALW.

To implement their commitments relating to diversion of SALW transfers in the UN PoA, and in other international and regional agreements (see Section 3 below), all states need to ensure that they have in place adequate laws, regulations and procedures in each of these areas. As noted, any weak link will be exploited for diversion purposes. Later sections of this report will examine the issues and priorities or controls in each of the areas listed above.

Preventing diversion of SALW holdings

As with transfers of SALW, a review of the potential that exists for diversion of SALW from holdings necessitates the adoption of the following types of measures:

- **Measures to ensure effective monitoring of all authorised SALW holdings**, including: reliable marking and record-keeping of all holdings of SALW, and regular inventory checks to enable timely identification of and responses to possible diversion.
- **Regulation and review of authorised national and civilian holdings of SALW**, to avoid or dispose of unnecessary or surplus stocks that are vulnerable to diversion: this involves specific management and regulation responsibilities for each type of holdings and authorised owner, ranging from manufacturers, armed forces, law-enforcement agencies, wholesalers, gun-shops and individual civilians.
- **Measures and regulations to ensure adequate physical security and safety of all authorised holdings** of SALW, consistent with their authorised use.
- **Systems and regulations to ensure adequate secure management of SALW holdings** including training, professionalism, vetting, oversight and control of relevant managers and personnel, and safeguards against non-compliant, corrupt or criminal behaviour.
- **Laws and procedures enabling and ensuring effective and timely investigation** of any diversion from authorised holdings of SALW, including prosecution of those involved and remedial measures to prevent similar diversion in the future.
- **Mechanisms for international and regional information exchange and experience-sharing** relating to all aspects of effective management and security of all categories of authorised civilian or official SALW holdings, including exchanges and guidelines of good practices that directly relate to preventing diversion of SALW transfers during transshipment.

- **Co-operation to review and enhance national systems** for secure management of all categories of SALW holdings, possibly including peer review mechanisms.

In order to implement their obligations under the UN PoA on stockpile management and security, states need to ensure adequate controls in each of the above areas, for each category of authorised holding and holder of SALW. In this report, in Section 10, we will particularly focus on the SALW stockpile management and control issues that are important in the context of preventing diversion of authorised SALW transfers.

3. International and regional commitments to prevent and reduce SALW diversion

Introduction

Over the last decade, important international and regional agreements have been developed establishing national commitments and international co-operation on SALW controls that are directly relevant to preventing and reducing diversion of SALW to unauthorised users or uses. This section briefly examines these existing agreements.

International commitments and national responsibilities: the UN Programme of Action (UN PoA)

The UN PoA provides the main global framework establishing norms and programmes for controlling SALW. In terms of SALW transfer controls it includes commitments by states to:

- effectively regulate and control all export, import, transit, and brokering of SALW;
- assess authorisations of transfers against clear and appropriate criteria and principles (including reducing risk of diversion and consistency with existing commitments under international law);
- exercise effective end-use/end-user controls;
- ensure effective operational systems for controlling SALW transfers (including border controls); and
- support and ensure enforcement of UN and other international arms embargo commitments.

The core UN PoA provisions relating to transfer control include the requirement that states 'put into place, where they do not yet exist, adequate laws, regulations, and administrative procedures to exercise effective control over the production of SALW within their areas of jurisdiction and over the export, import and transit or re-transfer of such weapons, in order to prevent illegal manufacture of and illicit trafficking in SALW or their diversion to unauthorised recipients' (UN PoA, Section II, paragraph 2).

Another highly negotiated UN PoA commitment is that states should 'assess export applications according to strict national regulations and procedures that cover all SALW and are consistent with the existing responsibilities of states under relevant international law...' (UN PoA Section II, paragraph 11). Accordingly, decisions on whether or not to authorise a possible SALW transfer are a matter for national governments, provided that they are consistent with international obligations and responsibilities under relevant international law. It is important to note that relevant international law goes well beyond obligations to respect UNSC Resolutions or prevent genocide, to include laws relating to international humanitarian law (IHL), international human rights standards and other areas.¹⁵

Despite this widespread understanding, some states appear to disagree about a number of important aspects of UN PoA implementation, for example: which international laws are relevant; the extent to which some of these laws are binding on them; and the scope of their existing responsibilities under laws they accept, where they relate to SALW transfers. For example, a few states appear to dislike any specific reference to human rights laws and obligations in relation to SALW transfers, but do not want to find themselves in the diplomatically difficult situation of explicitly disowning them. Their solution is to try to avoid or postpone any detailed international discussion of the whole area. Many other states are willing in principle to agree to political guidelines requiring them to address human rights or IHL concerns when considering whether to authorise a SALW transfer, but are reluctant to agree to specific interpretations of international law in this respect.

¹⁵ See, for example, *Compilation of Global Principles for Arms Transfers*, Arms Trade Treaty Steering Committee 2007, <http://www.controlarms.org/en/documents%20and%20files/reports/english-reports/global-principles-for-intl-arms-transfers/view>

These obstacles to clarifying key UN PoA commitments need to be overcome, and deserve high-level and consistent attention. In the meantime, however, it is important not to miss opportunities to move forward on clarifying and elaborating international guidelines in less politically contested areas of the UN PoA on transfer controls – particularly those relating to prevention of diversion of SALW transfers to unauthorised recipients. In so far as this is articulated in the UN PoA, no state has expressed any normative reservation about this aspect of UN PoA commitments to control SALW transfers.

Other international agreements addressing the diversion of SALW

Although the UN PoA is the principal and most comprehensive international agreement relating to SALW control, two further relevant international/multilateral agreements also carry commitments relating to the prevention of SALW diversion.

The UN Firearms Protocol

The UN Firearms Protocol was adopted by the UN General Assembly in June 2001, and entered into force in July 2006. Pre-dating the UN PoA, the UN Firearms Protocol was the first instrument specifically addressing certain categories of SALW to be agreed at the global level. In contrast to the UN PoA, the UN Firearms Protocol is a legally binding treaty and is focused particularly on illicit firearms used in crime, in particular transnational crime. Accordingly, state-to-state transactions are exempt from its purview.

Direct references in the UN Firearms Protocol to the diversion of firearms are limited to Article 11, Security and Preventive Measures. Under this, states are obliged “in an effort to detect, prevent and eliminate the theft, loss or diversion... (a) To require the security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit through its territory; and (b) To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder co-operation.”

Thus under the UN Firearms Protocol the priority areas for the prevention of diversion centre upon the secure holding, storage and transportation of firearms on the one hand, and upon the adequacy of transfer controls, border controls and of international co-operation amongst customs and law enforcement agencies on the other. Whilst these are important benchmarks, the lack of detail therein could impede effective and widespread implementation. However at the time of writing the development of associated guidelines to provide technical assistance to member states on implementing the operational measures outlined in the Protocol is underway. It is to be hoped that through such a process the implementation of the Protocol, including its provisions relevant to combating diversion, can be encouraged and facilitated.

The Wassenaar Arrangement

The Wassenaar Arrangement was established in July 1996 in order to “contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilising accumulations”.¹⁶ As a forum that includes the majority of the world’s leading arms and military technology exporters, any agreements amongst Participating States has the potential to significantly influence the nature of the international arms trade. In practice, however, the lack of political cohesion amongst Wassenaar States together with the politically binding nature of the ensuing declarations and initiatives has produced more modest results. Nonetheless the prevention of diversion of military and dual-use technologies has been an important consideration for the Wassenaar Arrangement with the issue addressed consistently throughout the development of a range of normative statements and guidelines with several reflecting a more sophisticated and considered approach to the problem than is typically found in other multilateral fora.

The Initial Elements set the tone in general terms by asserting that Participating States have a responsibility to ensure that arms and dual-use transfers are not diverted for the

¹⁶ Wassenaar Arrangement Initial Elements, July 1996, www.wassenaar.org

enhancement of military capabilities that threaten international and regional security.¹⁷ Importantly the guidelines for information exchange on non-participating states allows for discussion of “diversion activities”¹⁸ thereby helping to ensure that the issue of diversion remains live within the context of ongoing Wassenaar discussions.

The issue of diversion, specifically to unauthorised end-users, is highlighted in the normative provisions relating to destabilising transfers of conventional arms with the issue of the quantities of arms to be transferred highlighted as a specific indicator of concern; diversion of arms to terrorist groups is also highlighted (and is a recurrent theme in subsequent Wassenaar statements).¹⁹

Specifically in relation to transfers of SALW the Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons, as well as highlighting the risk of diversion to terrorists, require that “2. Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: (c) be diverted to territories whose external relations are the internationally acknowledged responsibility of another State;” and “(g) Contrary to the aims of this document, be either re-sold (or otherwise diverted) within the recipient country, re-produced without licence, or be re-exported”.²⁰ Beyond this, these Guidelines also highlight the adequacy of stockpile management procedures within the recipient state as an important consideration for states exporting SALW, with Participating States agreeing to “take into account, as far as possible, the stockpile management and security procedures of a potential recipient, including the recipient's ability and willingness to protect against unauthorised re-transfers, loss, theft and diversion”.²¹

In December 2007, the Wassenaar Arrangement members agreed a document on ‘Best Practices to Prevent Destabilising Transfers of SALW through Air Transport’, which was aimed at addressing the need for effective controls on air transportation of SALW, which is directly relevant to diversion and illicit trafficking of these weapons. Finally, the Wassenaar Arrangement also takes the important step of highlighting – in the Best Practices for Effective Enforcement – the need for adequate risk or threat assessments to prevent diversion of arms and dual-use technologies with governments urged to “share information bilaterally on persons and companies considered to present a high risk of diversion”.²²

The Participating States of the Wassenaar Arrangement have thus given serious consideration to the issue of diversion and have addressed several distinct dimensions of the problem. While this is encouraging in itself, the extent to which these commitments are being implemented in practice nevertheless remains unclear.

Implications for national controls to prevent diversion

In practice, the great majority of countries have relevant laws, regulations and administrative procedures in place to control diversion. But in many cases these are badly out of date, ineffective, inconsistent or incomplete. Those states and regions that have given serious attention to ensuring effective implementation of UN PoA commitments in this area have found it necessary in recent years to:

- overhaul and develop their laws and regulations;
- review and strengthen their capacities for assessing applications for SALW transfers, for managing the decision-making process, and for monitoring and enforcing national decisions;

¹⁷ Ibid

¹⁸ Wassenaar Arrangement General Information Exchange: Indicative Contents no. 3 Projects of Concern, see Wassenaar Arrangement Basic Documents www.wassenaar.org

¹⁹ Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons, December 1998, see Wassenaar Arrangement Basic Documents, Ibid.

²⁰ Best Practice Guidelines for Exports of Small Arms and Light Weapons agreed at the Wassenaar Arrangement Plenary, December 2002, see Wassenaar Arrangement Basic Documents www.wassenaar.org

²¹ Ibid

²² Best Practices for Effective Enforcement, 1 December 2000, see Wassenaar Arrangement Basic Documents, Ibid.

- improve accountability to promote rigorous and consistent implementation of national policy and regulations; and
- support development and dissemination of, and training in, good-practice guidelines at a national and regional level.

Indeed, all international initiatives to improve controls on SALW transfers operate within this framework. They focus on:

- increasing the awareness and capacity of relevant national decision-makers, officials and mechanisms to ensure that national SALW transfer controls operate effectively and consistently with national policies and commitments;
- clarifying and elaborating the implications of national policies and guidelines for assessing whether to authorise an export, import, transit, transshipment or brokering of SALW, including UN PoA commitments and other international and regional commitments of the state concerned; and
- facilitating consultations, co-operation and confidence-building between governments and other stakeholders.

Experience shows that all of the above are very important for promoting good quality and consistent national assessments and decisions on SALW.

Implementing UN PoA and related international commitments on SALW transfer controls

In the lead-up to the 2006 UN PoA Review Conference, there was wide interest amongst states in developing guidance and mechanisms for international assistance and co-operation on a range of legal, regulatory and administrative arrangements. This included proposals relating to developing government systems and units for: managing SALW transfer controls; developing 'model law'; enhancing adoption of effective transit and transshipment monitoring and control; authenticated end-user certification; and end-use controls. Unfortunately despite an encouraging start the 2006 Review Conference ended in frustration and failure and while many of the discussions that took place were positive and encouraging, the failure to agree a substantive outcome document meant that progress in implementing many aspects of the UN PoA continued at an incremental pace. Fortunately, a relatively successful 2008 BMS helped to restore at least a positive and constructive atmosphere for promoting implementation of existing UN PoA commitments.

The new international agreement to enable timely and reliable co-operation to trace illicit SALW is an important step forward in this context. In spite of weaknesses, required to achieve consensus agreement, the International Tracing Instrument (ITI) reinforces and strengthens international commitments on marking and record-keeping, and most importantly provides detailed provisions to enable international co-operation in tracing investigations.²³ As discussed in Section 8 below, the priority now is to ensure effective implementation and, above all, to promote use of the ITI to trace and close down lines of supply and diversion points for SALW seized in countries in or emerging from conflict, or from unauthorised armed groups.

The Report of the Group of Governmental Experts (GGE) on SALW brokering²⁴ was significant in that it provided an internationally agreed description of the problem of arms brokering along with a range of closely associated activities. Whilst clarifying the importance of effective and consistent national laws and regulations to control the problem the GGE also

²³ ITI, Ibid. For a detailed examination of the main aims of such an instrument, see UNIDIR/SAS, 'The Scope and Implications of a Tracing Mechanism for Small Arms and Light Weapons, UNIDIR, Geneva, 2003. For a good outline analysis of the negotiations leading to the ITI, and of the main achievements and challenges, see for example, G. MacDonald, 'Connecting the Dots: the International Tracing Instrument', in *Small Arms Survey 2006: unfinished business*, Oxford University Press, 2006, chapter 4.

²⁴ Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, UN Doc. (A/62/163), August 2007
<http://disarmament.un.org/cab/brokering/GGE%20brokering/Sg%20Report/A62163E>

established that the effective regulation of SALW brokering required international co-operation and information exchange as well as assistance to build capacity in states where effective controls were lacking. Unfortunately the report of the GGE effectively side-stepped the issue of an international instrument to control SALW brokering and as a consequence the development of international framework that is considered crucial by many states and NGOs remains an elusive goal.

Numerous states and regions have taken concrete steps, since 2001, towards implementing their UN PoA commitments. Unfortunately, however, improvements have been patchy, and some regions and countries have made little discernable progress.

A range of factors appear to explain this troubling situation in relation to controls on SALW transfers. Some fragile or post-conflict states lack capacity to properly implement or enforce appropriate national controls. At the same time a much larger category of industrialised and developing states also need to build their capacity to establish and implement SALW transfer controls in line with good practice. Experience suggests that regional agreements can act as a spur to improved national practice; indeed, it is notable that national regimes tend to be most well developed in (sub)regions where regional SALW arrangements are in place. In many countries, the political will to ensure effective and consistent arms transfer controls appears to be inadequate, partial or sporadic.

Initiatives to clarify guidelines for implementation of UN PoA commitments

One key factor contributing to inadequate performance appears to arise from the formulation of the UN PoA itself and the implications of several relevant UN PoA commitments are unclear. In the absence of more elaborated guidance, the national officials and decision-makers responsible for taking decisions on SALW controls often do not take adequate account of UN PoA commitments. For example, what information and assessments do they need to avoid risks of diversion, or to ensure consistency with existing responsibilities under relevant international law?

To address this problem, significant international initiatives were launched after 2001 to promote, clarify and elaborate the UN PoA commitments relating to controls on SALW transfers. Most prominent were: i) the Transfer Control Initiative (TCI) spearheaded by the UK government which sought to promote a dialogue within different regions as regards how PoA SALW transfer control commitments could be effectively implemented; and ii) the Informal Consultative Group Process (CGP)²⁵ established by the Biting the Bullet Project to explore the substance of SALW transfer control commitments within, and related to, the UN PoA.

Through these and other initiatives, substantial progress was made between 2001 -2006 towards developing international understandings to clarify and develop the implications of PoA commitments relating to SALW transfer controls. A large majority of states, but not all, found such processes important and were willing to support a clarification to promote implementation of UN PoA commitments in these areas. The 2006 Review Conference failed to consolidate these advances in an agreed document, but the issue was addressed constructively at the 2008 BMS, raising hopes of follow-up action at an international level. In August 2007, an ad-hoc international conference was held in Geneva, focussing particularly on clarifying and developing understandings on requirements to promote implementation of UN PoA commitments relating to SALW transfers. Sponsored by Canada, this meeting helped to maintain faltering international attention and momentum on key issue areas following the disappointing Review Conference, and established significant precedents for possible follow-on inter-sessional international meetings within the UN PoA framework.

²⁵ See Small Arms Consultative Group Process: developing international guidelines for national controls on SALW transfers, Biting the Bullet, March 2006; Small Arms Consultative Group Process: developing international norms to restrict SALW transfers to non-state actors, Biting the Bullet, November 2005.

Regional and multilateral agreements

Whilst UN PoA commitments regarding the need to prevent the diversion of SALW could usefully be clarified and elaborated it is important to note that the issue has been addressed to a greater or lesser degree within existing regional and sub-regional SALW control agreements. Certain of these agreements may, together with the commitments entered into by Wassenaar Arrangement states, point the way to the development of clearer international norms and guidelines for preventing SALW diversion.

Agreements pre-dating the UN PoA

During the period leading up to the UN 2001 Conference on SALW, states in several regions and sub-regions came together to exchange views and agree upon principles, guidelines and procedures for controlling SALW transfers. Whilst a number addressed the issue of diversion in some way, the nature of such references and the detail contained therein varies significantly from region to region.

The Americas

The first regional agreement to specifically address the control of SALW transfers was the 1997 Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (hereafter referred to as the OAS Convention).²⁶ This regional agreement is nevertheless of great international importance in that it ultimately provided a model for the subsequent agreement of the UN Firearms Protocol in 2001 (see above). Accordingly the focus of the OAS Convention centred upon the control of commercial firearms transfers within a crime prevention context, exempting state-to-state transactions from its scope. In terms of measures to prevent diversion, however, references within the OAS Convention are minimal, requiring only that states “in an effort to eliminate loss or diversion, undertake to adopt the necessary measures to ensure the security of firearms, ammunition, explosives, and other related materials imported into, exported from, or in transit through their respective territories”. Although limited, these provisions do focus on one of the most obvious weak-points – the arms transfer process – whereby SALW are most vulnerable to diversion by criminal elements and thus are in keeping with the scope and objectives of the agreement.

West Africa

In 1998 fifteen West African states signed the ECOWAS Moratorium on the import, export and production of small arms and light weapons.²⁷ The Moratorium was a pioneering agreement which sought to proscribe the production of SALW and to prevent their movement into or out of the region, except in clear cases of national security need. To this end, an ‘exemptions procedure’ was established whereby the ECOWAS Secretariat would be provided with information relating to a proposed SALW transfer and the national security requirement it was intended to fulfil. As such, the Moratorium should, in theory, have had an impact on the potential for SALW transfers to be diverted within West Africa. However, despite the establishment of an implementation structure in the form of the Programme for Coordination and Assistance on Security and Development (PCASED), the Moratorium faced significant implementation challenges. Notwithstanding the support received from SALW exporting states – including parties to the Wassenaar Arrangement – the Moratorium was often criticised for its ineffectiveness in preventing transfers that fuelled the several conflicts that were ongoing in Western Africa during the late 1990s and early 2000s. In 2004 PCASED was disbanded and was replaced by a new structure – ECOSAP – and a year later work began on transforming the Moratorium into a comprehensive and legally-binding Convention (see below).

²⁶ Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, 1997 <http://www.oas.org/juridico/English/treaties/a-63.html>

²⁷ ECOWAS Moratorium on the import, export and production of small arms and light weapons, 1998 <http://www.ploughshares.ca/libraries/Control/EcowasMoratorium.html>

The European Union

From the latter half of the 1990s until the UN SALW Conference in 2001 EU member states agreed a raft of measures relating to the control of conventional arms, including SALW. Of these, the 1998 EU Code of Conduct on Arms Exports²⁸, which in 2008 was transformed into the EU Common Position defining common rules governing control of exports of military technology and equipment,²⁹ has greatest direct relevance to preventing the diversion of SALW in that Criterion 7 therein is specifically concerned with “[t]he existence of a risk that ... military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions”. In assessing the risk of diversion member states are required to consider:

- a) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity;
- b) the technical capability of the recipient country to use the equipment;
- c) the capability of the recipient country to exert effective export controls;
- d) the risk of ... technology or equipment being re-exported or diverted to terrorist organisations (anti-terrorist equipment would need particularly careful consideration in this context).”

These provisions set the EU Code/Common Position apart from many other multilateral agreements in that, in addition to highlighting the need to prevent arms transfers being diverted from the intended recipient, it actually outlines particular factors that impact upon the likelihood of diversion. Indeed, when considering the transfer of SALW, such factors should be considered as part of all states’ diversion risk assessment processes. In a significant development since the establishment of the EU Code/Common Position, member states have, through the ‘User’s Guide to the EU Code of Conduct on Arms Exports’,³⁰ gone a step further in elaborating a set of guidelines for implementation, including Criterion 7. These include a range of diversion-related considerations that should impact upon member states’ decisions to licence the export of arms. While these guidelines largely reflect current practice amongst the member states they do nevertheless include a number of important considerations that could assist any state in carrying out an assessment of diversion risks.

Although the 1998 (revised 2002) EU Joint Action on the European Union’s contribution to combating the destabilising accumulation and spread of small arms and light weapons³¹ does not contain explicit reference to the need to prevent diversion of SALW this imperative is nevertheless consistent with the objectives of the agreement. Indeed, the full implementation of the commitments “to supply small arms only to governments... in accordance with appropriate international and regional restrictive arms export criteria” and “to combat illicit trafficking of small arms through the implementation of effective national controls, such as efficient border and customs mechanisms, regional and international co-operation and enhanced information exchange” should contribute to a reduction in possibilities for SALW diversion. Moreover since this Joint Action includes commitments to the provision of assistance to states affected by excesses SALW for the destruction of SALW and for disarmament, demobilisation and reintegration of combatants, EU member states are in a position to take proactive measures to help prevent the diversion of SALW from one conflict zone to another.

²⁸ EU Code of Conduct on Arms Exports, June 1998
<http://www.consilium.europa.eu/uedocs/cmsUpload/08675r2en8.pdf>

²⁹ EU Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, 8 December 2008 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>

³⁰ The most up to date version of the EU Code Users Guide was agreed at the Working Party on Conventional Arms Exports at its meeting on 22 February 2008 <http://register.consilium.europa.eu/pdf/en/08/st07/st07486.en08.pdf>

³¹ EU Joint Action on the European Union’s contribution to combating the destabilising accumulation and spread of small arms and light weapons, July 2002 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:191:0001:0004:EN:PDF>

SADC

The objectives of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials³² agreed in 2000 are to prevent, combat and eradicate the illicit manufacturing and trade in firearms and to strengthen co-operative regional efforts to this end. Although this agreement makes no direct reference to the need to prevent the diversion of SALW a range of measures are specified which, if implemented fully, would help to reduce possibilities for the diversion of SALW. Such measures include: “the co-ordination of procedures for import, export and transit of firearms shipments”; “measures ensuring that proper controls are exercised over the manufacturing of, possession and use of firearms, ammunition and other related materials”; and “provisions that ensure the effective control of firearms including the storage and usage thereof”.

OSCE

In the run up to the UN 2001 Conference, the OSCE Document on Small Arms and Light Weapons³³ of 2000 was the principal collective statement of OSCE states vis a vis controlling the illicit trade in SALW. The aims of the OSCE Document include combating illicit trafficking in SALW and preventing and reducing destabilising accumulations of SALW and there are specific provisions relating to prevention of diversion. In particular it requires that participating states avoid transfers of SALW where there is a clear risk that they would be “diverted to territories whose external relations are the internationally acknowledged responsibility of another state” or that they would be “either re-sold (or otherwise diverted) within the recipient country or re-exported for purposes contrary to the aims of [the] document”. Moreover the Document states that when importing into or exporting SALW from their territory, participating states should ensure that they “retain adequate control over such transfers...to prevent the diversion of the small arms to any party other than the declared recipient.” Finally, it also urges that “[i]n order to prevent the illegal diversion of small arms, the participating States are encouraged to establish appropriate procedures that would permit the exporting state to assure itself of the secure delivery of transferred small arms” possibly including “a physical check of the shipment of small arms at the point of delivery”. Thus, in addition to the provisions relating to assessment of the risk of diversion attending SALW transfers, the OSCE Document is significant in that it urges the adoption of practical measures for ensuring that diversion of transfers do not take place; if implemented consistently, such measures are likely to have a deterrent effect against the possibility of the diversion of SALW transfers.

Agreements post-dating the UN PoA

Since 2001 several regions have concluded new agreements aimed at tackling the illicit trade in SALW, while others have been supplemented, elaborated or strengthened. Whilst the UN PoA was undoubtedly a major influence in the development of these regional agreements, most contain commitments relating to the prevention of diversion and other aspects of SALW control that are far more detailed and specific than those set out in the UN PoA.

The Pacific Islands

Within the Pacific Islands Forum (PIF) a regional agreement on SALW called the Nadi Framework was developed by the South Pacific Chiefs of Police Conference and the Oceania Customs Organization through a three-year-long process, beginning March 2000. The Legal Framework for a Common Approach to Weapons Control Measures³⁴ addresses a range of firearms control issues including requiring the adoption of legislation to criminalise the illicit manufacturing of, trafficking, sale and possession of firearms, ammunition etc. Although the Nadi Framework does not explicitly address the problem of SALW diversion, provisions requiring participating states to: establish an effective system of export, import and

³² SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, 2000 <http://www.sadc.int/index/browse/page/125>

³³ OSCE Document on Small Arms and Light Weapons, November 2000 http://www.osce.org/documents/fsc/2000/11/1873_en.pdf

³⁴ Legal Framework for a Common Approach to Weapons Control Measures, South Pacific Chiefs of Police Conference and the Oceania Customs Organization www.globalpolicy.org/security/smallarms/regional/nadi.rtf

transshipment control; to notify each other when firearms etc are in transit through their respective territories; and to harmonise their import, export, transit and transshipment requirements, are relevant to efforts to prevent diversion of SALW. The Nadi Framework Model Weapons Control Bill was finally endorsed by Pacific leaders at the August 2003 PIF meeting in Auckland thus becoming the official regional framework for firearms control in the Pacific.

The European Union

The 2003 EU Common Position on Arms Brokering³⁵ has clear implications for efforts to prevent the diversion of SALW. This agreement requires that all EU member states adopt controls on the activities of arms brokering agents within their jurisdiction, based on licensing of individual transactions and with an option to require the registration of arms brokers. The majority of EU member states have implemented this agreement and so the now virtual EU-wide control of arms brokering agents should serve to restrict opportunities for diversion of SALW where such actors are involved.

OSCE

In December 2003 the OSCE published *The Handbook of Best Practices on Small Arms and Light Weapons*.³⁶ A comprehensive compendium of information relating to SALW control, the Handbook addresses a number of issues that are important within the context of preventing diversion of SALW, in particular:

- National Controls over Manufacture of SALW
- Marking, Record-Keeping and Traceability of SALW
- National Procedures for Stockpile Management and Security
- National Control of Brokering Activities
- Export Control of Small Arms and Light Weapons

The need to trace SALW from the time of manufacture in order to detect possible points of diversion is identified in the Handbook as a major rationale for the adoption of provisions relating to marking, record keeping and tracing and for international co-operation in this field. At the same time, the need to avoid transfers of SALW that might be re-exported or diverted to unauthorised end-users or for unauthorised purposes is a central tenet of the Best Practices in relation to export control of SALW.

East Africa

Following up the landmark Nairobi Declaration of 2000³⁷, in 2004 10 East African states agreed the more substantive and legally-binding Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa³⁸ (hereafter referred to as the Nairobi Protocol). The Nairobi Protocol provides substance to the commitments of the UN PoA, the Nairobi Declaration, and other agreements and is widely recognised as one of the most progressive sub-regional small arms agreements. It requires that states introduce controls across a wide range of issues including illicit manufacturing; import, export and transit; civilian possession; controls on state-owned small arms; marking; recordkeeping; brokering; enforcement of arms embargoes; destruction; capacity building; public education and awareness-raising; information sharing and co-operation. Despite its comprehensive scope, the Nairobi Protocol does not explicitly mention the need to prevent the diversion of SALW, however, as is the case with the aforementioned

³⁵ EU Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:156:0079:0080:EN:PDF>

³⁶ OSCE Handbook of Best Practices on Small Arms and Light Weapons, December 2003 <http://www.osce.org/item/13550.html>

³⁷ Nairobi Declaration on the Proliferation of Small Arms in the Great Lakes Region and the Horn of Africa, 15 March 2000 <http://www.recsasec.org/pdf/Nairobi%20Declaration.pdf>

³⁸ Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, 21 April 2004 <http://www.recsasec.org/pdf/Nairobi%20Protocol.pdf>

SADC Protocol, there is little doubt that if participating states were to fully implement the provisions of this agreement opportunities for the diversion of SALW would be curtailed.

Pursuant to the Nairobi Protocol, in 2005 participating states adopted Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol³⁹. The Guidelines are significant in that they set high common standards and elaborate detailed provisions to guide implementation of all aspects of the Protocol while they also address the issue of diversion of SALW in a number of different contexts. For example, provisions relating to stockpile management procedures include a range of measures designed to prevent the diversion of SALW while the guidelines also state that end-user certificates should include provisions relating to the potential re-export of SALW including “a prohibition on transfer, diversion, export, re-export of the goods without previous approval from the original exporting country.” The Arms Transfer Criteria also specifically address the diversion issue and require that “States Parties shall not authorize transfers that are likely to be diverted, within the recipient country or be re-exported, to any other user than the stated final end-user”. In addition states are also required to take into account the recipient’s: record on compliance with end-use undertakings and diversion; stockpile management and security procedures; ability and willingness to protect against unauthorized transfers, loss, theft and diversion.” Despite their progressive nature, as with most other regional agreements, implementation of the Nairobi accords has been slower than hoped-for. In this regard, a lack of capacity and severe pressure on limited resources within the Nairobi states have been major contributory factors.

Central America

Also in 2005 the states of the Central American Integration System (SICA) agreed a politically-binding Code of Conduct on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel.⁴⁰ This agreement prohibits the transfer of arms to states that, *inter alia*, commit violations of human rights and international humanitarian law, fail to observe UN or regional arms embargoes, and contravene norms of democratic governance. As with the Nairobi and SADC Protocols, the SICA Code of Conduct does not explicitly address the risk of diversion, however the fulfilment of a range of accompanying measures, such as the requirement that states parties harmonise “procedures for importing, exporting and issuing of transfer documents and monitoring the recipients of arms, ammunition and other related materiel” should help reduce possibilities for diversion of arms during transfer.

The Americas

In 2006 the Inter-American Drug Abuse Control Commission (CICAD) finalised their Draft Model Regulations for the Control of Brokers of Firearms, their Parts, Components and Ammunition.⁴¹ These Model Regulations are important in that their development encapsulated an explicit recognition that the promotion of harmonised firearms brokering controls would “assist in preventing their diversion to unauthorised ends”. Accordingly, the CICAD Model Regulations provide for comprehensive regulation of firearms brokering, including optional provisions relating to registration of brokers. Crucially, the Regulations include a list of prohibitions which specify that brokerage licences should not be granted in circumstances whereby they would lead to *inter alia*: the breaching of UN or other multilateral arms embargoes; acts of genocide or crimes against humanity; violations of human rights; the perpetration of war crimes; terrorist acts; and diversion activities – particularly in relation to organised crime.

³⁹ Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol, approved by the third Ministerial Review Conference held on 20-21 June 2005
<http://www.recsasec.org/pdf/Best%20Practice%20Guidelines%20Book.pdf>

⁴⁰ See <http://www.un.org/events/smallarms2006/pdf/rc.wp.6-e.pdf>

⁴¹ CICAD Draft Model Regulations for the Control of Brokers of Firearms, their Parts, Components and Ammunition, OAS, 2006 http://www.oas.org/juridico/english/cicad_brokers.pdf

West Africa

In the West African Region, the comprehensive ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials⁴² was agreed in 2006, superseding the 1998 ECOWAS Moratorium on the import, export and production of SALW (see above). Under the terms of the ECOWAS Convention the transfer of SALW into, from or through national territory is prohibited unless an exemption is secured from the ECOWAS Executive Secretariat; exemptions may be made so as to allow states to fulfil legitimate national security requirements or to engage in peace support operations. The Convention includes Chapters addressing the transfer of SALW, the manufacture of SALW, transparency and information exchange as well as an “Operational Mechanism” which contains provisions relating to *inter alia* civilian ownership of SALW, management and security of stockpiles, collection and destruction of SALW, marking, tracing, brokering and border controls. The issue of diversion is mentioned specifically only insofar as “A transfer shall not be authorised if it is likely to be diverted, within the transit or importing country or be re-exported, to unauthorized uses or users or into the illicit trade”.⁴³ The fact that this is the sole reference to diversion in the ECOWAS Convention serves to underline a relatively common misperception in international, multilateral and regional SALW agreements that diversion is an issue relating only to the transfer of SALW. Although it is during the transfer of SALW that diversion presents the greatest risk, it can also occur in other contexts, for example as a result of inadequate stockpile management provisions.

Interactions between regional and international commitments and implementation processes

As can be seen from the above discussion, regional and international policy processes are distinct in many ways, and have relative autonomy not only in terms of commitments, but also in terms of policy process, agendas and political culture. However, it is important not to exaggerate this distinctiveness. There is, and needs to be, positive synergy and continual interplay between the regional and international policy and programming level for complex transnational processes such as preventing and responding to SALW proliferation and diversion.

The links between regional and global agreements, policies and programmes on SALW have several dimensions. Whilst these are widely recognised in principle, in practice they are often subtle and highly nuanced. It is also important to highlight that the ‘regional’ level is actually often multilevel itself, with various bilateral, trilateral and sub-regional organisations, agreements and processes linking with pan-regional organisation and initiatives.

The interplay between international, regional and multilateral SALW-related agreements can be characterised through several key relationships as follows.

The importance of maintaining consistency between international and regional commitments

In the case of SALW, the UN PoA provides the key international normative framework (supplemented by the Firearms Protocol, ITI and wider agreements governing arms, explosives, or dual technology), with which all regional commitments should be consistent. Achieving appropriate consistency requires ongoing political and expert consultation and attention. In some regions, regional commitments may be more fully elaborated or developed in some issue areas, reflecting regional opportunities and requirements. In other parts of the world, regional commitments may be less specific than international commitments, making states in such areas much more dependent on global agreements and mechanisms to support implementation.

At the same time, international and regional levels have dynamically interacted in relation to the development of agreements and programmes on SALW over the last decade. The

⁴² ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials, 2006 <http://www.iansa.org/regions/wafrica/documents/CONVENTION-CEDEAO-ENGLISH.PDF>

⁴³ ECOWAS Convention, *Ibid*, Chapter II: Transfer of Small Arms and Light Weapons, Article 6: Cases for Refusal of Exemptions for Transfers.

development of regional agreements on SALW in the OAS, OSCE, AU, EU, South Pacific and other areas from 1997 – 2001 played a key role in the development of the UN PoA and the Firearms Protocol. At the same time the global negotiating process for the UN PoA, in turn, provided a key stimulus and framework for regional negotiations and initiatives.⁴⁴

The requirement to mobilise international assistance

International technical, financial and political support is generally critical for implementation of national and regional commitments and it is through international agreements and institutions that a key framework is provided for mobilising donor awareness and resources. Moreover, where policy or institutional mandates at the global level are inadequate, the existence of a regional agreement and request for support can provide the basis for enabling international support.

Creating an enabling environment

Combinations of sub-regional, regional, international and global agreements and mechanisms can in practice be critical to the enabling of necessary working level co-operation for effective implementation of measures to prevent or combat SALW diversion etc. Actors that are motivated to take action can opt to use one or other level of agreement to legitimately circumvent bureaucratic or political obstacles that may for some reason or another exist within one of the organisations and mechanisms.

The existence of effective sub-regional and regional processes and resources can also help neighbours to pool resources and expertise, and form critical mass of agencies for co-operations and implementation. Moreover, it is an important confidence-building measure for issues such as diversion, where trans-boundary co-operation is important for effective national action.

The development of inter-regionalism

It is important the regional processes learn and co-operate with each other. This is often a missing link, but where it starts it can enable wider international progress even where global consensus is not yet possible. Co-operation between two or more regional organisations can help to spread lessons learned and good practices, and to promote wider international acceptance of guidelines, norms and programmes developed initially in only one or two regions. They can provide a good political framework for outreach activities, and contribute to the mobilisation and effective use of international assistance. The weakness is that inter-regionalism often lacks sufficient institutional resources and follow-up to go beyond ad-hoc exchanges.

These and other types of interactions all combine in complex ways to have a major impact on the effectiveness of implementation of commitments. If they do not work together, or are affected by some negative synergies, implementation will be set back. Positive synergies, however, can enable effective implementation even where local circumstances are very challenging. In later sections of this report, we will address recommendations for both regional and international levels and, in the conclusions, we highlight recommendations and priorities for next step initiatives to develop combinations of regional and international initiatives to further promote action to tackle SALW diversion.

⁴⁴ For a detailed examination of these interplay processes, see O Greene, 'Examining international responses to illicit arms trafficking', *Crime, Law and Social Change*, Volume 33, pp 151 – 190, 2000.

4. Considering SALW transfer licence applications: assessing and reducing diversion risks

Introduction

This section examines issues and priorities for preventing diversion of SALW transfers by denying export or import licences to proposed transfers that pose significant risks.

All adequate national systems for controlling SALW transfers involve applications for licences for international transfers, which are considered and decided by the relevant national authorities. An international transfer of SALW cannot legally proceed without at least an export licence authorised by specific government authorities of the exporting state, and in virtually all cases also a similarly authorised import licence by the importing state.

As discussed in section 3 above, Paragraph 11 of Section II of the UN PoA commits all states to 'assess applications for export authorisations according to strict national regulations and procedures that cover all SALW and are consistent with the existing responsibilities of states under relevant international law, taking into account in particular the risk of diversion of these weapons into the illicit trade'. Such commitments are reinforced, and in some cases elaborated, by numerous regional agreements.

More than seven years after this commitment was made in 2001, implementation by many states remains poor. The Biting the Bullet project's detailed assessment of implementation over the first five years of the UN PoA showed that only 111 out of 185 states had procedures and laws controlling the export of SALW. Most states do not even appear to have clear national criteria for assessing applications of SALW transfers. Only about 40 states stated that their SALW export controls include an assessment of the risks of diversion.⁴⁵ Investigations of cases of diversion of SALW transfers often reveal neglected risk factors that should have been obvious to any reasonably conscientious and informed export licensing authority.⁴⁶ Similarly, they often demonstrate that the import licences were either counterfeit or irresponsibly or corruptly authorised.

It is clear that all responsible states should undertake a proper assessment of the risks of diversion before authorising any SALW transfer; just as they should also consider the risks that the proposed transfer would be used in violations of human rights or international humanitarian law, in terrorism or crime, or would exacerbate or destabilise internal or international conflicts. This applies not only to exporting states but also to importing and other states with licensing responsibilities for example, for brokering (see Section 6) or transit/transshipment (see Section 7).

Assessing risks of diversion of SALW transfers

Assessing the risk of diversion of proposed SALW transfers to well-known partners or allies trusted to have high standards of controls and compliance with agreements, using established and well-regulated shipment arrangements, will not normally be particularly challenging. But not all proposed arms transfers are like this. Careful case-by-case assessments are required with regard to licence applications for, for example, an occasional or 'one-off' SALW arms transfer to an unfamiliar end-user in a country whose control systems and officials are not well-known and which may involve various brokering, transportation or freight-forwarding agents. Particular care needs to be taken in cases where either the importing country or transit countries are near conflict zones or in regions where controls may be weak.

⁴⁵ See *Reviewing action on small arms: assessing the first five years of the UN Programme of Action*, Biting the Bullet, 2006, *Ibid*.

⁴⁶ See, for example, the reports of successive UN Panels of Experts: these can be accessed via the UN Sanctions Committees webpage <http://www.un.org/sc/committees/>. Also *Undermining Global Security: the European Union's Arms Exports*, Amnesty International, 2004 <http://www.amnesty.org/en/library/asset/ACT30/003/2004/en/dom-ACT300032004en.html> and Chapter 4 of *Small Arms Survey 2008: Risk and Resilience*, http://www.smallarmssurvey.org/files/sas/publications/year_b_pdf/2008/CH4%20Transfer%20diversion.pdf

For the licensing authorities of an exporting state, when assessing an application for the export of SALW, some proposed arms transfers can be ruled out virtually at first glance. For example, is the proposed destination country or end-user ruled out for national foreign policy reasons or according to national criteria for export controls (which, in some cases, may be based upon agreements reached at regional or multilateral level)? Is the proposed end-user covered by a UN Security Council or other arms embargo to which the exporting state is committed? In practice, companies wishing to obtain permission for an export will often informally gauge the prospects for a positive decision from a particular government, and will either abandon their plans or source the weapons elsewhere should authorisation appear unlikely to be given.

Once a prospective SALW export has passed this initial stage, serious consideration of the licence application should begin. A systemic risk assessment for a proposed SALW should include the following aspects.

Check for forged or inauthentic documentation, such as importation certificates, transit state approvals, or end-user/use documentation. Government authorities need to remain vigilant to the possibility that documentation submitted in support of the application may be forged, corruptly approved, or not authorised according to proper procedures. Often this can be revealed by elementary checks using available resources, the internet and telephone. But unless the licensing officials are thoroughly familiar with the required documentation, approved signatories, and regulatory procedures of the transit authorities, destination country and end-user, some direct confirmation will be necessary. This may involve visits by relevant embassy officials in the transit and/or destination country. Telephone calls only to the officials who have signed the importation certificates are inadequate: they may be corrupt or acting beyond their authority. Overall, although the officials concerned may find it burdensome, the resources required to make adequate checks on the authenticity of documentation are modest.

Assess the credibility of the stated end-user and end-use. The risk of diversion is substantial if the stated end-user or end-use is dubious for some reason. In this context, under its Blue Lantern end-use monitoring programme the US Government has identified a number of 'warning flags'. These include:

- reluctance or evasiveness by the applicant or purchasing agent to provide full end-use or end-user information;
- scanty or dubious background information on the end-user;
- unfamiliar private end-user;
- end-user declines usual follow-on service, installation, warranty, spares, repair or overhaul contracts;
- requested arms or services appear excessive or inconsistent with the end-user's or consignee's inventory, line of business, or needs;
- unfamiliarity of end-user with the product or its use;
- designation of freight-forwarders as foreign consignees or end-users; and
- location of end-user in free-trade zone.⁴⁷

These and related issues are discussed further in section 5 (end-user controls). For the purposes of this section, the main point is that licensing authorities should seriously assess whether the end-user is not only of good standing but also fully credible as an end-user of this particular SALW transfer for the stated purposes. Requirements for detailed supplementary information will help the assessment, but it may also require some independent investigation, including in-country checks by embassy officials.

⁴⁷ See presentation on the Blue Lantern Program by Judd Stitzel Research and Analysis Division Office of Defense Trade Controls Compliance Bureau of Political-Military Affairs to the Eighth International Export Control Conference Bucharest, 6-8 March 2007 http://www.exportcontrol.org/library/conferences/1379/STITZIEL_--_Blue_Lantern_PPT_for_Bucharest_Conference_Mar_06.pdf

Assess risks of diversion posed by all parties involved in the proposed SALW transfer, including exporter, brokers, shipping agents, freight-forwarders, and intermediate consignees. Each of these should routinely be vetted, to check for warning signs or evidence of past involvement in diversion activities. Use of agents and/or intermediaries with no apparent connection with the end-user is one of several warning signs. Concerns relate not only to the risks that any of these might knowingly facilitate diversion, but also that they may take inadequate precautions against diversion or not report suspicions to relevant authorities. These issues are discussed in more detail in Sections 6 and 7 (brokering and transit controls). Case-by-case risk assessments for each of the parties involved could be relatively resource intensive, but this could be reduced through investment in relevant data-bases, pre-registration requirements, and arrangements for inter-governmental information requests.

Assess risks of diversion posed by the proposed shipment arrangements. In order to make such an assessment, the licensing authorities must require information to be submitted on such arrangements. Transit or transshipment through several countries or involving a number of different companies is often a strong indicator of risk, particularly if these include countries or companies with doubtful controls or near regions where there is high demand for the SALW involved.

Assess the possible demand amongst unauthorised users for the SALW in the proposed transfer. For example, is there strong demand for such weapons amongst any groups in, near or connected to destination and transit countries? This demand may arise in relation to crime, armed conflict, or from embargoed countries. This will require an assessment of a range of possible demands and risks, requiring local and regional knowledge that is not readily available to most licensing officials. Such assessments can be facilitated by systematically involving multi-agency consultations in assessing arms transfer proposals, as is becoming increasingly recognised as good practice. It is important to take into account the risks of diversion or loss of control after delivery to the end-user (by re-transfer or diversion from stocks) as well as during the shipment to the end-user.

Assess the risk that the authorised end-user may put the weapons to unauthorised uses. This requires an assessment of the roles and interests of the end-user, and the context in which he operates. Thus, for example, an authoritarian government facing internal opposition or insurrection may be judged as likely to consider using imported arms against opposition even if the end-use statement indicates otherwise. Similarly, a company experiencing financial problems or political pressures may be willing to sell or re-export the arms for profit despite guarantees to the contrary. Case-by-case assessments of these risks may require detailed local knowledge, but general risk factors can also be used, for example, relating to levels of crime, violence, the rule of law, effectiveness of controls on SALW and firearms, and conflict risks.

Assess risks of diversion relating to the reliability of controls in the importing country. Risks of diversion within the destination country are reduced if it maintains strong and reliable controls on SALW transfers and on national and civilian SALW holdings within its jurisdiction. It would provide reassurance against unauthorised re-export, as well as of diversion from the end-users holdings. Thus an assessment of the condition and reliability of the national controls of the importing state is useful. It is also important because risks of diversion may become substantial in a country with weak controls, or facing risks of conflict or instability, irrespective of the reliability of the end-user itself.

Assess risks that the SALW transfer would increase the risks of diversion or irresponsible export of the existing SALW holdings of the end-user. Experience shows that holdings of SALW that have been rendered surplus to requirements following the importation of additional weapons tend to become more vulnerable to diversion. This is because the stockpile management and security of surplus or less-valued arms attracts less attention and resources. Further, the end-user may be willing to sell these surplus weapons to undesirable recipients. These potential implications of any SALW transfer should be assessed at the licensing stage. Indeed it is becoming increasingly recognised as good practice to include in arms transfer agreements provisions for destruction or other safe disposal of

weapons rendered surplus by a SALW transfer, although there are only a few cases so far where this has been implemented in practice.

It is clear that a proper risk assessment is required for each SALW transfer licence application and that such an assessment needs systematically to address each of the above categories of risk. National officials responsible for such risk assessments need clear and elaborated guidelines on the factors (including those outlined above) that need to be taken into account, and how to gather and assess the relevant information.

This could prove challenging even for licensing authorities in major developed states, with comprehensive national regulations and well-resourced enforcement systems, and with relevant trained embassy staff and resources in most potential partner countries; even these states may need to increase their dedicated resources for such risk assessments. Smaller or developing countries typically have fewer licence applications to consider, but they too will require relevant capacity building. In situations where transfers are proposed to new recipient states where the exporting country has no embassy, enhanced international co-operation could help.

It is important to consider ways and means of making such diversion risk assessments more efficient and feasible. These can broadly be divided into four approaches.

Invest sufficient resources in the export control system to enable full risk assessments to take place. This seems to be a justifiable use of resources to implement key UN PoA commitments, and investment in even a few additional dedicated and trained staff could make a dramatic difference to the conduct and effectiveness of risk assessment. The allocation of resources in this regard should, in essence, be commensurate with the volume of SALW transfer licence applications received by individual governmental authorities. Thus it is important that those states that are involved in a significant volume of SALW transfers have, in place, sufficient operational and personnel resources in order to ensure full risk assessments are conducted in each case; those countries that deal with only a few applications will require proportionately fewer resources for this purpose. States should seek to take advantage of co-operative arrangements with partner government licensing authorities in order to maximise their scope for informed risk assessment.

Develop national criteria to indicate what to do when uncertainties about important risks cannot be reduced within available time and resources. For example, if a potentially important risk cannot be shown to be low within available time and resources, the licensing officials could be instructed either to refuse the licence or to impose conditions on the export licence that would in any case greatly reduce the risk.

Develop co-operation arrangements with importing governments, where possible. Assessments of several of the risk factors outlined above could be greatly improved through co-operation with the relevant authorities in the importing state. Responsible importing states also have a strong interest in preventing diversion of SALW transfers, including from private or government agency end-users. They will normally have relatively easy access to key information required for the risks assessments discussed above. It is important for the overall implementation of the UN PoA that co-operation between importing and exporting states is improved. It is also important in this context to remember that nearly all states both export and import SALW (or associated ammunition, parts and components) on occasion. This is not to imply that such co-operation will always be easy and reliable. However, lack of awareness of, concern about, or co-operation on diversion risks by the relevant authorities of the importing state will in any case function as a risk indicator.

Facilitating co-operation between exporting and importing states on diversion risk assessment and mitigation

It is difficult for exporting states to thoroughly assess risks of diversion of SALW transfers on their own, and there are obvious potential advantages to co-operate with the prospective importing state on this task. Authorities of the importing state will normally have better knowledge and experience of potential end-users, and relatively good knowledge of the risks of diversion within their jurisdiction. Nevertheless, there is surprisingly little co-operation on risks assessments for potential SALW transfers in practice between exporting and importing states. There is suspicion and a wide perception of likely strong differences of interest. While this is understandable in many contexts, there are nevertheless potential SALW transfers where the governments of the importing and exporting states actually share strong interests to prevent diversion. In practice, for example, SALW diversion within the importing states will often pose greater threats to them than to other authorities.

There are two contexts in which this case can be most apparent: where the proposed end-user is a private company or other civilian agency in which the importing state authorities have nothing other than a regulatory interest; and where the proposed end-user is a legitimate state agency which has recognised requirements for both the weapons and for wider capacity-building assistance to improve its controls on its own SALW holdings and use. In both cases, co-operation with the exporting state can help to enhance the importing authorities' own risks assessments and might also help to mobilise wider capacity-building assistance. It is also potentially in the interests of responsible exporting states to aim for such co-operation, since it may help to maintain and develop their reputation as responsible exporters of SALW and to consolidate existing security partnerships.

The next steps in this area are to take opportunities to establish useful precedents for such co-operation. If successful, they should be publicised, to demonstrate the potential for co-operation, and to encourage larger numbers of importing states to take diversion risk assessments more seriously before approving importation licences for SALW.

Develop international or regional co-operation to facilitate risk assessments. Individual states can pool certain information and resources in order to facilitate assessments of some of the risks discussed above. Examples include sharing information on: suspected or proven diversion points; dubious brokers, shippers, consignees or freight-forwarding agents; end-users that have not complied with end-use agreements; the status of controls on SALW transfers and holdings within the recipient country; the local and regional situation; and so on. Members of the Wassenaar Arrangement and the EU, for example, have begun to develop information-sharing mechanisms on some of these issues. They must always be flexible, because trust can be hard to develop in the context of competitive arms transfer markets. But wider international arrangements for sharing relevant information on at least an *ad hoc* basis could be considered.

Using risk assessments in arms transfer licensing decisions

Wherever a proper risk assessment by national licensing authorities indicates that a proposed SALW transfer poses a substantial risk of diversion—either before or after it reaches its authorised end-user—the UN PoA commitments clearly imply that the government involved should either refuse the licence or take adequate measures to reduce the risk to acceptably low levels. This applies to all relevant governments, whether they are in the role of regulator of exports, imports, transit, or brokering activities for this particular proposed transfer.

Where some types of risk factors for diversion are judged to be high, it is hard to see what measures could feasibly be taken to reduce them for the proposed SALW transfer. These apply, for example, when there are substantial risks relating to: forged or misleading documentation; lack of credibility of end-user or end-use; grossly inadequate controls by end-user or within the recipient state (or future risks of breakdown of controls). In such cases the application for an export licence should be refused.

For other types of risk factors, it is possible to envisage ways of imposing restrictions on the transfer licence, building relevant capacities, or enhancing controls to substantially reduce the identified risks. For example:

- risks of diversion during the shipment could be reduced by imposing restrictions on some of the parties involved, such as shipping agents or brokers, or on transportation routes and transshipment arrangements; shipment tracking and delivery verification could also be employed;
- risks of diversion whilst in transit within the recipient country could be reduced by specific measures to ensure safe delivery;
- risks of diversion by the end-user could be reduced by a combination of enhancing regulatory and control systems within the importing state, strict end-user/use agreements and end-use verification measures;
- risks of diversion due to inadequate national controls in the recipient country, or inadequate stockpile security by the end-user, could potentially be mitigated⁴⁸ by capacity-building assistance specifically to the end-user but also to the overall systems in the importing state; and
- risks of knock-on effects on weapons rendered surplus by the transfer could be reduced by agreements to ensure destruction or other safe disposal of the weapons concerned.

Several of these risk reduction measures would imply at least a significant delay in authorising the SALW transfer. For example, any improvements in control systems in the importing state would take time to develop and implement, though this would bring lasting benefits. However, where the risks relate mainly to the shipment arrangement or transit routes, risk reductions might be implemented straightforwardly through a change of route or shipper.

Although there is overlap, there is clearly a distinction between taking measures that substantially reduce the risks of diversion, and measures that mainly raise the likelihood that diversion will be detected after the event. The former are greatly to be preferred, but where there is scope to authorise limited transfers without high risks of damaging impacts, the latter may also play a useful role in some circumstances.

Through such measures and restrictions, the risks of diversion could be sufficiently reduced to justify awarding an export licence, provided that there are strong legitimate grounds for authorising the transfer and the other risks of misuse are low. Over time, it is possible and desirable for interested states to mitigate risks of diversion through longer-term measures. One such approach is to develop good and enduring co-operation between the exporting, importing and transit states concerned. For example, legitimate transfers are facilitated if the exporting and transit states are confident in the effectiveness of the importing state's systems for issuing and enforcing importation certificates and regulating and ensuring good controls on SALW holdings within their jurisdiction. Similarly, regular and reliable communications between concerned states relating to each SALW transfer helps to mitigate risks of diversion. As noted (see Box) co-operation between exporting and importing states to reduce diversion risks could include capacity-building assistance with enduring benefits in terms of enhancing national controls to prevent diversion and misuse.

A further approach for reducing risks of diversion is to learn effectively from experience. If unauthorised diversion of previous SALW transfers is known to have taken place implicating some of the involved parties, special caution is necessary. States thus have a responsibility to maintain and use systems for monitoring past shipments, so that this information can be put to use in future assessments of diversion risks. Some states, such as the US, do this through procedures for post-delivery checking. All states have means at least informally to check whether some of the transfers that they have authorised have been diverted, using a

⁴⁸ In the context of this report and analysis of methods and procedures for preventing diversion of SALW the term "mitigation" is intended to convey a process whereby all reasonable steps are taken in order to reduce risks of diversion to a low level. In those circumstances where risk mitigation cannot be assured, the authors would argue that the obligation should then fall on the licensing state to refuse the transfer.

combination of open sources, national intelligence agencies, embassy investigations, and consultation with friendly states with relevant information. The new international instrument to enable timely and reliable tracing of illicit SALW (ITI) provides a potential source of information (as well as deterrence) relating to diversion, in cases where states that discover illicit SALW initiate a tracing investigation. However it should be stressed that evidence to date from national reports on the ITI suggests that states will have to significantly improve on their implementation of the tracing aspects of the agreement before any meaningful exchange of information on diversion risks can take place.

In principle, all risk assessments and risk mitigation measures to prevent diversion can be treated on an *ad hoc* case-by-case basis. In practice, this is scarcely adequate. At the least, systems and mechanisms to facilitate and resource case-by-case checks need to be elaborated. This should at least be done on a national level. But it is also important to develop relevant systems and a regional and international level. Just as resources can usefully be pooled to facilitate risk assessments, so too can international co-operation and assistance help to develop measures to reduce identified risks of diversion. In this context, the following sections examine issues and priorities for improving controls to prevent and reduce diversion once SALW transfers have been authorised.

5. Reducing risks of diversion through better end-use/user controls

Weaknesses in end-use certification arrangements

In recent years the flaws and inadequacies in the SALW end-use certification provisions that are relied on by many states have been well documented. Reports by UN⁴⁹ and NGO⁵⁰ sources have shown that widely-adopted minimalist practices are inadequate for the reliable assurance of the end-use of exported arms. The ease with which end-use certificates can be copied and forged, along with the willingness of unscrupulous governmental actors to provide false end-use certificates, has undermined the integrity of written assurances. Coupled with this, negligence, corruption and poor end-use practices on the part of exporting and importing governments, arms manufacturers and traders, as well as brokering and transportation agents, compound such weaknesses. Indeed it has become apparent that where end-use controls are based solely on the requirement for, and unquestioning acceptance of, paper end-use certificates the system is wide open to fraud and abuse.

A series of reports from UN Groups of Experts established in the early 2000s to examine breaches of arms embargoes imposed upon *inter alia* Angola, Liberia, Sierra Leone and Somalia were particularly noteworthy in highlighting flaws in existing national end-use practices that have been exploited by corrupt and unscrupulous actors. The absence of concerted action to address existing failings means that the issues raised in these reports are as relevant today as they were when the reports were first published.

The involvement of corrupt government agents and/or government complicity in the provision of false end-use assurances was highlighted *inter alia* by the UN Panel of Experts on Sierra Leone, reporting in December 2000. In one particular case, an EUC issued by the government of Burkina Faso on 10 February 1999 authorised a Gibraltar-based company to purchase weapons – including surface-to-air missiles and rocket propelled grenades and their launchers – for the sole use of the Ministry of Defence of Burkina Faso which was to be the final destination and end-user of the weapons. The Panel reports, however, that rather than being retained by Burkina Faso they were temporarily offloaded in Ouagadougou before being transhipped to Liberia.⁵¹ In addition, the UN Panel on Somalia reporting in 2003 found that high level officials in the government of the Yemen had been willing to provide Yemeni end-user certificates and to facilitate the sale and delivery of weapons to the Transitional National Government of Somalia.⁵²

The use of false end-user certificates has also been widely documented. For example, the UN Panel of Experts on Liberia reported in October 2003 that several shipments of weapons – including a comprehensive range of SALW – that were brokered by the Belgrade-based company Temex had been supplied to Liberian forces in contravention of the UN arms embargo. These weapons were believed to have been procured on the basis of a false Nigerian end-user certificate. In addition, the Panel suspected that further shipments were made to Liberia on the basis of an unauthenticated EUC purporting to emanate from the DRC.⁵³

The failure to check the authenticity of EUCs has also been identified as a serious problem within end-use regimes. In situations where basic checks on the authenticity of end-use documentation are not carried out the potential for the undetected diversion of SALW transfers increases significantly.

⁴⁹ See the reports of successive UN Panels of Experts can be accessed via the UN Sanctions Committees webpage <http://www.un.org/sc/committees/>

⁵⁰ See for example *Undermining Global Security: the European Union's Arms Exports*, Amnesty International, *Ibid.*

⁵¹ Report of the Panel of Experts on Sierra Leone Diamonds and Arms appointed pursuant to Security Council Resolution 1306 (2000), UN Doc S/2000/1195 paras 203 – 207.

⁵² Report of the Panel of Experts on Somalia pursuant to UNSC Resolution 1425 (2002), 25 March 2003, UN Doc S/2003/223, para 74.

⁵³ Report of the Panel of Experts established pursuant to paragraph 25 of Security Council Resolution 1478 (2003) concerning Liberia, UN Doc S/2003/937 Paras 87-94. See also S/2003/498 and S/2002/1115.

International norms and SALW end-use certification

The need for some form of end-use certification is now recognised internationally as an important aspect of SALW end-use control with the UN PoA requiring states to use “authenticated end-user certificates and effective legal and enforcement measures” (Section II, para 12). Whilst these are important commitments, the lack of detail regarding even the basic form or content of EUCs and of the procedures that should be followed with regard to their authentication does little to encourage progressive implementation.

A range of other multilateral and regional SALW agreements also address the need to assure the end-use of exported SALW. The SADC Firearms Protocol and the Nairobi Protocol both refer to EUCs as part of national SALW export control systems and promote their harmonisation among state parties.⁵⁴ The Nairobi Protocol also stipulates that the granting of export licences should be conditional on the issue of an import authorisation by the recipient state.⁵⁵ Also of note are the OAS Convention and the UN Firearms Protocol. Although neither of these instruments explicitly refers to the use of EUCs, they also stipulate that the granting of export licences should be dependent on an authorisation being issued by the recipient state.⁵⁶

Standards set by the EU and the Wassenaar Arrangement detail the elements that are considered to represent the basic level of information required in EUCs while at the same time elaborating on a set of further optional provisions. Specifically, EUCs, when requested, must include, as a minimum:

- the exporter's details (at least name, address and business name);
- the end-user's details (at least name, address and business name);
- the country of final destination;
- a description of the goods being exported (type, characteristics), or reference to the contract concluded with the authorities of the country of final destination;
- the quantity and/or value of the exported goods;
- the signature, name and position of the end-user;
- the date of the end-user certificate;
- an end-use and/or non re-export clause; and
- an indication of the end-use of the goods.

Equivalent standards are stipulated in the OSCE Document on SALW of 2001, the OSCE Best Practice Guide on SALW Export Control of 2003, and the Decision on EUCs and Verification Procedures of 2004.⁵⁷ They have also been adopted in the Nairobi Best Practice Guidelines on the implementation of the Nairobi Protocol that were adopted in 2005.⁵⁸

Insofar as the UN PoA states the need for *authenticated* end-use certificates, it is worth noting that several multilateral SALW control instruments affirm the need to ensure that the “authenticity of licensing and authorisation documents can be verified or validated.” This principle is stipulated in, for example, the UN Firearms Protocol⁵⁹, and the SADC⁶⁰ and Nairobi⁶¹ protocols. In addition, the OSCE Best Practice Guide and the OSCE Decision on EUCs stipulate that, where the end-user is a non-governmental actor, exporting states have to require a validation of the EUC by the receiving state.⁶² Beyond this, the Wassenaar Arrangement’s Best Practices for Effective Enforcement of 2000 promote confirmation of the “stated end-user and end-use of items to be exported prior to issuing an export licence” and

⁵⁴ SADC Firearms Protocol, *Ibid*, Art. 8.c and .d and the Nairobi Protocol, *Ibid*, Art. 10.e and 16.g.

⁵⁵ Nairobi Protocol, *Ibid*, Art. 10.b.i. and c.

⁵⁶ OAS Firearms Convention, *Ibid*, Art. IX.2 and 3, and UN Firearms Protocol, *Ibid*, Art. 10.2.a

⁵⁷ OSCE Decision no. 5/04 of November 2004 on Standard Elements of End-User Certificates and Verification Procedures for SALW Exports (OSCE Decision).

⁵⁸ Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on SALW, *Ibid*, Chapter 2.

⁵⁹ UN Firearms Protocol, *Ibid*, Article 10.5.

⁶⁰ SADC Protocol, *Ibid* Art. 8.d.

⁶¹ Nairobi Protocol, *Ibid* Art. 10.e.

⁶² OSCE Handbook of Best Practices on Small Arms and Light Weapons, *Ibid*, p. 9 and OSCE Decision, *Ibid*, para 1.

say that this could range from “documentation to on-site premise checks of the end-user and end-use”.⁶³

Priorities for end-use certification and authentication

End-use certification

As of January 2009, approximately 68 states have reported to have systems in place that include the use of EUCs or equivalent documentation, however approximately half of these states are located in Europe. Of those states that do not implement end-use control systems many claim that they do not export or re-transfer SALW and so have no need for export controls that include the use of EUCs. However, as argued above, all states are *potential* exporters of SALW and so should institute systems and procedures to assure and monitor the end-use of exported SALW in order to prevent diversion and misuse. In the case of those states that do have end-use provisions as part of their SALW export control system, there are important differences in the scope, detail and comprehensiveness of relevant national practices.

Widespread variations exist in the form and content of EUCs required by exporting states. Many governments have one standard format EUC that is applicable to the export of all strategic goods although at least one state, Sweden, has several different types of EUC depending on what is being exported. Finland requires an EUC to be issued by the competent authority in the recipient state when the export is of a complete weapons system; where the export is of components and subsystems a ‘Certificate of Use in Own Production’ may be accepted.⁶⁴

The German Government’s end-use certification requirements also may vary depending on the type of goods being exported, the country of destination and end-user and allows for the provision of both “Private” and “Official” types of EUC. “Official” EUCs are required typically for the export of “War Weapons” to a governmental end-user; on the other hand “Private” EUCs are accepted in relation to exports of “Other Military Equipment” and contain statements by consignee or end-user referring to the final destination and use of the items.⁶⁵

Argentina has an extensive list of requirements for EUCs. For applications for the export of arms for civilian use, the exporting firm must present either an international import certificate (IIC – see below) or an EUC issued by the competent authority in the country of destination. This must provide full details of the exporter, the importer in the country of destination and the goods to be exported (type, make and model of weapon, firing mechanism, calibre and serial number and/or type of ammunition, type of tip, make, calibre and batch number).⁶⁶ For exports of military SALW Argentina requires an EUC which must be authenticated by the Argentine consulate in the country of destination. The EUC must contain a certification from the Ministry of Defence, or other competent authority, of the country issuing it. This must include information on the buyer and the end-user of the military material and should certify that it will not be re-exported without the authorisation of the competent authorities of Argentina.

Where states do not require an EUC the most common alternative is the IIC – provided by the government of the importing state prior to the transfer. States using this type of import

⁶³ Wassenaar Arrangement Best Practices for Effective Enforcement, *Ibid* point 3.

⁶⁴ National Report of Finland on the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, 2008 <http://disarmament.un.org/cab/bms3/Finland.pdf>

⁶⁵ According to the definition established under German Law “War Weapons” include all types of light weapons and some categories of small arms and are contained in the War Weapons Schedule Annexed to the War Weapons Control Act. However items such as revolvers, self-loading pistols, rifles and carbines are classified as “Other Military Equipment” and are contained in Part 1, Section A of the Export Schedule which is an Annex to the Foreign Trade and Payments Ordinance. See National Report on the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, Federal Republic of Germany, March 2008 <http://disarmament.un.org/cab/bms3/Germany%20sent%2027%20Mar.pdf>

⁶⁶ See Report of the Argentine Republic on the implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons In All Its Aspects, Buenos Aires, 20 June 2007 available via <http://disarmament.un.org/cab/bms3/1National%20Reports%202008.html>

authorisation include approximately 30 that are members of one or more multilateral arms transfer control arrangements as well as others such as Brazil, China, Colombia, Egypt, India, Pakistan, South Africa and Uruguay.

A variety of security features are employed by states seeking to prevent falsification and misrepresentation of end-use commitments. For example, governments including that of South Africa and Germany specify that an official stamp or seal must be provided by the end-user along with an authorised signature and a reference number. The Swedish Government goes further requiring, in addition, that the declaration by the end-user be provided on special bank-note-quality paper.

Several states report that they make use of re-export restrictions as part of their end-use controls; this is discussed in detail in Section 9 below.

Authentication procedures

Whilst the requirement for some form of end-use certification is not uncommon amongst states, the extent to which EUCs and other similar documents are routinely authenticated by exporting states is less clear. This is despite the fact that there is considerable evidence to suggest that acceptance of EUCs at face value by exporting governments is, on its own, insufficient to prevent illicit transfers of SALW.

For those states that do routinely check the authenticity of end-use certificates, a variety of procedures are followed. For example, the most rigorous checks appear to involve consular verification in the recipient state to check that the information contained in the documents is correct and that the documents have been signed by those authorised to do so. This may entail embassy staff of the exporting state carrying out checks with the authorities in the recipient state that the end-user is a reputable entity and that official documents for the particular transfer have in fact been issued by these authorities. For example, Canadian policy stipulates that private end-use statements by foreign commercial companies seeking to purchase sporting firearms from Canada will be certified by a member of the locally-accredited Canadian mission. Specifically, this member will visit the company “to ensure that it is a reputable business which carries on within the dictates of local laws”. Argentina also carries out in-country checks on the authenticity of EUCs. The Argentine consulate in the country of destination must authenticate the certificate and certify that the signatures appearing thereon are authentic and pertain to the competent authority empowered to issue the certificate.

Authentication procedures may also include checks on end-use and end-user information by collecting additional information through open sources such as the internet or press reports, as well as governmental sources.

Priorities for end-use risk assessment

Whilst conducting checks to ensure that a purported end-user is genuine represents a critical aspect of any end-use controls, this process alone cannot rule out the possibility that exported SALW will be diverted. This is because, despite checks made on the authenticity of an end-user, the possibility will remain that unscrupulous entities, whilst presenting themselves as a plausible and legitimate end-user, may seek to take possession of arms before transshipping them onwards to an unauthorised recipient. It is vital therefore, that exporter governments take effective steps to counter such risks prior to granting an export licence.

One way in which this can be done is by undertaking a thorough risk assessment as part of the licensing process. In many ways procedures for risk assessment can be looked upon as a means whereby the licensing authorities in an exporting state seek definitive answers to a series of strategic questions. These questions would include the following:⁶⁷

- Who is the prospective end-user and what is their business?

⁶⁷ See http://www.exportcontrol.org/library/conferences/1379/Heinz_--_German_End-Use_Verification.pdf

- Is the end-user a suitable recipient of the SALW in question?
- Does the end-user have a record of reliability as a recipient of controlled goods?
- Has the end-user (or, if a private entity, its host government) been implicated in the diversion, re-export or misuse of controlled goods?
- Does the end-user have adequate facilities to ensure secure storage of SALW received?
- Is the end-user (or, if a private entity, its host government) capable of exercising effective export controls?
- How is the end-user viewed amongst other government departments or agencies and how would the transfer of SALW to the end-user be considered by them?
- How do partner governments view the end-user?

As well as asking these questions of the purported end-user and host government, a comparable list of questions should also be addressed with regard to any brokering and transportation agents involved in the transfer and with regard to the involvement of any intermediate consignees or transit authorities (see Sections 6 & 7 below).

A number of governments, such as the UK, place a significant emphasis upon risk assessment at the licensing stage to prevent diversion of exported SALW. Since the UK export control system is largely reliant on pre-licensing assessments as the means where by responsible end-use is assured, it is particularly important that these checks are carried out consistently and effectively.

The US has a well developed system of end-use control⁶⁸ that also places significant emphasis on pre-licensing risk assessment. Every licence application is carefully scrutinised to assess risk: if a private company is unfamiliar to the US licensing authority, if the end-use documentation is unclear, if the amount of the arms is large or the destination is of concern, for example, the US authorities may initiate its “Blue Lantern” system of end-use checks. Managed within the Directorate of Defence Trade Controls (PM/DDTC) by the Office of Defense Trade Controls Compliance’s (DTCC) Research and Analysis Division, this end-use monitoring program allows the US government to check a transaction prior to licensing or alternatively, through a post-shipment verification, to confirm end-user and end-user. The pre-licensing aspect of the Blue Lantern programme involves US government officials checking the information provided on EUCs, often using open-source information such as telephone directories and the internet. US personnel (either from the embassy in a recipient country or personnel from the DDTC) may also be required to conduct end-use checks overseas to verify the *bona fides* of unfamiliar foreign companies. Post-export, US officials may also be required to ensure delivery of licensed United States Munitions List (USML) commodities to proper end-users and confirm proper end-use, as well as to determine compliance with DDTC licensed agreements.

The purpose of these Blue Lantern checks is to verify the legitimacy of a transaction and to provide reasonable assurance that: i) the recipient is complying with the requirements imposed by the United States Government with respect to use, transfers, and security of the defence articles and defence services; and ii) such articles and services are being used for the purposes for which they are provided. The US government believes that the Blue Lantern programme has strengthened the effectiveness of US export controls and has proven to be a useful instrument in: i) deterring diversions to unauthorised end-users; ii) aiding the disruption of illicit supply networks used by governments under US or international restrictions and sanctions and international criminal organisations; and iii) helping the Department to make informed licensing decisions and to ensure compliance with US regulations. During 2006 Blue Lantern checks were initiated on 613 licence applications checks – less than 1 per cent of applications received during that year. During the same year 489 Blue Lantern cases were concluded with 94 deemed “unfavourable”.⁶⁹

⁶⁸ The US Government operates three types of end-use monitoring programme: The Blue Lantern Program is run by the State Department in respect of Direct Commercial Sales (DCS) of United States Munitions List (USML) items. The Extrancheck System is operated by the Commerce Department in respect of Dual-Use (CCL) Items. Finally, the Golden Sentry Program is the responsibility of the US Defense Department in respect of Foreign Military Sales (FMS) (i.e. government to government arms sales).

⁶⁹ Presentation on the Blue Lantern Program by Judd Stitzel, Ibid.

Priorities for follow-up checks

Comprehensive risk assessments are clearly an essential part of efforts to mitigate diversion risks. However, even where such assessments are carried out, further checks post-export are necessary if exporting states are to be assured that any SALW that are transferred are being used in accordance with the terms of the export licence. As well as acting as a deterrent to diversion, the results of any post-export checks can serve to inform subsequent pre-assessment procedures either by substantiating an assessment or by highlighting inaccuracies and areas where changes are necessary.

Delivery verification

Several states require that the recipient must commit to providing a Delivery Verification Certificate (DVC) as proof that the shipment has reached its authorised destination and end-user. Some states such as Sweden and New Zealand reserve the right to request a DVC in specific cases. For example the Swedish Government may require provision of a DVC when transferring particularly sensitive types of equipment, such as Man-Portable Air Defence System (MANPADS). Other states, including Belgium, Colombia, Finland, Germany, Hungary, Italy, Latvia, Luxembourg, Poland, Romania, South Africa, and Spain require systematic verification that exported SALW have reached their intended end-user. In South Africa a legal pre-requisite for the issuance of an export licence is that the end-user commits to providing a delivery verification certificate. The Belgian Government requires that three months after the export has taken place proof of delivery is required including details of transit routes and transport arrangements.

On-site inspections

Carrying out physical checks on the territory of the recipient is the only definitive means of ensuring that exported SALW have not been diverted. Despite this fact, few states reserve the right to follow-up exports of SALW in this way. Of those that do the South African government insists that EUCs contain a clause stating that the buyer grants access and permission to South African government representative(s) to visit the facilities to verify the end-use.⁷⁰ The Swedish export authorities may require the inclusion of a clause on EUCs under which the recipient commits to making facilities available to on-site inspections by Swedish authorities to allow for verification of compliance with restrictions that were imposed.⁷¹ As noted above, on-site inspections can form part of the US government's Blue Lantern system of end-use verification.

Sanctions

Breaches of end-use obligations are generally considered a serious matter by exporting governments. Nevertheless, despite the deterrent effect that is likely to accrue from the articulation of clear sanctions, not all states make clear the consequences of a flagrant violation of end-use undertakings.

Of those that do make specific declarations in this regard, the German Government points to the future denial of strategic exports in that "[a] recipient country that, in breach of an end-use certificate, authorizes or does not seek to prevent or sanction the unauthorized re-export of war weapons or other military equipment relevant to war weapons will on principle, as long as such conditions persist, be excluded from receiving any further deliveries of war weapons or other military equipment related to war weapons."⁷² In the US if a recipient government is found to have breached end-use obligations the information is generally reported to the US

⁷⁰ See the South African Department of Trade and Industry for a copy of the EUC and the associated requirements, http://www.dti.gov.za/nonproliferation/AnnexureANonTransfer_EndUseCertificate.pdf

⁷¹ See UN Office of Disarmament Affairs: small arms and light weapons, 'States that have submitted reports to the Department of Disarmament Affairs in 2005: Sweden', <http://disarmament.un.org/cab/nationalreports/2005/Swedish%20National%20report%20PoA%202005.pdf> and the website of the Swedish Inspectorate of Strategic Products, <http://www.isp.se/sa/node.asp?node=466>

⁷² *Political Principles Governing the Export of War Weapons and Other Military Equipment*, Adopted January 19, 2000 found in German National Report on the Implementation of the United Nations Programme, Ibid.

Congress and senior officials of the US Government. Depending on the severity of the violation, states can have imposed on them policies of denial or can be formally sanctioned, although this is relatively rare. At very least, such actions would result in very high scrutiny of any licence application in the future and the imposition of licence provisos, i.e. additional restrictions associated with the export. If a private entity is found to have violated re-transfer obligations, they can be debarred (legally barred from any US defence trade) or put under a policy of denial (no exports).

Priorities for developing effective end-use controls

At multilateral and regional level a substantial level of commonality is emerging around EUC requirements among those regions and countries that have taken this issue seriously. However details relating to security provisions, authentication procedures, re-export restrictions and follow-up are either voluntary or left entirely to national discretion.

Among a large group of states there is significant experience in certifying and monitoring the end-use of transferred SALW. National systems have evolved over time with emphasis placed on different aspects depending on governmental priorities, capacities and experience. In terms of both pre-licensing risk assessment and follow-up provisions the US Blue Lantern system is one of the most rigorous. Reserving the right to conduct follow up on-site inspections to verify end-use is likely to serve as an important deterrent to the unauthorised diversion or re-export of SALW.

However, it is important to recognise that, whilst seeking to develop and promote best practice in end-use control, some states have little experience in such matters and few available resources that can be channelled to these ends. Nevertheless if states are serious about preventing and combating the diversion of SALW it is clear that certain minimum standards need to be adopted by all states. These should include:

- the systematic employment of EUCs carrying details as specified in the list outlined above;
- the inclusion of clauses in EUCs prohibiting unauthorised diversion or re-export;
- the receipt prior to shipment of consent on the part of the importing and transit states to the transfer of SALW into/through their territory;
- the routine authentication of the details provided on an EUC using open source information;
- the checking of information provided by the end-user by foreign embassy staff or through direct contact between government departments in the exporting and recipient state;
- the requirement that verification of delivery is provided along with confirmation of transit routes;
- reserving the right to carry out on-site-inspections should concerns arise post-export; and
- clear and proportionate sanctions in the event that breaches of end-user undertakings are discovered.

6. Reducing risks of diversion by brokers

The role of brokers in SALW diversion

Arms brokers are key actors in the trade in SALW and can play a role in facilitating both the legal and illicit trades. They operate in a number of ways, including by sourcing arms from suppliers on behalf of recipients and arranging the transfer, or by buying arms and selling them onwards.⁷³ In carrying out their activities, arms brokers are known to have played a key role in providing SALW to proscribed and irresponsible end-users who would have difficulty in securing supplies direct from a government-authorised entity. Indeed, the significant contribution that unregulated arms brokering has made to the illicit trade in SALW has been well documented over the past decade in the reports of various UN Panels and other sources. As increasing evidence has emerged of the role that brokers have played in supplying arms into conflict and human rights crisis zones, so concern about the activities of arms brokers and shipping agents has grown.

As well as participating in the direct supply of SALW to proscribed and irresponsible end-users, instances whereby arms brokers have been involved in the diversion of SALW from a purported legitimate end-user are not uncommon.⁷⁴ In such cases the diversion of SALW may or may not take place with the knowledge and complicity of the declared end-user. On the one hand the declared end-user may provide false end-user certification and even a base from which the cargo can be transhipped. These circumstances obtained in the infamous case from early 1999 involving the transhipment through Burkina Faso of large quantities of SALW and other materiel to the embargoed Taylor regime in Liberia.⁷⁵ On the other hand, the declared end-user may have no knowledge of the fact that they are being used as a cover for the illicit procurement of SALW. This was the case when Serbian-based arms brokerage company, Temex, participated in the arrangement of six shipments of arms, including SALW, to Liberia between June and September 2002 in contravention of the UN arms embargo. The shipments were licensed by the Yugoslav authorities based on the provision of a Nigerian end-use certificate of which the Nigerian authorities had no knowledge and subsequently declared to be false.⁷⁶

In addition, the fact that unscrupulous arms brokers are frequently involved in arranging the transportation of arms means that they can avail themselves of the significant opportunities that exist to effect the diversion of SALW whilst in-transit. In this regard, the UN Panel of Experts established pursuant to UNSC Resolution 1343 (2001) concerning Liberia described a number of techniques – including the use of fraudulent [aircraft] registration numbers and the filing of false flight plans – that arms traffickers use in order to disguise the ultimate destination of their cargo.⁷⁷

The role of brokers in the diversion of SALW is facilitated by poor export, import and transit controls, the breakdown of end-use and re-export undertakings, and corruption and poor enforcement practices; many of these issues are addressed elsewhere in this report. However the main reason for the continuing involvement of brokers in the illicit SALW trade lies in the continuing absence or inadequacy of arms brokering and related controls in many

⁷³ In their Report, the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons ventured a definition of the term broker as “a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise.” The Report goes on to assert that the broker may or may not take ownership of the SALW involved. See paragraph 8-10 of A/62/163* and Corr.1, 30 August 2007.

⁷⁴ See Small Arms Survey 2008: Risk and Resilience, pp 120-122.

http://www.smallarmssurvey.org/files/sas/publications/year_b_pdf/2008/CH4%20Transfer%20diversion.pdf

⁷⁵ See Report of the Panel of Experts on Sierra Leone Diamonds and Arms appointed pursuant to UNSC Resolution 1306 (2000), UN Doc S/2000/1195 paras 203 – 207 <http://www.un.org/sc/committees/1132/pdf/sclet11952e.pdf>

⁷⁶ See Report of the UN Panel of Experts established pursuant to UNSC Resolution 1343 (2001) concerning Liberia, UN Doc S/2002/1115 paras 64-74

<http://daccessdds.un.org/doc/UNDOC/GEN/N02/626/79/IMG/N0262679.pdf?OpenElement>

⁷⁷ Ibid para 62.

states. Seven years on from the establishment of the UN PoA the vast majority of states have yet to institute effective legal and regulatory measures in this crucial area.

International norms and SALW brokering

UN PoA commitments relating to arms brokering appear somewhat contradictory in nature, specifying that states should:

“...develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering. This legislation or procedures should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the state's jurisdiction and control” (Section II, para 14);

“...develop common understandings of the basic issues and the scope of the problems related to illicit brokering in small arms and light weapons with a view to preventing, combating and eradicating the activities of those engaged in such brokering” (Section II, para 39); and

“...consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons (Section IV, para 1. (d))”.

The varying focus of these commitments suggest that, in 2001 when the UN PoA was agreed, states were at varying levels of understanding regarding the nature of the SALW brokering problem and what steps were required in response. However, in December 2005 the UN General Assembly passed Resolution 60/81⁷⁸ which called for the establishment of a Group of Governmental Experts (GGE) to consider further steps to enhance international co-operation in preventing, combating and eradicating illicit brokering in small arms and light weapons. The SALW brokering GGE met three times during the course of 2007 and produced a Report which was submitted to the UN General Assembly at its sixty-second session. In addition to providing an internationally-recognised description of the problem of arms brokering and closely related activities, the Report provides an overview of the range of existing measures employed to address the arms brokering nexus, from licensing transactions, registration of brokers, record-keeping requirements, legal penalties and international co-operation. While the GGE's recommendations urge states to develop adequate laws, recommendations and administrative procedures the exact form and scope of such provisions is left to national discretion. In fact, the bulk of the GGE's recommendations centre upon the need for increased international co-operation amongst states – on a voluntary basis – to tackle arms brokering and on the need for capacity-building amongst states that lack the resources and expertise to effectively address the problem.

Since the UN PoA was agreed in 2001, however, a variety of multilateral and regional agreements have addressed the issue of arms (including SALW) brokering in some detail, and many have advocated the adoption of specific systems of control including registration and licensing of individual transactions.

Of the other multilateral agreements that have addressed the issue of arms brokering, the legally-binding EU Common Position on Arms Brokering⁷⁹ has possibly had the greatest impact as it requires that all EU member states develop controls based on the licensing of individual brokering transactions. As of July 2008, 19 out of 27 member states had in place the controls necessary for compliance with the Common Position. The scope of this agreement has been echoed in provisions established by the OSCE⁸⁰ and Wassenaar Arrangement⁸¹ all of which encourage regulation of 'core' brokering activities i.e. mediating in (or negotiating) arms deals and the buying and selling of arms.

⁷⁸ See <http://daccessdds.un.org/doc/UNDOC/GEN/N05/492/46/PDF/N0549246.pdf?OpenElement>

⁷⁹ EU Council Common Position on the control of arms brokering 2003, *Ibid.*

⁸⁰ OSCE Handbook of Best Practices on Small Arms and Light Weapons, National Control of Brokering Activities, *Ibid.*

⁸¹ Elements for Effective Legislation on Arms Brokering in Wassenaar Arrangement Basic Documents available at <http://www.wassenaar.org/publicdocuments/index%20BD.html>

The SADC and Nairobi SALW Protocols also include commitments relating to the facilitation of SALW transfers by those who buy and sell weapons or act as intermediaries. While the specific controls pertaining to the SADC Protocol are relatively vague, those of the Nairobi Protocol include clear requirements for registration of SALW brokers and licensing of individual transactions. Despite the legally-binding nature of these agreements, however, implementation of commitments is proceeding relatively slowly.

The OAS have also agreed comprehensive Draft Model Regulations for the Control of Brokers of Firearms, their Parts, Components and Ammunition which, although not legally binding, nonetheless provide a broad template for national controls on firearms brokering including licensing transactions and registration of arms brokers. Significantly, the OAS Regulations define brokering activities in comprehensive terms including “manufacturing, exporting, importing, financing, mediating, purchasing, selling, transferring, transporting, freight-forwarding, supplying and delivering firearms, their parts or components or ammunition or any other act performed by a person that lies outside the scope of his regular business activities and that directly facilitates the brokering activities.”⁸²

Thus the majority of existing regional and multilateral agreements have illustrated clearly the need for states to implement controls on SALW brokering based on a system of licensing individual transactions; most also include a recommendation that states consider establishing a national register of those engaging in such activities. Were all states parties to fully implement their respective commitments with regard to SALW brokering, including a full diversion risk assessment in their scrutiny of arms brokering transactions, possibilities for arms brokers to engage in the diversion of SALW would be considerably limited.

Priorities for national controls on brokers

Brokering activities

As of January 2009, approximately 41 states have controls on SALW brokers with the majority of these situated within the wider Europe. Most operate system of licensing individual transactions and focus on regulating the ‘core’ activities of facilitation/mediation in arms deals on the one hand, and buying and selling arms on the other. For example, the definition of brokering activities in Sweden includes sale, transfer, offer for sale, loan, gift or intermediation. In Bulgaria brokering activities are designated as “negotiating or realising a commercial transaction with arms or with a dual-use item as well as the sale or transfer of arms or a dual-use item which is their property from the territory of one third country to another third country”.⁸³ In a similar vein, German controls impose a licence requirement on: mediating a contract for the acquisition or transfer of war weapons and other military equipment located outside German territory or showing that an opportunity exists for concluding such a contract; or concluding a contract on the transfer of war weapons and other military equipment located outside German territory. UK controls on trade (trafficking and brokering) in military, paramilitary and certain other explosive related goods apply in respect of agreeing to supply or deliver, or doing any act calculated to promote the supply or delivery of such items from one third country to another third country where such actions are carried out for payment.⁸⁴

Some governments have taken a more expansive approach to the control of arms brokering. Polish law has an elaborate definition of brokering services which includes “a) negotiating, business consulting and assistance in conclusion of contracts, as well as any form of participation in activities related to export, import, transit or conclusion of any lease, donation, loan or bailment agreement as well [as] any contributions in kind which may, in particular,

⁸² CICAD/OAS Model Regulations, *Ibid*, Art. 1

⁸³ National Report of Bulgaria on Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2008 available via <http://disarmament.un.org/cab/bms3/1National%20Reports%202008.html>

⁸⁴ Note that if the destination is an embargoed destination, or for certain restricted items, this commercial condition (i.e. “must be carried out for payment”) does not apply.

refer to the transfer of items of strategic importance from one country to another; b) purchase, sale or organisation of any transfer, and in particular forwarding of items of strategic importance from one country to another.” Conversely, other governments have taken a more restrictive approach to the control of arms brokering. For example, the Russian Government permits foreign trade in SALW only by the state intermediary – “Rosoboroneksport” – a specialised federal state enterprise established by decision of the President of the Russian Federation. To this end, under article 6 of the Federal Law on military and technical co-operation between the Russian Federation and foreign states, all other Russian natural persons and organisations are prohibited from brokering SALW.

Whilst a broad definition of brokering activities may pose certain challenges – particularly with regard to enforcement – it is nonetheless likely that where SALW brokering controls are conceived in broad terms greater possibilities will exist for preventing diversion of SALW than in circumstances where SALW brokering is narrowly defined.

Brokering-related activities

In addition to controlling core SALW brokering activities, some governments have also sought to regulate a range of associated activities that play a crucial role in the fulfilment of most SALW brokering deals. These activities include providing transportation, logistics, freight forwarding, insurance and financial services that are associated with the sale and delivery of SALW and other conventional arms. Whilst brokers can, and do, undertake such brokering related activities alongside the core activities of mediating in arms deals and buying and selling arms these activities can also be undertaken by specialist individuals and companies that would not be affected by controls on core arms brokering activities. Accordingly comprehensive efforts to prevent diversion of SALW should necessarily address the role of such actors in the brokerage of SALW.

In line with their comprehensive approach to the control of arms brokering the US International Traffic in Arms Regulations (ITAR) specifically includes “the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service” in the definition of brokering activities that are subject to prior licensed approval of the Office of Defence Trade Controls.⁸⁵ Other governments have sought to address particular aspects of brokering related activities. The German Government imposes a licence requirement on the transportation of arms between third countries on vessels sailing under a German flag or in aircraft registered in Germany.⁸⁶ In the Netherlands laws are directed at financial involvement (though excluding generic commercial services such as banking) and trade in military goods and arms that leads directly to a material benefit. Under the *Financial Services Strategic Goods Decree* a licence is required for transactions brokered from foreign territory by a person or entity connected to the state involving certain categories of military equipment and embargoed destinations.⁸⁷ In the UK a range of ancillary services (including transportation, financing and insurance and general advertising) are controlled in circumstances where a UK person aims to facilitate the supply of military equipment to embargoed destinations. Similar controls also apply in relation to trading in a specific range of “restricted” goods (anti-personnel mines, cluster munitions and torture equipment). Transportation, though not financing and insurance, is also controlled for some additional items, such as SALW and MANPADs, their ammunition and components, and long range missiles, but controls on brokering-related activities do not, at the time of writing, apply to the involvement of UK nationals and residents in relation to transfers of most items on the Military List.

By extending national controls on SALW brokering to include brokering-related activities states are further reducing possibilities for the diversion of SALW. For example, by licensing the transportation of SALW by national carriers, governments put themselves in a position whereby they can assess the bona fides of such transfers including whether or not there is a significant risk of diversion. Where governments regulate the financial aspects of SALW

⁸⁵ United States of America. *International Traffic in Arms Regulations (ITAR)* (undated), sec. 129.2(b).

⁸⁶ Germany, *Kriegswaffenkontrollgesetz*, §4.1 in *Controlling Arms Brokering: Next Steps for EU Member States*, Holger Anders, GRIP, January 2004.

⁸⁷ Saferworld correspondence with licensing officials from the Netherlands government, July 08.

transactions financiers can be prevented from supporting deals that are suspect and where the risk of diversion is deemed high.

In developing controls on brokering-related activities a first step is for states to apply such a system of regulation and oversight to companies and individuals based within their national jurisdiction. However, it is also possible to extend these controls to the activities of nationals operating overseas (as in the case of US legislation) and to ships and aircraft operating abroad under the national flag (as is the case with regard to German legislation); such efforts would further reduce scope for SALW diversion.

Registration

A significant number of states that operate controls on the activities of SALW brokering agents also have a requirement that such agents register in advance with the national authorities.⁸⁸

In the US, as part of the comprehensive legislation on arms brokering the requirements for and effects of registration are far-reaching. Any person or entity wishing to engage in the brokering of defence articles or services must register with the Department of State and pay a registration fee. The person or entity is required to disclose information regarding their eligibility for engaging in such brokering activities, demonstrating that they are not indicted or convicted under relevant statutes. Information on corporate lineage (where relevant) and the nature of the brokering activities to be undertaken is also required. Registration, which is valid for a maximum of two years, is a prerequisite for any application for a licence to undertake specific brokering activities. The Department of State reviews each registration application and requires that any material changes to the initial registration are reported. A broker indicted or convicted of violating the Arms Export Control Act becomes ineligible to engage with or benefit from any regulated activity and a debarment is published in the Federal Register.

In Spain, all brokers are required to register prior to engaging in arms brokering activities. This registration requirement covers all those involved in the brokering of items on the EU Military List irrespective of whether or not the brokered goods enter Spain. The Spanish Government also makes available information on registered brokers and any registration request denials or removals to other EU member states. Brokers can be removed from the register if they fail to comply with the conditions of the registration or if they provide false information.

Although the UK Government does not operate a formal register of arms brokers, a database of arms brokering agents is compiled by means of the information that is contained on arms brokering licence applications and is kept by the Export Control Organisation. Its primary purpose is to allow the authorities to verify the identity of applicants and is particularly useful in relation to those brokering agents that apply for a licence on-line and who may not be based in the UK. Information contained in the database is not made publicly available, nor is it used as a means of disqualifying arms brokering agents from applying for licences to broker arms transfers. However it can be shared with partner governments (e.g. in the EU) in any exchanges that take place concerning arms brokers.

There are a number of ways in which registration of SALW brokers can play a potentially important role in efforts to prevent diversion of SALW. For example, if a SALW broker has been implicated in the diversion of SALW, then, depending on the legal basis on which the register is constructed, the registration of the arms broker – and their eligibility to apply for brokering licences – could be revoked. The maintenance of a register of SALW brokers can also facilitate targeted dissemination of information on relevant changes to legislation, control lists, arms embargoes etc. to registered brokers thereby helping to reduce the risk of inadvertent breaches of national regulations. Finally, where national arms brokering registers

⁸⁸ A list of states that operate a register of SALW brokers can be found in *Reviewing Action on Small Arms 2006: Assessing the first five years of the UN Programme of Action*, Biting the Bullet, 2006, Ibid.

exist, possibilities also exist for states to engage in information exchange and co-operation in tackling illicit arms brokering.

Record-keeping

The capacity for governments to prevent diversion of SALW by arms brokers is further enhanced in cases where all registered arms brokers are required to keep detailed records of their transactions. For example, in Germany, arms brokers are obliged to keep licences and other relevant documents for at least five years, thereby allowing for the possibility of on-site inspections of the supervising authorities;⁸⁹ in Lithuania, SALW brokers are required to keep records of their transactions for 10 years with data being stored in a digital database within the Police Department.⁹⁰ As well as facilitating the monitoring and enforcement of controls by national authorities, detailed records can be used by governments to form the basis of an annual public report including information on all brokering licences granted.

Diversion risk assessment

In view of the significant potential for SALW brokers to be involved in the diversion of SALW (outlined above) it is essential that government licensing authorities conduct a thorough assessment of diversion risks associated with all proposed SALW brokering transactions. Whilst information regarding the extent to which governments systematically undertake such risk assessments is not widely available, it appears that for some states at least such assessments are an integral part of their SALW transfer controls.

Germany issues licences for brokering activities according to the same provisions and administrative proceedings as licences for exports. As such, decisions on brokering activities are mainly based on the Political Principles and on the relevant European and international commitments entered into by the Federal Government, particularly the EU Code/Common Position. The licence application must include all relevant information so that the authorities can check the licensing conditions. In particular information is required concerning: personal data of the applicant, the seller and purchaser; the description of goods with control list number; the purchasing country and country of final destination; and information on the end-use of the goods.

Licences are granted or denied in principle on the basis of a thorough examination of each case. In general, the Federal Government must be assured that the items will only be used for defence purposes and will remain in the country of destination. A licence will not be granted if the applicant or any other person involved in the proposed transaction is considered to be unreliable.⁹¹

In the Netherlands monitoring of financial involvement in arms brokering consists of a review of those records of brokering licences and denials that are kept by national authorities. In addition, licensed brokers are obliged to keep records of their activities including the quantity, type and origin of the arms and the destination country so that they can be scrutinised by the authorities. The verification of adherence to end-use undertakings by recipients, *inter alia* by requiring proof of delivery of arms, is carried out. Such delivery verification inspections are made possible because Dutch national authorities can require brokers to make a contractual provision with the end-user or importer, allowing for physical inspection of the delivery by national authorities or by officials authorised by them. It can also require the payment of a deposit by the broker, to be paid back when proof of the delivery to the intended recipient is received by the national authorities.⁹²

According to the UK Government an essential part of its strategy for the responsible management of strategic exports is to seek to minimise the risk of equipment being diverted

⁸⁹ Saferworld correspondence with German export licensing officials June 2008.

⁹⁰ National Report of Lithuania on Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, March 2008 available via <http://disarmament.un.org/cab/bms3/1National%20Reports%202008.html>

⁹¹ Saferworld correspondence with German export licensing officials June 2008.

⁹² Saferworld correspondence with the Netherlands' export licensing officials June 2008.

from the stated end-use or end-user. The UK Government believes the only sure way of preventing diversion or misuse is through risk assessment at the licensing stage. Checks on end-users (and others involved in the transfer) by using all the information available and that provided in support of a licence application (including end-user undertakings) is critical to the operation of this system. Where concerns exist about an export to a country of concern, then the relevant overseas post will be consulted. If a licence involves a non-government organisation, again the relevant overseas post will be asked to carry out checks (for example driving to the address to see if it exists). Checks are also made by Government advisers with any enquiries relayed to the licensing authority to follow-up with the licence applicant for satisfactory explanations. Applications are refused where doubts remain.⁹³

Extraterritorial controls on SALW brokering

In the same way that adopting a comprehensive definition of SALW brokering and including brokering-related activities in the scope of national controls can increase possibilities for states to prevent the diversion of SALW transfers, so does the inclusion of an extra-territorial dimension within SALW brokering controls (where controls apply to the activities of nationals and/or residents operating abroad). Of those states that currently operate controls on arms brokering several including Belgium, Bosnia Herzegovina, the Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Malta, Moldova, Norway, South Africa, Sweden, the UK and the US report to have at least some elements of extra-territoriality in their SALW brokering controls. However the precise nature and scope of extra-territorial controls varies from state to state. For example, in the UK extra-territorial controls on arms brokering activities are currently limited to transactions facilitated by UK nationals involving those categories of Military List goods regarded as most sensitive (e.g. torture equipment, anti-personnel mines, SALW) and to transfers which would contravene national, EU, OSCE or UN arms embargoes. Accordingly, providing that UK nationals avoid transactions where the end user is under embargo, or which involve sensitive goods, and providing that they carry out their brokering activities outside the UK, they remain free from the reach of UK arms brokering legislation.

The broadest application of extra-territorial controls is found in the US, where the brokering of defence articles or services by any US national requires a licence even when the activities are carried out abroad and regardless of whether or not the weapons transit US territory. Furthermore, the brokering licence requirement also extends to foreign agents established and working from abroad in circumstances where they broker US-origin weapons or work with US nationals.

It is sometimes argued that if an international instrument could be agreed on the control of international arms brokering then there would be no requirement for states to incorporate an extra-territorial dimension within their national arms brokering controls. However, even with an international instrument in place, it is likely that unscrupulous arms brokering agents would seek to carry out their activities from those states with the weakest national controls or poorest record of enforcement. Accordingly, the adoption of extra-territorial controls by as many states as possible will be an essential element of international efforts to prevent the diversion of SALW into regions of conflict and human rights crisis zones.

Priorities for international co-operation and assistance

As with all efforts to prevent diversion of SALW, national controls on SALW brokering are most effective when reinforced by international co-operation and information sharing and the provision of assistance to states with a lack of capacity or expertise in relevant areas. Indeed in the field of small arms control there are numerous examples of sub-regional, regional, multilateral and global agreements incorporating provisions for information exchange so as to enhance the overall effectiveness of their operation. For example, at international level the UN PoA encourages states, on a voluntary basis, to provide reports to the Department of Disarmament Affairs on their national implementation of the agreement (Section II, Para 33). In addition, provisions for information exchange exist within the UN CASA (Co-ordinating

⁹³ Saferworld correspondence with UK export licensing officials September 2008.

Action on Small Arms) mechanism. At multilateral level the Wassenaar Arrangement incorporates well-developed information exchange mechanisms, including arms and dual-use transfer and denial notification provisions.

At regional and sub-regional levels information exchange provisions are specified in relation to the implementation of a wide variety of agreements. For example, the SADC and Nairobi Protocols on SALW incorporate provisions for information exchange with regard to the implementation of the respective agreements and, to this end, regular Ministerial Meetings are held. In the OSCE, the Document on Small Arms has information exchange requirements relating to national marking systems, manufacture control procedures, export policy procedures and documentation, control over brokering and destruction techniques and procedures. The EU Code/Common Position incorporates a well-established export licence denial notification and consultation mechanism whilst providing for information exchange on end-users of concern. In the Americas, UN-LiREC and the OAS Commission for Inter-American Drug Abuse Control have developed the Small Arms and Light Weapons Administration (SALSA) system to serve as a public and private portal for exchanging information on national legislation and policy actions.

Specifically with regard to the control of arms brokering the EU Common Position on Arms Brokering requires member states to establish “a system for exchange of information on brokering activities among themselves as well as with third states” in order to “take particular account of the case where several member states are involved in the control of the same brokering transaction(s)”⁹⁴; information exchange on the activities of arms brokers is understood to take place within the regular meetings of the EU Council of Ministers Working Group on Arms Exports (COARM). The OAS Model Regulations recommend that states should disclose the name of the relevant official responsible for carrying out licensing or registration so as to facilitate co-operation and information exchange amongst countries on the control of arms brokers. The Regulations also stipulate that for those countries that adopt a system of registration of arms brokering agents: “National Authorities shall cooperate with one another to exchange information, contained in their respective registry of brokers, including information relative to ineligibility, debarments and denied applicants”.⁹⁵

An efficient mechanism for information exchange between states is vital to ensuring the effectiveness of national controls on SALW brokers and thus for preventing diversion of such weapons. However, despite the existence of provisions for information exchange in a number of regional and multilateral fora, the extent to which these mechanisms are being fully utilised in order to prevent illicit arms brokering is questionable. Those information exchange provisions that exist would be significantly enhanced by the adoption by states of either a formal requirement for brokering registration or the development of a national database on the activities of SALW brokers. Such provisions allow states to acquire and store information on the activities – legal and otherwise – of arms brokers and subsequently to be able to exchange relevant information with other states. Not only do such information exchanges serve as an aid to the enforcement of controls at national level they also help to prevent “licence shopping” by arms brokering agents that have been prohibited from operating in one or more states.

Priorities for preventing SALW diversion through illicit brokering activities

It is clear that, in participating in the diversion of SALW, arms brokers take advantage of inadequacies, loopholes and inconsistencies in national arms transfer control regulations. The ineffectiveness of SALW re-export, transit/transportation and end-use controls is documented elsewhere in this report and it is within this context that arms brokers engage in SALW diversion and so fuel the illicit trade. However the complete absence of national controls on SALW brokering in the vast majority of states also continues to offer major opportunities for

⁹⁴ EC Common Position on the control of arms brokering, 2003, *Ibid.* In accordance with Article 5 of the Common Position, Member States have put in place separate arrangements (specific databases) for the exchange of information regarding national legislation and for the exchange of information regarding registered brokers, if applicable. [Saferworld correspondence with UK export licensing officials, September 2008.]

⁹⁵ Model Regulations for the Control of Brokers of Firearms, Their Parts and Components and Ammunition, Art. 3, Par 12 http://www.cicad.oas.org/Desarrollo_Juridico/ENG/Recursos/322MRFirearmsBrokersEng.pdf

unscrupulous actors to engage in the illicit trafficking and diversion of SALW. This is particularly disappointing given the now significant quantity of work that has been undertaken by international organisations – including the recent GGE on SALW brokering – by some governments and by many non-government organisations to shed light upon the problem of SALW brokering and to develop potential solutions to the problem. Until the absence/inadequacy of national arms brokering controls in many states is addressed along with the lack of international information exchange and co-operation in order to support enforcement efforts, opportunities for SALW brokers to participate in the diversion of SALW will persist.

7. Reducing risks of diversion during transit

Diversions risks and the transit of SALW

Transit controls can represent a weak link in the chain of transfer controls and their inadequacy can be a major contributory factor in the illicit SALW trade. As numerous UN and NGO reports have documented, SALW in-transit are susceptible to diversion from the authorised end-user to unauthorised or illicit entities.⁹⁶ Many such cases are difficult to detect and prevent. For example, reports of in-transit air-drops of SALW to Colombian rebel groups and the use, by would-be traffickers, of itinerant sea-going vessels sailing under flags of convenience and with no fixed schedule, illustrate the difficulty that exists in foreclosing opportunities for diversion.⁹⁷ Despite this, it is nonetheless obvious that unless states do adopt and enforce rigorous controls on the transit of SALW and other conventional arms, opportunities to prevent diversion will be limited and unscrupulous arms traffickers will take advantage of those loopholes that exist.

For most states, the primary focus of diversion controls is to prevent diversion or “leakage” from an arms shipment as it transits national territory. In this respect diversion controls are a means of preventing SALW from entering the illicit market and reaching illegitimate end-users. However diversion controls can fulfil other important functions. For example, the scrutiny of all aspects of an arms shipment (its point of origin, its content, its transportation route and its intended end-user) as it enters national territory provides governments with an opportunity to interdict consignments where there are grounds for believing that they will be diverted from their intended recipient or where they are adjudged to be destined for proscribed or irresponsible end-users (including those subject to a UN or other arms embargo).⁹⁸

Evidence of weak transit controls can be found in reports of the various UN Panels of Experts established to investigate violations of the sanctions against UNITA, Sierra Leone and Somalia.⁹⁹ For example, the UN Panel of Experts on Somalia specifically reported in October 2003 on the weaknesses that existed in the transit control systems at airports in a number of states, including Djibouti and Yemen, both of which were implicated in the routing of weapons into Somalia.¹⁰⁰

Despite the importance of transit controls this aspect of SALW transfer controls has yet to become a major subject for international debate and so opportunities for the diversion of in-transit shipments of SALW remain.

Emerging norms relating to control of transit

The importance of controlling transit of SALW has been addressed in a variety of multilateral contexts. The UN PoA has, for example, established a clear, although limited, international norm relating to transit control of SALW. Section II, para 2 calls on states to “put in place adequate laws, regulations and administrative procedures to exercise effective control over the...transit of [SALW]”, repeated in paragraph 12; whilst Section II, para 11 requires states “to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit”. The UN PoA does not elaborate the implications of these commitments, for example clarifying when a transit shipment should

⁹⁶ Several examples of diversion of SALW in transit are documented in the Small Arms Survey 2008: Risk and Resilience pp 120-122.

http://www.smallarmssurvey.org/files/sas/publications/year_b_pdf/2008/CH4%20Transfer%20diversion.pdf

⁹⁷ Ibid p116.

⁹⁸ The example, in May 2008, of efforts of a Chinese ship to unload a cargo of weapons in a South African sea port so that they could transit to Zimbabwe is a case in point. The South African government were provided with an important opportunity to prevent transit of weapons across their territory and into Zimbabwe where widespread political violence was taking hold. Ultimately, however, it was the refusal of South African dockworkers to unload the cargo that ensured the weapons did not transit South Africa. Reports followed that other Southern African countries subsequently refused the weapons transit to Zimbabwe and that the ship had returned with its cargo to China. See *Zimbabwe arms shipment returns to China* guardian.co.uk Thursday April 24, 2008.

⁹⁹ See <http://www.un.org/sc/committees/>

¹⁰⁰ Report of the Panel of Experts on Somalia (2003), 4 November 2003, UN Doc S/2003/1035, para 115 <http://daccessdds.un.org/doc/UNDOC/GEN/N03/580/59/IMG/N0358059.pdf?OpenElement>

be subject to controls and what minimum standards should be used for assessing applications for transit or monitoring shipments while in transit. This could be one explanation for the significant variations that exist in the level and stringency of national SALW transit controls.

At multilateral level, different aspects of SALW transit control have been addressed by the major SALW control regimes.

The OAS Convention¹⁰¹ and the UN Firearms Protocol¹⁰² both address the issue of SALW in transit from the perspective of the physical security of such shipments. They both require that states parties take appropriate steps to ensure the security of firearms in-transit, specifically in order to prevent their diversion. To this end, the UN Firearms Protocol also requires states to “increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder co-operation”.¹⁰³ On the regulatory side, the OAS Convention¹⁰⁴, the UN Firearms Protocol¹⁰⁵ and the Nairobi Protocol¹⁰⁶ all require states to establish or maintain adequate systems for the control of firearms in transit. Importantly, moreover, these agreements also require states parties, as exporters of firearms, to secure appropriate authorisation from prospective transit states prior to approving the release of firearms for export. Beyond this, the Nairobi¹⁰⁷ and SADC¹⁰⁸ Protocols also requires that states adopt measures that allow them to seize or confiscate SALW that transit their territory without the appropriate authorisations.

The OSCE Document on Small Arms focuses principally on procedures and criteria governing the export of SALW, however, there are limited provisions relating to transit of SALW, namely: that participating states should “decide whether to apply appropriate national procedures to small arms in transit” through their territory “in order to maintain effective control over that transit”.¹⁰⁹ It also requires that participating states, as exporters of SALW, should seek the appropriate authorisation from any proposed transit states.¹¹⁰ The EU Common Position establishes that where states require transit licences, applications will be assessed against the same eight criteria as for arms exports, and the User’s Guide to the EU Code/Common Position¹¹¹ specifies that denial notifications should be circulated amongst member states with respect to *inter alia* transit licences. The Common Position, however, leaves it to national discretion to decide when a transit licence is required.

Another multilateral initiative which could lead to more co-ordinated action to regulate SALW in transit is that of the December 2007 Wassenaar Arrangement “Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport”.¹¹² It is increasingly recognised that the limited capacity for air traffic control in some regions, such as sub-Saharan Africa, can have serious implications for the regulation and monitoring of air traffic and for preventing the illicit trafficking of SALW and other arms by air. In order to begin to address these problems, the Wassenaar Arrangement initiative requires the adoption of additional checks by governments licensing the export of SALW. These include checks on the air carrier and freight forwarder involved in SALW transportation, on the aircraft registration and flag, and on the flight route to be used and planned stopovers of SALW that are transported by air. Although in its infancy, such an initiative should provide the basis for useful additional checks on the bona fide nature of SALW transfers and, particularly when coupled with controls on SALW brokering and related activities, such measures should help to safeguard against SALW diversion in-transit.

¹⁰¹ OAS Firearms Convention, *Ibid*, Art. VIII.

¹⁰² UN Firearms Protocol, *Ibid*, Art. 11.

¹⁰³ *Ibid*.

¹⁰⁴ OAS Firearms Convention, *Ibid* Art. IX.

¹⁰⁵ UN Firearms Protocol, *Ibid*, Art. 10.

¹⁰⁶ Nairobi Protocol, *Ibid*, Art. 10.

¹⁰⁷ Nairobi Protocol, *Ibid*, Art. 3.

¹⁰⁸ SADC Protocol, *Ibid*, Art. 5.

¹⁰⁹ OSCE Document on Small Arms, Section III: Combating Illicit Trafficking in all its Aspects: Common Export Criteria and Export Controls, *Ibid*.

¹¹⁰ *Ibid*

¹¹¹ EU Code Users Guide, *Ibid*.

¹¹² Wassenaar Arrangement ‘Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport, 2007’ available at <http://www.wassenaar.org/>. In November 2008 the OSCE also agreed Decision No. 11/08 on Introducing Best Practices to Prevent Destabilising Transfers of SALW through Air Transport.

One aspect that is not addressed by any of the relevant regional and multilateral SALW control agreements, and which therefore remains a key area of variation, relates to defining those circumstances when a transit licence is deemed necessary. For example, under the auspices of the Spanish Presidency, during the first six months of 2002, EU member states considered the issue of transit. However, as referred to above, six years later member states are still unable to agree on the precise set of circumstances under which a transit licence should be required. Issues of contention included whether shipments either originating in, or which have already passed through another EU member state should be subject to transit licensing procedures. This long-term failure of the EU to agree on common criteria for establishing when a transit licence is necessary is illustrative of how difficult an issue this is for states and also of the need for much greater international attention to be paid to this aspect.

While the term 'transit' is most commonly used for the movement of goods through a states' jurisdiction occasionally the term 'transshipment' is used to mean the same thing. However there are indications of an emerging consensus around drawing a distinction between the terms transit and transshipment. The OAS-CICAD Model Regulations' and the EU User's Guide both posit that transit represents movements in which the goods merely pass through the territory of a state while transshipment refers to transit involving the physical operation of unloading goods from the importing means of transport followed by a reloading onto another means of transport for exporting purposes.¹¹³

National controls on transit of SALW

As of January 2009, approximately 90 states report to have some form of SALW transit controls in place. However, some governments have different laws, regulations and procedures relating to transit and to transshipment, while others fail to make a distinction between the two operations or appear to fudge the issue. For example the Strategic Trade Controls Branch of the Trade and Industry Department of Hong Kong treats transshipments of controlled goods as import and export shipments requiring separate licences while transit shipments of controlled goods require only a single transit licence. On the other hand, in Armenia, Denmark and Lithuania SALW transit is dealt with as an import-export issue. As a rule, transits of SALW through Denmark require prior permission to first import and then export the arms in question. Applications in this regard are considered by the Ministry of Justice who issues the permission in the form of a joint (transit) licence.¹¹⁴

In Croatia, permission to transport arms across the state border is issued by the Ministry of the Interior, and a copy of the permission is sent to all police departments through whose jurisdiction the transport passes.¹¹⁵ In Argentina, the transit of weapons can only be carried out with the prior authorisation from the National Arms Registry (RENAR) which must be provided with the end-user certificate issued by the competent authority in the country of destination (certified by the Argentine consulate in that country) and the export permit issued by the competent authority in the country of origin (also authenticated by the Argentine consulate in that country).¹¹⁶

However, in a significant number of states there is no legislative or regulatory provision for the effective control of transit. For example, the Government of Botswana reported in 2008 that it has no legal powers to inspect goods transiting its territory; however it also noted that a

¹¹³ EU Code Users Guide, Ibid.

¹¹⁴ National Report of Denmark on the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2008, <http://disarmament.un.org/cab/bms3/Denmark.pdf>

¹¹⁵ National Report of Croatia on the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2008, available at <http://disarmament.un.org/cab/bms3/1National%20Reports%202008.html>

¹¹⁶ National Report of Argentina on the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2007 <http://disarmament.un.org/cab/nationalreports/2007/ArgentinaE.pdf>

comprehensive review of national SALW control legislation is currently underway.¹¹⁷ In Slovakia a transit licence is only required if the shipment will take longer than seven days to pass through the 48,845 sq km of Slovakian territory.¹¹⁸ In practice, as it should not take any form of transport seven days to cross Slovakian territory, Slovakian controls have virtually no potential to prevent diversion or to exercise responsible control over any arms passing through their jurisdiction. For their part the New Zealand Government reported in 2007 that controls on firearms and associated parts “do not apply to the harbours and other territorial waters of New Zealand” and that goods must be landed before they become subject to national export controls. A new Arms Amendment Bill being placed before the New Zealand Parliament is, however, seeking to remedy this situation.

As in the case of New Zealand, for many states transit regulations appear to be a work-in-progress. There are often variations in regulations relating to the specific character of the planned transit, which could be exploited by dubious shippers and brokers. For example, for the Netherlands, an export licence is required if military goods in transit remain in the country for a period of more than 45 days (when transit is by sea) or 20 days (for other modes of transport). If the military goods remain in-country for a shorter period a licence is not required although the export control authorities have the power to impose an *ad hoc* licence requirement. The Dutch government is currently in the process of seeking to eliminate the distinction between so-called ‘fast’ transit and ‘slow’ transit so that a licence requirement will apply to all transit shipments regardless how long the goods remain in country. Transit shipments under the effective export control of EU partners are exempt from Dutch transit licensing requirements. For their part, the Bosnian Government has reported that it is currently carrying out a review of the number of border crossings with a view to reducing those which allow for the transportation of military equipment and other hazardous materials. The new regulations that are envisaged will specify a limited number of border crossings for strategic goods; at least 72 hours prior notification of the intended transit will be required along with a report on the operations undertaken to be submitted to the appropriate Ministry within 15 days of their completion.¹¹⁹

Information required in transit licensing

The level of information that is required by states as a prerequisite for the issuing of a transit licence varies amongst states. For example the government of Croatia requires that an extensive list of information be provided with any request to transport arms across national territory. This includes: the name and address of the sender; the name and address of the recipient; the name and address of the arms manufacturer; the type, make, model, factory number, calibre, quantity of the arms and the type of packaging; the type and registration number of the vehicle used for transportation; the first and last names of the driver and the escort and their passport numbers; the date and approximate time of the beginning of the transport, its direction and destination; the name of the entry and exit border crossings, and the time at which the arms will be transported over the border crossings; the security measures provided during the transport; and the relevant import and export permits granted by the authorities of the exporting and importing state.

As a major transit and logistics hub the Hong Kong authorities adopt a targeted approach focusing on shipments of concern. The possible risk of diversion of goods in transit is assessed by drawing reference, for example, to the sensitivity of the products and licensing parties concerned, the destination and the shipping route.¹²⁰ Interestingly, Hong Kong has adopted a ‘no-undercutting’ principle with regard to licensing the transit and transshipment of strategic goods. This means that the Hong Kong authorities do not approve a transit or transshipment licence if it is known that the originating country/place would not permit the

¹¹⁷ National Report of Botswana on the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2008 <http://disarmament.un.org/cab/bms3/Botswana.pdf>

¹¹⁸ Para. 22c of Act No. 179 of the Slovak Republic, “On Trading with Military Equipment”, 15 May 1998.

¹¹⁹ National Report of Bosnia and Herzegovina on the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2007, available at <http://disarmament.un.org/cab/bms3/1National%20Reports%202008.html>

¹²⁰ Saferworld correspondence with Hong Kong trade officials, 17 August 2007.

export of the same goods to the destination in question. In order to ensure that this no-undercutting principle is served, the Hong Kong authorities seek to maintain good co-operation with the licensing and enforcement authorities of its trading partners and currently has bilateral arrangements with sixteen trading partners to exchange denials and licensing information on a regular basis. Trading partners provide Hong Kong with information on denial notifications issued by them and in return pass to them data on transit and transshipment of goods (from the respective partner) to other destinations through Hong Kong. This process helps to ensure that Hong Kong is not undercutting the export control arrangements of trading partners.

Transit pre-notification

When implemented consistently, transit pre-notification can provide an important means of assessing a range of risks associated with cargo shipments, including dangerous goods such as SALW. Whilst SALW transit pre-notification provisions have been agreed under the UN Firearms Protocol, the OAS Firearms Convention and the Nairobi Protocol, it is unclear whether these provisions are being implemented rigorously by states parties.

Although not specifically intended as a means of preventing diversion of controlled goods, the enhanced customs controls envisaged under a recent EU initiative could, nevertheless, serve to highlight cases where there is a risk of diversion of SALW – for example to organised criminal gangs within the EU. By way of a December 2006 amendment to the implementation provisions of the EU Community Customs Code, a mechanism now exists whereby prior notification is given of any goods transiting the European Community.¹²¹ Prior to the arrival of a vessel, an “Entry Summary Declaration” may be lodged with the member state serving as the entry point for the goods into the EU. The Declaration must provide a description of every item on the vessel¹²² as well as the declared transit route through the EU. For containerised maritime cargo, notification must be given 24 hours before loading at the port of departure; for long-haul flights the requirement is 4 hours prior to arrival; and for short haul flights notification is required at time of take-off. On receipt of the Declaration the customs authorities of the entry state must conduct a security and safety risk assessment in relation to the cargo. Where the cargo is cleared notification is provided to the member state where the goods will exit the EU. Where a risk is identified “prohibitive action”¹²³ should be taken by the customs authorities of the entry member state. The new Regulations are currently being incorporated into national legislation across the EU (in the UK, for example, they will come into force on 1 July 2009).

The security of SALW in transit

Ensuring the monitoring and security of SALW in transit is an important aspect of preventing the diversion of SALW in transit, and in particular in guarding against their leakage into the illicit market within a transit state. Measures to assure the physical security of SALW are especially important when consignments are transiting by road, rail or waterway. A number of states take steps to assure the physical security of SALW in transit. For example:

- Serbia requires that companies obtain a transit permit that is valid for two weeks and also have an armed escort that is either hired by the company or provided by the Ministry of the Interior. The Mol informs customs and border police that a permit has been granted then the customs officials at the exit point verify it has left the country.¹²⁴

¹²¹ Commission Regulation (EC) No 1875/2006 of 18 December 2006 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_360/l_36020061219en00640125.pdf

¹²² Such as description of goods, carrier, name of person responsible – see Annex 30A of Council Regulation 1875/2006 for full details of the information that must be provided in the Entry Summary Declaration.

¹²³ Commission Regulation (EC) No 1875/2006 of 18 December 2006, Article 184e, *Ibid*.

¹²⁴ From *Analysis of national legislation on arms exports and transfers in Western Balkans*, Saferworld/SEESAC, September 2006, p83. <http://www.saferworld.org.uk/images/pubdocs/Arms%2520export%2520analysis%2520FINAL%2520.pdf>

- In Romania, only Romanian companies are permitted to conduct the transit of controlled goods. Shipments must be accompanied by the Gendarmerie and can only enter the country and the entry point stated on the transit permit.¹²⁵
- For passage through Hungarian territory, only companies established in Hungary are entitled to apply for transit licences and arms transit shipments must be accompanied by an armed security escort.¹²⁶
- In Kenya, where SALW are intended for transit en route to a neighbouring state the weapons must be escorted whilst on Kenyan territory; the Kenyan government argues that this rules out any possibility of diversion of SALW into the country.¹²⁷

Priorities for the development of SALW transit controls

Identifying emerging best practice

While less than half of all states actually have legislation with regard to transit, those states that do operate such controls appear to do so according to widely differing standards. As a consequence, transparency must be key to promoting compliance with the wide variety of national approaches to the regulation of transit so that, at the very least, those SALW export, brokering and shipping agents that wish to adhere to national laws and regulations are in a position to understand what is required of them.

The existence of widely varying national approaches is not altogether surprising given the fact that the guidance that is provided by the various multilateral SALW control regimes is neither clear, nor consistent, nor comprehensive. In view of this situation, substantial international consultations are needed to exchange experiences and identify good practices or model regulations.

To date, those elements that could be considered as emerging best practice include the following:

- the adoption of laws, regulations and administrative procedures that allow for the scrutiny and control of all SALW entering national jurisdiction – including territorial waters, air space and sea and air ports;
- securing the consent (or non-objection) of transit and importing states prior to authorising any export of SALW;
- the notification by the authorities in a transit state to the next destination en route that a SALW consignment has left their jurisdiction;
- the exchange of information on transit and transshipment licensing with relevant trading partners;
- the issuing of transit licences to be dependent upon the provision of all relevant export and import documentation;
- the interdiction of SALW consignments in-transit where there are concerns regarding export and import licence documentation, end-use assurances, bills of lading, travel routes and other information (such as where disreputable actors are known to be involved in the transportation);
- scrutiny of any transit licence applications according to strict criteria such as those agreed by states parties to Nairobi Protocol in the Best Practice Guidelines; and
- measures to assure the monitoring and security of all SALW in-transit through national jurisdiction in order to guard against theft or diversion.

¹²⁵ From *Romania's arms transfer control system at EU accession: an analysis*, Saferworld, February 2007, p23. http://www.saferworld.org.uk/images/pubdocs/Romania_Export_Controls.pdf

¹²⁶ Presentation of the Permanent Mission of the Republic of Hungary to the UN Department for Disarmament Affairs, New York, 11 June 2004, No. 253-1/2004 <http://disarmament.un.org/CAB/nationalreports/2003/Hungary.pdf>

¹²⁷ National Report of Kenya on the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2006 <http://disarmament.un.org/cab/nationalreports/2006/kenya.pdf>

Capacity building

In addition to having the necessary laws, regulations and administrative procedures for the regulation of SALW in transit, states also need to have the capacity – including experienced personnel and adequate infrastructure – to scrutinise shipments and enforce transit controls. Experience suggests that inspection procedures at ports and airports are often inadequate with too great a reliance on accepting documentation at face value.¹²⁸ At the same time the absence, particularly in developing countries, of basic infrastructure such as scanning machines can render cargo inspection onerous and time-consuming.¹²⁹ Even for comparatively wealthy countries, finding adequate resources for the control of SALW in transit may prove problematic particularly in locations where trade volumes are high.

Nevertheless, the significant possibilities for the diversion of SALW in transit into regions of conflict and to human rights crisis zones means that acquiring the wherewithal for effective SALW transit control should be a priority for developed and developing countries alike. In this regard the Wassenaar Arrangement “Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport” (see above) could serve as an important initiative. While the requisite checks on various aspects of SALW air transportation should provide a useful additional means of ensuring that SALW transfers are legitimate and should help prevent diversion of SALW in-transit, the effectiveness of such measures is likely to be further enhanced by co-operative efforts to encourage their adoption internationally. To this end existing plans by Wassenaar Arrangement participating states to engage in outreach activities based on these Best Practices are to be welcomed.

¹²⁸ See, for example, the Report of the UN Panel of Experts on Somalia pursuant to UNSC Resolution 1474 (2003), November 2003, UN Doc S/2003/1035, paras 100-102 and 115
<http://daccessdds.un.org/doc/UNDOC/GEN/N03/580/59/IMG/N0358059.pdf?OpenElement>

¹²⁹ *Ibid.*

8. Tracing diverted SALW

The importance of tracing diverted SALW

The possibility to trace lines of supply of SALW that have been diverted from authorised transfers or holdings is vital in order to identify and close-down diversion points and to promote accountability for neglectful, irresponsible or criminal activities associated with such diversion. However, many illicit SALW that are seized or discovered by relevant authorities cannot be traced in a reliable and timely manner due to inadequate marking, poor record-keeping or lack of international co-operation in tracing.

There are two main contexts in which efforts need to be made to trace SALW that have been diverted from authorised transfers or holdings and which are thus illicit.

The first main context for initiating such traces is as part of a criminal investigation to trace a crime weapon: for example a gun seized from criminals or associated with a robbery, extortion or murder. In this case, the trace may be conducted to identify, prosecute or close down the operations of those involved in the supply or criminal misuse of the weapon. Often in this context, the trace will focus only on one or a few weapons.

There are well-established mechanisms for international co-operation to assist with such crime weapon traces; particularly those of Interpol. Over the past 15 years these Interpol mechanisms have been upgraded and more widely used with the introduction of the International Weapons Electronic Tracking System (IWETS),¹³⁰ capacity building programmes to enable and promote relevant data-collection and use, and dissemination of guidance materials (such as the Firearms Reference Table) to enable accurate identification and reporting of confiscated weapons.¹³¹

The second main context for SALW tracing relates to efforts to identify lines of supply and diversion points for arms or ammunition that are internationally trafficked to areas of conflict and instability (including those under UNSC arms embargo), or to non-state groups. In this second context, the diversion of SALW to illicit or unauthorised uses or users is also criminal. There is strong overlap between the two, particularly since criminal groups are often involved in arms trafficking. However, the arms supply processes in the second context not only often involve larger-scale shipments, but also are widely regarded to be much more politically sensitive, constraining normal police investigations and requiring additional international agreements and mechanisms to enable tracing. Moreover, the conflict-prone or war-torn countries that suffer the consequences of illicit arms trafficking often lack the capacity to conduct effective tracing investigations confronted, as they often are, with other intense and urgent security problems.

In order to tackle the SALW diversion processes that are the focus of this report, it is particularly important to enable and promote effective tracing of lines of supply of illicit SALW that are seized or discovered in this second arms trafficking context. Such tracing is important to:

- identify and disrupt on-going lines of supply of diverted SALW to: countries and regions in, or emerging from, conflict; embargoed destinations; or to rebel or terrorist groups (once established, 'arms pipelines' and trafficking networks tend to endure or transmute, continuing to contribute to violence and insecurity until they are closed down);
- identify and expose points of diversion, to enable weak links in present transfer control systems to be addressed and to help to prevent similar diversion in the future;

¹³⁰ Project IWETS (INTERPOL Weapons and Electronic Tracking System) provides member countries with a communication and information-sharing tool which helps to enhance criminal and terrorism investigations related to firearms.

¹³¹ According to the Canadian Firearms Programme www.cfc-cafc.gc.ca the Firearms Reference Table is an encyclopaedic research tool developed by the Royal Canadian Mounted Police that provides narrative and graphic information relating to the description, technical identification and legal classification of firearms.

- promote accountability for neglectful, complicit or inadequate SALW transfer controls or licensing decisions where they are discovered;
- deter national authorities from taking irresponsible decisions or practices, for fear that these may later be exposed through a tracing investigation;
- reduce the risks that countries are wrongly implicated or criticised in arms diversion processes. For example, in the absence of the rigorous tracing of lines of supply of illicit arms required to identify the actual diversion point, the state where diverted weapons were originally produced may wrongly be suspected of irresponsible practices; and
- provide evidence for criminal prosecutions for SALW diversion.

International norms to enable tracing of diverted SALW

The importance of tracing lines of supply of illicit and unauthorised SALW in order to identify points where they were diverted from authorised holdings or transfers was emphasised in the 1997 and 1999 reports of the successive UN Groups of Governmental Experts on SALW¹³², while the 1997 OAS Convention incorporated standards for marking, record-keeping and tracing.¹³³ The UN Firearms Protocol, signed in 2001, included specific obligations for marking, record-keeping and tracing of firearms.¹³⁴

In early 2000, Switzerland and France launched an influential international initiative on SALW tracing, which contributed to strong norms on the issue being included in the UN PoA in 2001. These included UN PoA commitments by states to:

- ensure that all SALW are uniquely marked at the point of manufacture (Section II, para 7);
- adopt and enforce all necessary measures to prevent the manufacture, stockpiling, transfer or possession of any unmarked or inadequately marked SALW (Section II, para 8);
- ensure that comprehensive and accurate records are kept for as long as possible on the manufacture, holding and transfer of SALW under their jurisdiction, so that accurate information can be promptly retrieved and collated by competent national authorities (Section II, para 9);
- ensure responsibility for all SALW held and issued by state agencies, as well as effective measures for tracing such weapons (Section II, para 10);
- strengthen their ability to co-operate in identifying and tracing illicit SALW in a timely and reliable manner (Section II, para 36), in particular by strengthening mechanisms based on exchange of relevant information (Section III, para 11);
- use and support Interpol's International Weapons and Explosives tracking System (IWETS) and any other similar data-bases (Section III, para 9); and
- consider international co-operation and assistance to examine, and facilitate transfer of, technologies that would improve the tracing and detection of illicit trade in SALW (Section III, para 10).

On the recommendation of Section IV of the UN PoA, the UN General Assembly established a UN Group of Governmental Experts on Tracing Illicit SALW. This took extensive evidence (such as a detailed UNIDIR/SAS Study¹³⁵) during 2002-3, and issued a Report in July 2003 that unanimously concluded that it was both desirable and feasible to develop an international tracing instrument.¹³⁶ Negotiations for such an instrument took place through a UN Open-Ended Working Group during 2004- 5 and were completed in June 2005. The International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit

¹³² Report of the Panel of Governmental Experts on Small Arms, UN Doc. A/52/298, <http://disarmament.un.org/cab/smallarms/docs/rep52298.pdf> and Report of the Group of Governmental Experts on Small Arms, UN Doc. A/54/258, <http://disarmament.un.org/cab/smallarms/docs/rep54258e.pdf>, respectively.

¹³³ OAS Convention, *ibid*, Art. VI, Art. XIII.2 and Art. XIII.3.

¹³⁴ UN Firearms Protocol, *ibid*, Art. 8 and Art.12.4.

¹³⁵ *The Scope and Implications of a Tracing Mechanism for Small Arms and Light Weapons*, O. Greene, F. Schütz, M. Hallowes, G. Thomas, M. Wéry & I. Berkol, UNIDIR & Small Arms Survey, January 2003.

¹³⁶ Report of the Group of Governmental Experts on Tracing Illicit Small Arms and Light Weapons, UN Doc. A/58/138 <http://daccessdds.un.org/doc/UNDOC/GEN/N03/426/32/PDF/N0342632.pdf?OpenElement>

Small Arms and Light Weapons' (ITI)¹³⁷ was adopted by the UN General Assembly on 8 December, 2005.

The International Tracing Instrument (ITI)

The ITI is politically-binding – a disappointment to the large number of states that would have preferred a legally-binding treaty. Nevertheless, as a politically-binding agreement, it came immediately into force, and all UN member states are committed at high political level to meet its requirements. It covers all types of SALW with the exception of ammunition and those light weapons that have to be transported in light vehicles.¹³⁸ The exclusion of SALW ammunition from the ITI was strongly resisted by most states, but was finally accepted once it was clear that this was a condition for acceptance of the instrument by the US Bush Administration.

The main obligations of the ITI can be divided into commitments on marking, record-keeping, co-operation on tracing, and implementation and follow-up.

In relation to **marking**, the ITI reinforces the standards established in the UN Firearms Protocol and the UN PoA. Each SALW should be uniquely marked at the time of manufacture, and the ITI stipulates the minimum contents, characteristics and placements of marks. It strongly recommends that weapons also be marked at the time of import, though this is not mandatory – which is a weakness since an import mark significantly increases the likelihood and timeliness of a successful trace, particularly for older weapons. All SALW held by government military and security forces for their own use must be 'duly marked'. Confiscated illicit SALW must be securely stored until they are either destroyed or marked and recorded pending future use.

The ITI similarly reinforces and strengthens previous agreements relating to **record-keeping**. All states are obliged to establish and maintain accurate and comprehensive records for all marked SALW within their territory or under their jurisdiction. Manufacturing records must be kept for at least thirty years, and for at least twenty years for all other records, however, to 'the extent possible', states have undertaken to retain such records indefinitely.

The ITI provides the greatest 'value-added' on obligations for **co-operation** in tracing. It establishes clear modalities for states that request and respond in relation to tracing investigations. States must respond in a timely and reliable manner to any legitimate request for a trace by the state which has seized or discovered the illicit SALW and has provided the relevant identifying information (marks etc). States receiving tracing information should 'respect all restrictions placed on its use' and 'guarantee the confidentiality of such information'.

The ITI has defined circumstances when states may delay, limit or refuse co-operation with a tracing request. These include where releasing the information would: compromise an on-going criminal investigation; violate legislation providing for the protection of confidential information; 'compromise national security consistent with the Charter of the UN'; or where the requesting state cannot guarantee the confidentiality of the information. Thus any state that has decided against co-operation with a particular trace can find grounds for doing so that are recognised by the ITI although it must rapidly inform the requesting state of its reasons, and 'the requesting State may subsequently seek clarification of this explanation'.¹³⁹

On **implementation and follow-up**, the ITI requires states to establish the necessary national administrative and legal framework for implementation, and to designate one or more national points of contact. It provides for exchange of information on weapons markings used to indicate the country of manufacture or import, and for co-operation with the UN and Interpol. States are requested to co-operate in implementation of the ITI, including considering provision of assistance. States are committed to regular reporting and meetings on the implementation of the ITI, and to review possible further development of the

¹³⁷ ITI, Ibid.

¹³⁸ ITI, Ibid, Section II, para 4,

¹³⁹ ITI, Ibid, Section V, para 23.

instrument, within the framework of UN PoA's Review Conferences and Biennial Meetings of States.

The ITI is therefore a major international agreement, complementing the UN Firearms Protocol and existing UN PoA norms. It reinforces and strengthens norms on marking and record-keeping, provides modest but workable arrangements to promote and facilitate implementation and, above all, establishes clear norms and modalities for co-operation in tracing on SALW. The exclusion of ammunition is, however, a serious weakness that needs to be addressed in the future.

Norms established at regional level

Several regional agreements reflect and reinforce these international norms on tracing. The OAS Convention includes provisions for marking and record-keeping to enable tracing, and is supplemented by OAS CICAD Model Regulations for the movement of firearms. The OAS Convention was amongst the first to address SALW tracing issues, but has in recent years failed to keep pace with dynamic developments in other regions on this issue. The OSCE Document on SALW not only includes important norms on marking, record-keeping and tracing of SALW, but also elaborates them in detail in the 2003 OSCE 'Best Practice Guide on Marking, Record-Keeping and Traceability of SALW'.¹⁴⁰ Wassenaar Arrangement countries include guidelines relevant to tracing in their Best Practice Guidelines for Exports of Small Arms and Light Weapons. In South East Europe, SEESAC has laid out clear standards relating to SALW marking, record-keeping and tracing in its Regional Micro-Disarmament Standards and Guidelines.¹⁴¹

The 2006 ECOWAS Convention on SALW, their Ammunition and Other Related Materials provides perhaps the strongest legal requirements for marking, record-keeping and tracing. These are consistent with the ITI and go beyond them in some areas, particularly inclusion of SALW ammunition in its scope, and provision for relatively well-developed mechanisms for national and regional implementation.¹⁴² These include: establishment of computerised national data-bases and registers; requirement for permanent maintenance of records on SALW; establishment of a sub-regional register; marking of SALW with both 'classic' and 'security' markings on as many parts of the weapon as possible; marking of ammunition with a unique mark, to identify lot, manufacturer, and country and year of manufacture.

Similarly, the 2004 Nairobi Protocol, covering 12 East African states, establishes strong norms on marking and record keeping, and elaborates these in its Best Practice Guidelines of 2005.¹⁴³ The SADC Firearms Protocol includes similar norms for SADC member states, as does the Nadi Framework and PIF Weapons Control Bill for Pacific Island countries.

This combination of international and regional norms and best-practice guidelines have recently been reinforced and supplemented through a number of technical guidance documents. In July 2008, the UNDP launched a new 'How to Guide' on SALW Legislation, which includes a detailed chapter providing detailed guidance on national legal, administrative and technical provisions for marking, record-keeping and tracing co-operation, which usefully combines and presents the best-practice guidelines emerging from existing international and regional agreements.¹⁴⁴ It includes technical advice relating to ammunition as well as to weapons. The Small Arms Survey published an 'Ammunition Tracing Kit' manual¹⁴⁵ to

¹⁴⁰ OSCE Handbook of Best Practices on Small Arms and Light Weapons, Chapter 2, Ibid.

¹⁴¹ SEESAC Regional Micro-Disarmament Standards /Guidelines
<http://www.seesac.org/index.php?content=&page=crse§ion=2>

¹⁴² See <http://www.iansa.org/regions/wafrica/documents/CONVENTION-CEDEAO-ENGLISH.PDF>

¹⁴³ Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, <http://www.recsasec.org/pdf/Nairobi%20Protocol.pdf> ; Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol
<http://www.recsasec.org/pdf/Best%20Practice%20Guidelines%20Book.pdf>

¹⁴⁴ UNDP *How To Guide: Small Arms and Light Weapons Legislation*, UNDP, July 2008
http://www.undp.org/cpr/documents/sa_control/SALWGuide_Legislation.pdf

¹⁴⁵ Small Arms Survey, *Ammunition Tracing Kit*, SAS, Geneva, 2008
http://www.smallarmssurvey.org/files/sas/publications/b_series_pdf/ATK/ATK.pdf

complement the new comprehensive Firearms Reference Table prepared and disseminated by Canada.¹⁴⁶

Present national regulations and practices

Publicly available information on states' national regulations and practices relating to marking, record-keeping and tracing SALW has increased significantly in recent years, as awareness has increased and countries provide reports on implementation of the UN Firearms Protocol, UN PoA and, most recently, the ITI. Nevertheless, it remains patchy and unclear.

Marking and record-keeping

Since 2001, a total of 119 states have reported to the UN on measures relating to at least one of the UN PoA commitments on marking record-keeping and tracing. Some 65 states have reported national marking requirements at time of manufacture, and most of these have provided sufficient information at least to confirm minimal compliance with ITI norms on this matter (i.e. a unique serial number, with year and country of manufacture). In many cases, the reported information was substantial but nevertheless remained unclear as to whether the minimum ITI standards for marking at time of manufacture are fully implemented. Twenty five states reported that provisions for marking were not applicable to them, since SALW were not manufactured in their country. Some 31 states reported on their marking requirements at time of import – recommended but not obligatory in the ITI.¹⁴⁷

One of the most important challenges for implementing international norms is to ensure that all SALW held in government and security force stocks are duly marked, and to ensure that inadequately marked weapons are considered illicit and are safely marked or destroyed after seizure. Some 48 states have reported on these issues but have included incomplete or ambiguous information. Of those states that report to have established legal requirements or practices, at least some do not appear fully to address ITI requirements.¹⁴⁸

In relation to record-keeping some 44 states have recently reported relevant information. However, these reports mostly do not fully confirm adequacy, including for example, safeguards against loss of records when manufacturers close down, full records of SALW held by civilians, or capacity for timely retrieval of reliable information.¹⁴⁹

The overall picture presented by available information on national procedures and regulation for marking and record-keeping of SALW is therefore patchy. It is clear that many states at least have some national systems requiring unique marking at the time of manufacture and record-keeping, and some have reported reasonably comprehensive systems.

However, the majority of states appear to have provided little or no relevant information on their current national regulations and practices. Of the 60 or so states that have at least provided substantial information recently, it appears that most have significant work to do to implement ITI norms. There appear to be particularly important gaps in national measures to ensure that, for example, all SALW held by government and state security forces are adequately marked and that seized SALW are securely either destroyed or marked and recorded. Few states also require marking at import, and the number of these does not appear to be increasing rapidly. Finally, only relatively few states (less than a dozen) have reported that they have systematically reviewed their existing regulations and systems for marking and record-keeping SALW in the light of ITI or regional norms and have embarked on a planned upgrading programme.

In this context, as in other issue areas, participation in dynamic regional agreements appears to be important for promoting national standards. Members of the ECOWAS Convention,

¹⁴⁶ Royal Canadian Mounted Police, Firearms Reference Table, RMCP, 2007.

¹⁴⁷ For a useful and relatively thorough review of the national reports and reporting rates for the UN PoA on marking, record-keeping and tracing, see S. Cattaneo and S. Parker, *Implementing the UN Programme of Action on SALW: analysis of the national reports submitted by states from 2002 – 2008*, UNIDIR, Geneva, 2008.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

Nairobi Protocol, SEESAC and OSCE have had the benefit of several capacity-building and awareness-raising workshops, and have taken initiatives to develop relevant international co-operation and assistance.

Tracing co-operation

The lack of publicly-available information on progress on tracing co-operation is particularly worrying. Most importantly, although many states report participation with Interpol and many weapons traces are reported for normal criminal investigations, there is little evidence of progress towards increased tracing co-operation to identify points of diversion of arms shipments diverted to non-state groups or to countries in or emerging from conflict. This is particularly disappointing given that it was in order to address this 'second' category of traces that the ITI was established.

To provide more detail, some 66 states have reported information relevant to tracing, including participation in Interpol and World Customs Organisation mechanisms. Of these, some 23 states provided details on their mechanisms or practices of information exchange. Several of these highlighted participation in regional mechanisms, including those of the EU Schengen Agreement (e.g. Norway), and the West Africa Regional Police Chiefs Co-ordinating Organisation and ECOWAS (e.g. Senegal). Six states (Denmark, Greece, Malaysia, Peru, Philippines, and Russia) reported systems for data collection and sharing that were under development.

By 2008, over 30 states had provided the UN Office for Disarmament Affairs (ODA) with contact details of their point of contact for tracing co-operation, and 20 states reported under the ITI on tracing co-operation. Of these, seven states including Algeria, Jamaica and Ecuador indicated the bodies responsible for handling SALW tracing requests under the ITI.

Several states provided some quantitative or qualitative details of tracing operations. Thus, for example, the USA reported that the US Bureau of Alcohol, Tobacco, Firearms and Explosives conducts about 300,000 firearms traces per year, approximately 40,000 of which are conducted on behalf of foreign law enforcement agencies. Russia reported that it had transmitted 216 communications on tracing to Interpol between April 2007 and February 2008, including 70 requests through Interpol for sales histories and criminal records checks relating to tracing investigations. Jamaica reported that some 900 firearms trace requests were processed between January 2000 and August 2004 for recovered firearms, while Brazil, China, Germany and the UK reported that they had supported tracing investigations.

These SALW tracing activities are welcome, but the great majority of the reported tracing investigations appear to relate solely to police tracing investigations for crime weapons. There is virtually no reported indication that tracing investigations have been launched to investigate and disrupt trafficking networks or 'arms pipelines' supplying diverted weapons to countries in or emerging from conflict, or illicit shipments to non-state groups, or those attempting to circumvent UN or other arms embargoes. Accordingly, there is little indication that the ITI is fulfilling the objectives for which it was designed.

It is possible that the ITI has in fact been used for such tracing investigations, but that this has not been made public possibly due to confidentiality requirements or diplomatic sensitivities. It is certainly likely that at least some tracing co-operation has occurred involving Middle Eastern states, Israel and the USA to trace diverted arms shipped to militias in that region. Similarly, co-operation in tracing diverted SALW to Al-Qaida affiliates is likely to have been active in recent years. Such intelligence co-operation has a long history.

Nevertheless, it seems clear that governments are not making active and appropriate use of the ITI to trace lines of supply of diverted weapons. Still less do they appear to be sharing the findings or conclusions from any such tracing investigations in order to help with wider efforts to prevent and close down diversion networks, beyond customary co-operation between customs or intelligence agencies. It is striking, for example, that UN Expert Reports into

circumvention of UNSC arms embargoes, such as the recent report on the DRC,¹⁵⁰ make no reference to SALW tracing investigations under the ITI, even though they include extensive analysis of lines or supply of arms to armed groups.

Recommendations for regional and international actions to promote tracing co-operation

On the basis of the above analysis, it seems clear that active measures are required not only to accelerate effective national implementation of the ITI's commitments in relation to marking and record-keeping, but also to promote active use of the ITI for tracing lines of supply of diverted SALW to armed groups or to countries that are in or emerging from conflict. The following is an attempt to highlight some priorities and recommendations in this context.

One of the outcomes of the difficult negotiations leading to the ITI is that the instrument itself has only relatively weak provisions for promoting its implementation and effective use. Nevertheless, it is important in the first instance to use the ones that we have. Thus, initiatives are urgently required to promote more systematic national reporting on implementation of all aspects of the ITI by states. The existing schematic guidelines that exist should be developed into a more systematic template that facilitates and encourages the provision clearer and more comprehensive information regarding implementation of each aspect of the ITI. International expert and financial assistance could usefully be mobilised to encourage and assist better reporting from all states. Similarly, it is important not only to encourage states to identify national contact points for the ITI, but within this framework also to specify the national contact points and mechanisms available specifically for tracing co-operation. The next meeting to discuss progress in implementing the ITI, due to take place in 2010, will then have a better basis for review.

However, much more is required beyond such minimal initiatives for the ITI to effectively contribute to preventing and reducing SALW diversion. As illustrated below, in practice, these will need to be framed as initiatives of:

- 'international coalitions of the willing';
- regional organisations; or
- inter-regional co-operation.

Briefly, the priorities for international or regional initiatives include the following:

- Establish international or regional mechanisms to offer, on request, peer review teams of two or three experts from partner countries, to review national systems relating to the ITI and to advise and assist the requesting government on priorities for improvement. Such mechanisms have been found to be invaluable in many settings, including OECD DAC reviews of development aid programmes, or UNFCCC expert panels on national reports on greenhouse gas emissions and measures. Relatively advanced regional organisations, including OSCE, OAS, ECOWAS and the Nairobi Protocol countries should consider also initiatives for inter-regional co-operation on such issues.
- Develop regional and international mechanisms for consultations on specific lines of supply and diversion points for illicit SALW, where information gained from ITI tracing co-operation can be combined with other information and analyses to enable member governments to exchange information and assessments (with due confidentiality constraints) and to facilitate action to close down identified diversion routes and prevent future diversion. The mechanisms for general consultation developing within arrangements including the EU (COARM) and Wassenaar Arrangement could provide useful experience in this respect.
- Take initiatives to promote use of the ITI to trace lines of supply and diversion points for illicit arms seized in countries in or emerging from war. In particular, initiatives are needed

¹⁵⁰ See Reports of the UN Panel of Experts pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo <http://www.un.org/sc/committees/1533/egroup.shtml>

to ensure that such tracing operations are launched in cases where the UN and other multilateral or regional organisations are providing stabilisation and peace-building assistance. This may require specific initiatives by individual concerned states in co-operation with the authorities of the country concerned, but ways should be found to link these with UNSC considerations.

9. Reducing risks of diversion by re-transfer

The importance of constraints on re-transfers

Re-exportation of SALW after they have been received by the authorised recipient is an important source of illicit or uncontrolled flows of SALW. In some cases, the unauthorised re-exportation takes place shortly after the shipment has been received. One example of this involved the transshipment, in 2000, of five million rounds of Ukrainian-origin ammunition from Cote d'Ivoire to Liberia shortly after the arrival of the ammunition in Abidjan.¹⁵¹ Where this type of diversion takes place, there may be strong suspicion that the recipient is guilty of deception or non-compliance with the terms under which the original transfer was authorised. Regardless, any steps taken by the original exporter to assure the end-use of the SALW will have proved futile.

Often, however, the re-export may take place in the years following receipt of the original shipment. This proved to be the case following the shipment, by the US, of over 2000 'Stinger' man-portable surface-to-air missiles (MANPADS) to Afghan Mujahedeen in the late 1980s; ten years on some quarter of the MANPADS sent to Afghanistan remained unaccounted for.¹⁵² The extent to which prior authorisation is required for such transfers from governments involved in authorising the original shipment depends on the terms of the end-use agreements and understandings. In practice, this is often unclear and seen as a 'grey' area. It is very important, however, that controls on such delayed re-transfers are fully and clearly specified.

Emerging norms relating to re-export of SALW

Re-export of second-hand arms and ammunition is one of the primary sources of illicit SALW – a fact recognised by a number of multilateral agreements. At the international level, Section II, para 13 of the UN PoA makes an important reference to the need to regulate the re-export of SALW. This requires states to "...make every effort, in accordance with national laws and practices, without prejudice to the right of States to re-export small arms and light weapons that they have previously imported, to notify the original exporting State in accordance with their bilateral agreements before the re-transfer of those weapons."¹⁵³ As with many provisions of the UN PoA this clause was a compromise between those states seeking a complete prohibition on the unauthorised re-export of SALW and those opposing any form of controls. Nevertheless, the agreed UN PoA commitment is important and needs to be addressed.

Other regional and multilateral SALW agreements also establish commitments relating to the re-export of SALW. However, as opposed to the UN PoA commitments which are framed from the perspective of the importing/potential re-exporter state, the majority refer to the responsibilities of the original exporting state. The Wassenaar Arrangement's Best Practice Guidelines urge states, when considering the export of SALW, to take account of the risk of re-export, particularly to terrorists.¹⁵⁴ The commitments contained within the EU Code/Common Position are also relatively weak in that signatories are required to consider the risk that arms may be "re-exported under undesirable conditions".¹⁵⁵ It is worth noting, however, that the reference to diversion in the EU Common Position appears to take little account of many of the important debates on SALW control that subsequently took place in the context of the UN PoA and other multilateral SALW control arrangements. The re-export commitments contained in the OSCE Best Practice Guides are stronger, stating that the export of SALW should be avoided where there is a risk of diversion or re-export; they also

¹⁵¹ Small Arms Survey 2008: Risk and Resilience, p 123.

http://www.smallarmssurvey.org/files/sas/publications/year_b_pdf/2008/CH4%20Transfer%20diversion.pdf

¹⁵² Small Arms Survey, *Ibid*, p 120.

¹⁵³ UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2001, UN Document A/CONF.192/15, <http://disarmament.un.org/cab/poa.html>

¹⁵⁴ Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons, December 2002, *Ibid*.

¹⁵⁵ EU Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, article 2, criterion 7, 8 December 2008, *Ibid*.

state that EUCs and export contracts should include provisions prohibiting or restricting the re-export of SALW.¹⁵⁶

The SALW export criteria associated with the Nairobi Protocol echo the OSCE commitments insofar as they assert that: “States Parties shall not authorise transfers that are likely to be diverted, within the recipient country or be re-exported, to any other user than the stated final end-user”.¹⁵⁷ In addition the Nairobi Best Practice Guides also specify that end-user certificates include a “prohibition on transfer, diversion, export, re-export of the goods without previous approval from the original exporting country”¹⁵⁸. Importantly, however, the Nairobi Best Practice Guidelines also include commitments for states as potential importers/re-exporters of SALW in that they unequivocally require states parties to notify the original exporting state prior to the re-export/re-transfer of SALW.

While a variety of multilateral commitments exist relating to the re-export of SALW the majority of these are voluntary in nature and no clear international norm has yet been established beyond the need to consider seriously the implications of the re-export of SALW. This lack of clarity is reflected in the variety of practices that have been adopted by states.

Current practice: states as importers of SALW

In terms of the policies and practices of states as importers (and so potential re-exporters) of SALW, approximately 32 governments reported by early 2009 that they notify the original exporting state in advance of the re-transfer of SALW.¹⁵⁹

For many states, current practice appears to centre upon providing SALW re-export notification to the original exporting state *only* if it is a requirement of the relevant end-use undertakings that have been given at the time of import. This would appear to be widespread practice even amongst states such as Austria, Denmark and Norway who are participants in the OSCE, whereby the Best Practice Guides suggest that member states, as exporters of SALW, take a considered approach to the issue (see above). The Danish government reports, however, that an agreement exists between Denmark and Finland, Norway and Sweden, requiring the Danish authorities to notify these other governments in the case of re-exports of SALW originally imported from them.

It appears common practice, then, for states as importers of SALW to place the onus on exporters of SALW to determine the extent to which they need to be informed or consulted prior to re-export. This follows the guidelines set out in most multilateral agreements which frame re-export restrictions in terms of the responsibility of the state authorising the original transfer of SALW.

Current practice: states as exporters of SALW

It is clear that in order for exporting states to exert any control over SALW post transfer they need to ensure that a no re-export clause is explicitly included as a condition of the original transfer. Several states report that they make use of re-export restrictions as part of their end-use controls including Argentina, Austria, Belarus, Belgium, Bulgaria, Canada, Finland, France, Germany, Italy, Kazakhstan, Norway, Republic of Korea, Romania, Russian Federation, South Africa, Spain, Sweden, Switzerland, Turkey and the US.¹⁶⁰

¹⁵⁶ OSCE Handbook of Best Practices on Small Arms and Light Weapons: Best Practice Guide on Export Control of Small Arms and Light Weapons, Ibid.

¹⁵⁷ Best practice guidelines for the implementation of the Nairobi Declaration and the Nairobi Protocol on small arms and light weapons, Ibid, Chapter 2.

¹⁵⁸ Ibid.

¹⁵⁹ ‘Table 2’, *Reviewing action on small arms: assessing the first five years of the UN Programme of Action*, Biting the Bullet, 2006, Ibid.

¹⁶⁰ See national reports on implementation of the PoA by these states at <http://disarmament.un.org/cab/salw-nationalreports.html>

Where they are applied, re-export controls are typically imposed in situations whereby 'military' SALW are exported to the armed forces of another state. Re-export restrictions in this case generally require the armed forces to confirm that they will be the sole end-user and that they will not re-export the items without prior authorisation of the original exporting state. Certain states, including Bulgaria, Italy, the Russian Federation and South Africa report that they may include restrictions in arms sales contracts entered into with other governments.¹⁶¹ One interesting variation on this issue is the approach taken by the German Government whereby, wherever possible, supply contracts are to stipulate that old arms have to be destroyed when new arms are supplied. This measure is intended to help guard against the irresponsible re-transfer of old weapons, identified as one of the principal sources of illicit SALW.

Re-export risk assessment

When considering the export of SALW states must make a full risk assessment as to the possibility that the weapons in question may be re-exported. Such a risk assessment should consider a range of material factors including:

- the legitimate defence and domestic security interests of the recipient country;
- the capability of the recipient country to exert effective export controls;
- the risk of the arms being re-exported or diverted to terrorist organisations or to conflict and human rights crisis zones;
- any record of the recipient previously engaging in the unauthorised re-export of SALW; and
- any record of the recipient supplying arms to irresponsible end-users.¹⁶²

These factors are reflected in the export criteria associated with several regional and multilateral agreements such as the EU Code/Common Position, the OSCE Document on Small Arms and the Nairobi Best Practice Guidelines and represent core considerations for any state licensing the export of SALW.

Sanctions

In the event that the unauthorised re-export of SALW is discovered this is generally considered a serious matter by exporting governments. For example the unauthorised re-transfer of Swedish-origin SALW could result in the withdrawal of a licence, the reviewing of other export licences that have been granted and the denial of future licences; they may also consult with other EU member states and, in the case of a serious breach, look into sanctions.¹⁶³ The US also has programmes in place to deal with possible unauthorised re-export. For example, the Golden Sentry Programme, administered by the Defense Security Cooperation Agency (DSCA) of the US Defense Department performs checks on military-to-military arms transfers¹⁶⁴, while the Blue Lantern Programme is run by the State Department and deals with commercial sales of defence items. Under Blue Lantern (see Section 5 on end-use above) US embassy staff, worldwide, conduct periodic checks on commercial SALW exports to ensure that they are being used in accordance with end-use undertakings and have not been re-exported. According to the 2007 US report on implementation of the UN PoA, "Inquiries range from interviews with end-users to physical inspections. Over 5,000 end-use checks have been performed since the inception of this program in 1990." Should such checks prove unfavourable, the US Government reports that existing export licences can be revoked and future applications denied to the relevant entities, whilst those responsible can be subject to debarment and civil or criminal penalties.¹⁶⁵

¹⁶¹ See national reports by these states as well as Bulgaria, Law on the Control of Foreign Trade Activity in Arms and in Dual-Use Goods and Technologies (Arms Law), adopted in 2002, Articles 15 and 17; and South Africa, National Conventional Arms Control Act (Arms Law), adopted in 2002, Articles 16 and 17.

¹⁶² Ibid.

¹⁶³ Saferworld telephone interview with Swedish licensing officials, August 2007.

¹⁶⁴ US Government report on the implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons In All Its Aspects
<http://disarmament.un.org/cab/nationalreports/2007/United%20States%20of%20America.pdf>

¹⁶⁵ Ibid.

Priorities for preventing the unauthorised re-export of SALW

The extent to which states seek to control or prevent the re-export of SALW is a key part of efforts to prevent the undesirable and sometimes illicit transfer of SALW. In this regard both importing and exporting states have responsibilities to fulfil. The agreement and articulation of a strict international norm against the unauthorised re-export of SALW is a major priority for all existing multilateral SALW control regimes. At national level, however, there are a number of measures that all states should seek to adopt.

From the perspective of the original exporting state

All states should investigate and take full account of the risks of re-export of SALW in the export licensing process (see above). These risks need to be assessed *inter alia* by examining whether the SALW for transfer are commensurate with the legitimate defence and security needs of the importing state as well as appropriate to the needs of the particular end-user. In addition the capacity and inclination of the importing state to retain control of the SALW as well as their ability to prevent unauthorised diversion or re-export should also be considered, as should the risk that the importing state may deliberately approve onward export.

Checks undertaken to assure the *bona fide* nature of an end-user (see above) need to be part of any effort to guard against re-export of SALW. While there will inevitably be capacity and resource implications for some exporting states it is important that all states endeavour to implement certain minimum standards in their end-use control systems (see Section 5 above). In order to enhance prospects for effective end-use control, states should explore the possibilities for co-operation and information exchange, particularly with regard to unreliable end-users. States thus need to begin by consulting readily available information and then pursue matters through foreign embassies or direct governmental contact as necessary.

SALW transfer contracts, licences and/or EUCs need to include clear provisions and commitments relating to controls on re-transfer, with responses and possible sanctions available to be used in the event of any breaches of these undertakings. In terms of preventing and combating the illicit trade in SALW, the most stringent practice is that there is clear and unequivocal acceptance on the part of the end-user that the SALW are for their sole use and are not to be diverted to another end-user or re-exported without notification or authorisation.

Finally, in terms of efforts to prevent inadequately controlled transfers of surplus SALW, the German Government's approach, whereby the importing state is required to destroy their old SALW, would appear the most effective way of guarding against the irresponsible re-export of surplus SALW and thus represents an important model which should be emulated by other states.

From the perspective of the importing (potential re-exporting) state

At a minimum, all states should fulfil their UN PoA requirement to notify the original exporting state in the event of the re-transfer of SALW. However, any additional re-export stipulations (for example a non-re-transfer clause) that have been agreed within the context of a particular transfer of SALW should be strictly adhered to.

Clearly, establishing effective controls to prevent diversion of SALW transfers to the illicit market requires international co-operation; this should be particularly close between exporting, transit, and importing country governments for each transfer. Unfortunately at present there appears only very limited co-operation: most states perform inadequately in taking steps to prevent re-export and diversion, and international information exchange and consultation is very limited. A recognition by all states of the importance of preventing the unauthorised re-export of SALW is required along with concrete steps to implement this and other related obligations.

10. Promoting effective SALW stockpile management and security to tackle diversion

The importance of ensuring secure management of authorised SALW holdings

Programmes to ensure effective stockpile management and security are a critical and integral part of efforts to prevent and reduce diversion of SALW, as well as being vital for meeting the wider challenge of reducing proliferation and misuse of SALW. In every region of the world, the great majority of illicit or unauthorised SALW have been sourced from diversion from authorised official or civilian holdings, through loss, theft, corruption or neglect.

As discussed in Sections 2 and 4 of this report, insecure holdings are a major contributing factor to diversion of SALW transfers, and thus need to be carefully considered in assessments of risks before such transfers are authorised by relevant national authorities – both in the exporting and importing state. In this context, the primary concerns are:

- diversion from holdings leading up to the shipment of SALW, during the transfer process and up to the point of receipt by the authorised end-user; and
- diversion from holdings of the authorised end-user of the SALW transfer.

In relation to the former concern, it is widely recognised (for example in the relevant NATO standards and OSCE Best Practice Guidelines)¹⁶⁶ that the transport of SALW poses particular challenges for stockpile management and security (see Section 7 on transit). As the shipment of the relevant SALW is separated from larger, often relatively secure, storage sites in readiness for shipment, they may be held in less secure circumstances. Accordingly, it may be relatively expensive (and therefore a low priority) to ensure high security for smaller quantities of arms or ammunition prepared for transfer shipments. New people or agencies gain potential access to or authority over the weapons, and these actors may be less experienced or reliable in relation to SALW management and security.

Once the shipment is underway, special attention needs to be devoted to managing, monitoring and securing the shipment during transportation and at any intermediate holding sites (including at the shippers, ports or airports). On arrival in the importing country, these concerns continue to apply, because authorised transfers are often vulnerable to diversion between importation and delivery to the authorised end-user. In practice, different risks and security standards often apply, depending on the official agency involved (military, police, civilian gun-dealers, etc) and the shipping agency that is used. Many of these diversion risks are addressed elsewhere in this report, but they also need to be considered from a stockpile security perspective.

In relation to the second of the main concerns noted above, the risks of diversion from the end-user's holdings largely overlap with the wider agenda of promoting effective management and security of authorised holdings in all countries and locations. However, there are direct links with the transfer control process. It is crucial that the risks of diversion from the end-user's holdings are carefully considered **before** the transfer is authorised by any of the relevant national licensing authorities (i.e. of the exporting and importing countries, but also of any transit or brokering countries involved). However, often one or more of these states lack mechanisms or capacity to conduct effective risk assessments (see Section 4).

There can also be co-ordination problems between the exporting and importing licensing authorities, leading to weak links. For example, licensing authorities in exporting states may wrongly assume that the importing state authorities will have properly assured itself of all stockpile security issues within its jurisdiction before an importation licence is issued. Surprisingly, officials from importing states often give the impression that they rely on exporting states to make such assessments, without real evidence that they can or have done so.

¹⁶⁶ OSCE Handbook of Best Practices on Small Arms and Light Weapons ,National Procedures for Stockpile Management and Security, Ibid; including Supplement, Annex C on Man-Portable Air Defence Systems (MANPADS), 2006) <http://scm.oas.org/pdfs/2007/cp17707E.pdf>

The development of international norms

The rapid development of international norms on SALW stockpile management and security has been one of the most striking achievements of international efforts to address SALW proliferation and misuse since the mid 1990s. Before that time, few countries accepted that their arrangements for managing and securing authorised official or civilian holdings of SALW were a legitimate matter for international concern or rules. As a result of the 1997 and 1999 Reports of the UN Groups of Governmental Experts on SALW, and wider awareness raising efforts, the UN Programme of Action established strong international norms on the issue.

By 2001, the main general norms on states' responsibilities to ensure SALW stockpile security had become relatively uncontroversial amongst UN member states. This consensus has further strengthened since 2001, as evidence has grown of the major on-going contribution of inadequate stockpile security to the problems of illicit or uncontrolled proliferation and misuse of SALW.¹⁶⁷

The main provisions in the UN PoA relating to safe and secure management of authorised stocks are contained in Section II (paras 3, 6, 8, 17, 18, 29) and Section III (paras 6 and 8). Under Section II, para 17, states undertake to ensure that 'the armed forces, police or any other body authorised to hold SALW establish adequate and detailed standards and procedures relating to the management and security of their stocks of these weapons. These standards and procedures should, inter alia, relate to: appropriate locations for stockpiles; physical security measures; control of access to stocks; inventory management and accounting control; staff training; security, accounting and control of SALW held or transported by operational units or authorised personnel; and procedures and sanctions in the event of thefts or loss.' Section III, paras 6 and 8, encourage international co-operation and assistance to enhance and ensure adequate SALW stockpile management and security, and regional and international capacity-building programmes in this area.

Having established these important general norms, many states and experts advocated the development of detailed international best practice guidelines on SALW management and security. However, this was resisted by several governments – mostly reflecting their general resistance to elaborating and developing UN PoA norms beyond those established in 2001.

More recently, there have been some further relevant developments on norms in the context of the UN SALW process. Most disturbingly, the Bush Administration of the USA led a contentious interpretation of the scope of the UN PoA norms, establishing that there was no consensus that they applied to SALW ammunition. This was considered illogical and problematic by most governments and experts, and resulted in a review by a UN Group of Governmental Experts (GGE) on Ammunition during 2008. One outcome of this was a consensus recommendation that the issue of SALW ammunition be taken forward within the UN within the wider framework of promoting stockpile security.¹⁶⁸ This was adopted by the UN General Assembly later that year. It remains very much a work in progress, but at least there is an international framework for promoting action on this issue, which also helps to raise international awareness of regional and informal expert guidelines on ammunition stockpile safety and security.

Within the UN PoA framework, discussions on promoting and ensuring SALW stockpile security at the 2008 BMS were generally constructive and positive, with the result that there are now prospects for the development of international good practice guidelines on this issue in the next few years.

These international and regional norms, combined with those relating to the security of SALW stocks in-transit, provide a reasonably strong normative framework for international action to enhance stockpile security issues relevant to diversion of SALW transfers. However, this aspect of the discussion has so far achieved relatively low international profile and awareness

¹⁶⁷ As summarised, for example, in Small Arms Survey, *Small Arms Survey 2008: risk and resilience*, Oxford University Press, 2008, chapter 2.

¹⁶⁸ Report of the UN GGE on Ammunition, 2008.

appears to be disturbingly low amongst many relevant national and regional officials and policy-makers.

Developments at regional level

Several regional organisations have developed their own good practice guidelines on stockpile management and security. In 2003, the OSCE established such detailed guidelines on SALW stockpile management, as a major chapter in its Handbook of Best Practices on SALW; this was supplemented in 2006 by an annex specifically addressing these issues for MANPADS.¹⁶⁹ SEESAC developed a number of relevant guidelines on stockpile management standards for South East European countries while the members of the Nairobi Protocol also recently adopted comprehensive best practice guidelines relating to SALW stockpile management and security.¹⁷⁰ Several other regional organisations are now moving forward on such issues; for example, in the Americas the Inter-American Drug Abuse Control Commission – a key agency relating to the OAS Convention – is considering proposals to update their Model Regulations on the security of storage of firearms.¹⁷¹

These regional best practice guidelines for SALW stockpile security are only officially recognised by member states of the relevant regional organisations. Thus, the majority of states have yet to adopt detailed international guidelines on this issue. Nevertheless, there is wide consensus amongst all national technical experts and responsible officials on good practice guidelines and professional standards for managing and securing authorised SALW holdings. For the military, NATO standards are widely recognised to prove a 'gold standard' in this area, for example, even if most countries remain far from having the systems and capacities to comply with them. In many countries, amongst other official agencies with authorised holdings of SALW, training and standards vary substantially according to their responsibilities and context, and are decidedly more patchy. Regulations and practices ensuring secure management of civilian SALW holdings are much more varied and contested, and this is to some extent reflected in the relatively oblique ways in which the UN PoA establishes norms in these areas.

National policies and practices

Since the late 1990s, the UN PoA and associated regional processes have generated numerous regional and international workshops on SALW stockpile management and security issues, and many expert and official reports have become available. Combined with national reports to the UN within the framework of the UN PoA, there is now much greater publicly available information on national policies and practices for managing and securing authorised holdings of SALW.

In 2006, the Biting the Bullet Project provided a detailed assessment of progress in ensuring adequate management and security of SALW stockpiles as part of its wider assessment of progress towards implementing the UN PoA.¹⁷² In its overall assessment, it noted increased activity and a range of encouraging national and regional initiatives to improve SALW stockpile security. Nevertheless, progress remained variable and limited in relation to the massive scale of problems of inadequate security of authorised SALW holdings in almost every region of the world. Only a small number of countries had conducted a systematic review of their national regulations and procedures, and developed a clear programme to address identified weaknesses.

Programmes to promote effective and secure stockpile management had been *ad hoc* and limited in most cases. The few regions where there were developing regional norms – such as

¹⁶⁹ OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna 2003
http://www.osce.org/fsc/item_11_13550.html

¹⁷⁰ Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol, Ibid, Chapter 1.

¹⁷¹ As reported, for example, by Ecuador in its reports to the UN under the UN PoA
<http://disarmament.un.org/cab/salw-nationalreports.html>

¹⁷² See *Reviewing action on small arms: assessing the first five years of the UN Programme of Action*, Biting the Bullet, 2006, Ibid.

the OSCE – were in general much more active at various levels (local, national, regional) than regions where specific norms and programmes were either vague or non-existent. The measures taken had focussed mainly on improving security of specific large storage sites for military equipment. This was important, but reflected a relative absence of attention to overall national systems, and also of measures relating to the many other categories of authorised holdings of SALW and their ammunition: held by operational units, police, border guards, penal services, private security companies, gun-dealers, manufacturers, and private citizens.

Reviewing evidence today, this picture appears to remain valid. There are important and on-going actions, including co-operation and assistance programmes, but they are often *ad hoc* and overall remain very limited in relation to the scale and urgency of the problems.¹⁷³ Reviewing national reports to the UN, some 100 states have provided reports that at least make some reference to SALW stockpile management, but many of the reports are very general, vague or partial.¹⁷⁴ The quality of the reports in terms of details and systems described correlate substantially with the existence of developed regional guidelines and processes. This is evidenced by the substantive nature of the reports from OSCE member states and the recent improvements in reports from East African states that appears to be associated with the adoption of Nairobi Protocol best practice guidelines (compared with a low overall international standards).

Of the 100 states that have reported anything on stockpile security and management, only 19 directly addressed issues of control of access, and 13 addressed issues of transport security. These few reports tended to focus on controls at major military storage sites, and of transport security relating to movements of SALW associated with operational military units. It is particularly worrying that numerous states that have referred to this issue in their reports have stated that they do not have significant SALW stockpiles – which is rarely true and indicates lack of critical awareness. This provides high indication that the specific stockpile management and security issues relating to diversion of SALW transfers are relatively neglected.

International co-operation and assistance to enhance SALW stockpile security and management at national level has grown very substantially since 2001, particularly within the frameworks of the OSCE, Euro-Atlantic Partnership Council, EU Joint Action on SALW, and Nadi Framework. The NATO Maintenance and Supply Agency (NAMSA) as emerged as an important technical unit to support such assistance programmes, in the OSCE region and increasingly beyond. Several states have established substantial programmes to provide assistance on SALW stockpile security issues, including Australia, Germany, Netherlands, Norway, Switzerland, United Kingdom and USA. These and other states have now developed substantial experience of stockpile security assistance programmes for SALW and other conventional weapons, from which lessons can be learned to enhance effectiveness.

Nevertheless, the scale and effectiveness of such co-operation programmes remains extremely limited and *ad hoc* compared with requirements. Too much of this co-operation focuses on one-off projects to address specific training and storage site problems, and there is limited follow-on to ensure that the overall national systems for stockpile security are adequate. In practice, there is little organised 'lessons-learned' activity between donors and recipients. While this is true of SALW stockpile management overall, it is even more true in relation to the specific issues of stockpile management to help to prevent diversion of SALW transfers.

¹⁷³ Supplementing our 2006 Report (op cit), the Biting the Bullet project has gathered more up to date information on this issue using a questionnaire survey of states during summer 2008.

¹⁷⁴ See National reports to the UN ODA on the UN ODA website; for a useful summary of these reports as they relate to SALW stockpile management, see the relevant chapter of S. Cattaneo and S. Parker, Implementing the UN Programme of Action on SALW: analysis of the national reports submitted by states from 2002 – 2008 UNIDIR, Geneva, 2008.

Recommendations for action

Enhancing stockpile management provisions for all authorised official and civilian stocks of SALW, so as to enhance security and prevent diversion is an area that appears to be ripe for international and regional initiatives.

All states have a responsibility at least to conduct a recent and thorough review of their own national systems and practices, and to establish a clear programme to address identified weaknesses. Only a few states have so far done so. It is important to note that even governments that previously felt satisfied with their existing arrangements have almost always uncovered important weaknesses and problems to be addressed when they have undertaken a proper review. This is the case for all aspects of ensuring security of authorised SALW holdings and to this end it is particularly important that all states examine their systems and policies relating to security and management of SALW during the entirety of an authorised transfer process, and for all categories of transfer, including relatively small quantities of civilian firearms. Similarly, each national authority (exporting and importing) needs to review the adequacy of their systems for assessing risks of diversion from transfers in the importing country and subsequently when held by the authorised end-user. In this context, the possibilities for developing systematic mechanisms for co-operation between exporting and importing states on such assessments should be examined and opportunities addressed.

Action is also required at the regional and international levels on these issues and can probably immediately be progressed within the UN PoA framework. This could include moving forward with the development of international best practice guidelines on stockpile management, or at least systematic training and awareness raising in relation to existing well-regarded regional standards such as those of the OSCE. Similarly, the UN ODA should be supported in its efforts to raise awareness and stimulate action to promote stockpile security, and to include those issues that directly relate to preventing diversion of SALW transfers; this could form part of its emerging facilitating role to match needs with potential offers of assistance. Finally, effort needs to be made to develop more detailed guidelines to encourage systematic national reporting on stockpile management issues, including sections that specifically highlight ensuring security of SALW transfers.

However, progress that is formally organised within the UN PoA framework has proved slow to develop, and it is important to reinforce action through a combination of international coalitions of the willing, regional organisations and mechanisms, and inter-regional co-operation.

Regional organisations that have developed substantial and detailed guidance and co-operation on issues of stockpile security and preventing diversion of SALW transfers have important opportunities to take new initiatives to enhance their effectiveness. Important initiatives to consider include the following:

- Launch a consultation and awareness-raising initiative focussed on the linkages between stockpile insecurity and risks of diversion of SALW transfers during transit and from the end-user – for all relevant categories of official and civilian SALW – with a view to developing good practice guidance on this issue.
- Establish a ‘review and lessons learned process’ in relation to co-operative programmes to promote stockpile security and management of SALW and ammunition in order to develop mechanisms and understandings of how to improve their effectiveness. These could focus on issues including:
 - how to ensure that resources and co-operative efforts are made more systematic, focussing on priorities for preventing diversion and for developing comprehensive national systems for control and moving away from *ad hoc* projects;
 - how to develop a co-operative process to review all member states regulation and practices regularly, perhaps using a ‘peer review’ mechanism; and

- how to establish mechanisms to facilitate co-operation between importing and exporting states for necessary assessments of risks of diversion from holdings prior to issuing transfer licences.
- Take opportunities to build on the recent inter-regional 'Synergies for Regional Organisations' conference¹⁷⁵ to develop mechanisms for more systematic co-operation with members of similar regional arrangements. For example, there appears to be great scope for systematically developing co-operation on these issues between OSCE, Nairobi Protocol; ECOWAS and OAS member states, including mechanisms for co-operating on risks assessments relating to diversion from end-user's holdings.

¹⁷⁵ Summary report of Synergy Conference for regional organisations on the implementation of the UN programme of Action on SALW, OSCE/NATO, 28-30 May 2008 http://www.nato-otan.org/issues/arms_control/2008-05-28_30-synergy-salw-final-report.pdf

11. Conclusion and recommendations

Developing effective co-operation to tackle SALW diversion

This section brings together the main issues and priorities emerging from this Report in order to outline next steps towards enhancing international action to prevent and reduce diversion of SALW.

It begins with a brief review of the main findings and recommendations relating to each of the specific issue areas addressed in the body of this Report (see the concluding sections of each of the previous Sections for more detail). It then discusses the next steps for international and regional co-operation to promote and facilitate effective action to prevent and reduce SALW diversion, including its integration into the wider comprehensive programmes needed to tackle SALW proliferation and misuse.

An agenda for renewed focus on tackling SALW diversion

Preventing and reducing diversion of SALW to unauthorised – that is illicit – holders and uses is a major priority for efforts to tackle SALW proliferation and misuse. Virtually all states have clearly recognised this, and have committed themselves to ensure that they have effective national regulations, systems and practices in place to prevent and combat such diversion. These commitments are expressed and elaborated in UN agreements, particularly the UN PoA, and in the UN Firearms Protocol, and are further reinforced by national laws and numerous regional agreements and international arrangements.

In this area at least, therefore, international norms and obligations relating to SALW are well-established, clear, and widely supported in principle. Unfortunately, implementation of these commitments remains patchy and inadequate.

Some countries and regions have taken significant steps to strengthen aspects of their controls, but weaknesses remain that are exploited by those engaged in diversion. Many countries have not yet seriously started to review their national regulations, procedures and practices or to ensure that they work effectively. A few regions and sub-regions have developed substantial good practices guidelines or co-operation mechanisms, which have contributed to higher national standards amongst their members. Several regional organisations are still at a very early stage – at best – in the development of such guidelines and mechanisms, leaving those member states who are relatively well-intentioned and committed isolated in their efforts.

As a result, diversion of SALW transfers continues to take place frequently and on a damaging scale, in all regions. Together, diversion from authorised transfers and holdings appears still to be by far the greatest source of illicit SALW (including parts, components and ammunition).

It is now timely for the international community to launch (or re-launch) concerted initiatives and measures to strengthen their systems for preventing and reducing diversion of all types of SALW from authorised transfers or holdings. This requires actions to address the full complexity of such diversion processes at national, regional and international levels.

As discussed in Section 2, diversion of SALW transfers can take place at any point of the transfer chain – from the start of the process through to after delivery to the authorised end-user. Each stage of the transfer process is complex, and has several potentially vulnerable aspects where loopholes and irregularities can be exploited to allow diversion. Similarly, there are many different categories of government or civilian holdings of SALW, and effective systems are required to ensure safe and secure management of each one of these. In too many countries, governments complacently point to their relatively good practices in a few such categories of SALW holdings or storage facilities while neglecting the many other sources of diverted SALW within their jurisdiction.

It is particularly important to recognise linkages between different aspects of the emerging policy agendas for preventing and reducing diversion of SALW. As policies develop in specific issue areas – such as transfer licensing, transit controls, brokering controls, tracing co-operation, end-user controls, and stockpile security – there is a risk of neglecting the ways in which they can mutually reinforce each other or in which weaknesses in one area undermine controls in others.

This Report has highlighted and developed the policy implications of such linkages. For example, it has emphasised the importance of developing much more systemic and careful assessments of risks of diversion, particularly by both exporting and importing states, to inform decisions on whether to authorise SALW transfers and what restrictions or conditions to place on any such transfer. Similarly, the report has emphasised important linkages between preventing diversion from SALW transfers and from holdings, during the stages of the transfer process and also after delivery to the authorised end-user.

Key priorities and findings

Within this framework, this Report has focussed on a few selected issue areas which are at the same time particularly important and ripe for renewed national, regional and international action. The following paragraphs highlight some key findings and priorities that emerge from our analysis.

Strengthen assessments of risks of diversion prior to authorising SALW transfers

The great majority of states have systems for assessing applications for licences to export or import SALW, and many declare that they include assessments of risks of diversion in their decision-making procedures. However, as discussed in Section 4, it appears that most states lack a systematic framework of guidelines and instruments for properly assessing each of the many aspects of diversion risk and their implications for licensing decisions.

Of the states that do have such frameworks, few appear to have sufficient capabilities to actually collect, analyse and act on the relevant information systematically. For example, many states not only authorise SALW transfers without information on transit routes and arrangements but also lack systems for preventive risk assessments once such information later becomes available prior to shipment. Similarly, pre-licensing assessments of the stated end-user and end-use appear often to be rudimentary at best, and many governments do not appear even to assess the end-user's systems for stockpile security. Surprisingly, perhaps, many countries seem to be willing to issue importation licences without realistic assessments of risks of diversion – during transit or after arrival of the shipment within their own jurisdiction. There appears to be little routine co-operation between states (beyond a few core partners or allies) to assess potential risks of diversion prior to decisions on whether to authorise SALW transfers, or to find ways of mitigating such risks.

Proper systematic risk assessments are necessarily time-consuming and resource intensive for many proposed SALW transfers, and most governments appear to allocate insufficient resources to such tasks. The impacts of this situation would be reduced if all governments adopted a highly precautionary approach, and refused to authorise proposed SALW transfers where diversion risks may be significant even where the application appeared otherwise to be acceptable. However, many do not take this cautious approach, and thus through their lack of capacity and care they contribute to on-going SALW diversion. Governments thus need to take steps to:

- ensure that their national systems and capacities for import, export or transit licensing enable and provide for systematic assessments of all aspects of risks of diversion (as well as other risks relating to the potential impact or use of the proposed transfer) before decisions are taken on authorisation;
- establish mechanisms for information exchange and consultation between relevant governments to facilitate effective and comprehensive risk assessments;

- adopt a precautionary approach if significant diversion risks are identified, including risks after delivery to the end-user, and either refuse to authorise the transfer or (if practical) put into place extra controls to eliminate or mitigate such risks; and
- ensure that systems are in place to identify and record cases of diversion where they take place, and that this information is carefully taken into account to avoid similar risks when considering future applications for transfers.

Improve end-use/user controls

Many weaknesses and flaws in existing systems of SALW end-user/end-use control have been well-documented and exposed, (see Section 5). While the UN PoA commits states at least to use authenticated end-user certificates and effective legal and enforcement measures, there are some emerging regional and international guidelines and standards which need to be widely adopted and implemented. Priorities for action include:

- adoption and use by all states of improved requirements for authenticated end-use/end-user documentation (e.g. including comprehensive details of the weapons, the end-user, the transit routes and the inclusion of clauses prohibiting unauthorised diversion or re-export);
- commitment and capacity building for comprehensive risk assessments relating to end-use and end-users from the perspective of diversion risks as well as of possible negative impacts or misuse of the transfer; and
- development of procedures and requirements for follow-up checks, including delivery verification, on-site monitoring or inspections and sanctions where end-user statements or commitments are not implemented.

Reducing risks of diversion by brokers

While SALW brokers can fulfil a legitimate function in SALW transfers it is now well-established that irresponsible brokers often play an important role in identifying and exploiting weak-links or loopholes to enable diversion (see Section 6). However, few states even have clear national laws, regulations and administrative control systems applying to brokers operating within their jurisdiction. The need for such systems is now becoming widely recognised internationally, and initiatives and measures for information-exchange and good-practice guidelines for such controls have been adopted in some regions. There are also emerging examples of good national practices and experience from over 40 states, including, for example, more than one useful approach towards the complex issue of controls on extra-territorial brokering activities. International initiatives and mechanisms to promote and ensure effective controls on brokering activities are required and the development of an international instrument would be an important means of encouraging and facilitating this process. Such an instrument should, *inter alia*, include international standards for national systems for registering and controlling brokers and brokering activities in order to prevent and combat diversion. It should also establish and strengthen mechanisms for international co-operation and assistance, to build capacity and to take action against irresponsible brokers.

Reducing risks of diversion of SALW transfers during transit

Inadequate controls during transit of SALW transfers often present weak links and enable diversion of SALW (see Section 7). Nevertheless, there are important international and regional norms, standards and guidelines that should be applied in this area. National regulations and procedures appear to be patchy, reflecting differing understandings of the responsibilities of transit states as well as varying levels of commitment and capability. Priorities for national, regional and international actions include:

- improved formal information requirements in transit licensing and controls, including proper pre-shipment assessments of risks of diversion (as discussed above in relation to Section 4);
- adoption of procedures for pre-notification of transfer shipments;
- enhanced co-ordination of national controls on air, maritime and land shipment arrangements; and

- improved security of SALW shipments in transit, including security during transport and at intermediate storage sites.

The time is ripe for developing and refining good practice guidelines in this area, learning lessons from current practices, and for launching capacity-building initiatives to ensure security from diversion at all phases of the transit process, including verification of final delivery to the end-user.

Promoting effective co-operation to trace illicit SALW

It is very important to be able to trace lines of supply and diversion points of illicit SALW in order to identify and close down diversion points and to promote and facilitate responsible decisions on SALW transfers in the future. As discussed in Section 8, there has been major international and regional progress towards establishing clear and specific standards for marking and record-keeping of all SALW, and for co-operation in tracing illicit SALW. Specifically, an International Tracing Instrument (ITI) has been established to complement and reinforce established Interpol arrangements and the UN Firearms Protocol and several regional agreements have development guidelines and commitments in this area. Follow-on international discussions indicate a relatively positive atmosphere for implementation and co-operation on tracing commitments.

However, there is an urgent need for regional and international initiatives to accelerate implementation of these norms. On the basis of national reports to the UN, most states have barely begun to take measures to ensure adequate unique marking and record-keeping, particularly of all existing stocks of SALW. Few states have clear procedures for marking at import – which is recognised to be important in practice for effective tracing. National regulations in relation to treatment of SALW that are found to be inadequately marked or recorded are often vague or unclear. International norms for marking, record-keeping and tracing are vague and contested in relation to the critical issue of SALW ammunition.

Perhaps most importantly, it is not clear that the ITI is being used to trace lines of supply and diversion points relating to illicit SALW found in countries in or emerging from conflict or held by unauthorised armed groups. This is the central purpose of the ITI, yet international discussion still appears rarely to focus on this issue. Confidentiality issues mean that there may only be limited public information on such traces. But interviews with relevant officials, as well as silences in relevant UN and other reports, indicate that little use of the ITI seems to be being made for such tracing investigations. Moreover, there appear to be few mechanisms for sharing findings from such tracing investigations on diversion points, in order to expose risky or irresponsible practices and stimulate relevant preventive measures. A combination of international, regional and inter-regional initiatives are recommended to stimulate and support systematic efforts to ensure adequate marking and record-keeping systems, and also to stimulate and share lessons from the findings on tracing investigations.

Reducing risks of diversion by re-transfer of SALW

Unauthorised re-transfer of SALW by the end-user is also a diversion issue, particularly if it contradicts end-user statements that were made to secure authorisation of the original SALW transfer. Such re-export is a major source of diverted arms from responsible original suppliers, and yet most national regulations and international and regional norms are relatively weak in this area. It is a priority systematically to develop and ensure national requirements to prevent unauthorised re-transfers, which implies priorities for action by both exporting and importing states (see Section 9).

Promoting SALW stockpile security to prevent diversion

As emphasised in Sections 2 and 4, diversion from authorised official or civilian holdings of SALW (through loss, neglect, corruption or theft) is probably the most important source of diverted arms in most countries. Major progress has been made in establishing international norms in which states commit themselves to ensuring safe and secure management of authorised SALW holdings, and there has been a significant increase in international co-

operation and assistance in this area. However, without major new international and regional initiatives, there is little prospect of developing present activities to the scale required to address this massive problem. Section 10 sets out priorities for national, regional and international actions and programmes to improve effective and secure management of all types of SALW holdings and where possible wider categories of conventional arms and munitions.

A key finding in relation to this Report is that there is little awareness and action to address the linkages between SALW stockpile security to prevent diversion from holdings and efforts to prevent diversion from SALW transfers. There should be close overlap and linkage, for example, between efforts to ensure security of SALW shipments during transport and at intermediate storage sites, and to ensure that the authorised end-users have adequate stockpile security arrangements. Similarly, careful assessments of stockpile security during and after transfer need to be conducted prior to any authorisation of a SALW transfer. It is a priority to review practices and develop specific national, regional and international guidelines to address this issue, and to promote bilateral and international co-operation and assistance.

Next steps for regional and international co-operation to prevent and reduce SALW diversion

On the basis of the above findings, it is important to launch or further develop concerted initiatives and measures to prevent and reduce diversion of authorised SALW transfers and holdings *in all of its aspects*. This implies concerted initiatives to comprehensively address all of the factors contributing to diversion that are identified in this report, rather than adopt a piecemeal approach. In most cases, such efforts can build on international and regional norms that have already been established, particularly within the last decade. The priorities now are to:

- clarify and elaborate relevant norms, and develop detailed good-practice guidelines, in order to clarify the implications of existing commitments and to facilitate effective implementation by national officials;
- ensure that countries all have adequate national systems of laws, regulations, procedures and practices to meet their responsibilities to prevent diversion as far as possible, and to properly respond to diversion when it takes place;
- develop capacities and co-operation mechanisms to enable effective and systematic assessments of risks of diversion before authorisation of SALW transfers and holdings;
- develop mechanisms to enhance bilateral, regional and international co-operation and co-ordination in the design and implementation of national control mechanisms, to share resources and expertise and avoid weak links and loopholes;
- strengthen awareness and capacity-building programmes, particularly for the majority of states that appear presently not only to have grossly inadequate national laws, regulations, procedures and practices to prevent diversion but also to be unaware of their own importance for international and regional efforts to prevent diversion; and
- develop international and regional mechanisms to identify, disrupt and close down points of diversion of SALW, including information-exchange and consultation arrangements as well as co-operation in law enforcement.

Most of the responsibility for taking such measures lies at the national level. However, regional and international initiatives and programmes are vital to promote and support necessary national actions, and also to enable co-operation and assistance.

As highlighted in Section 3, the interplay between national, regional, international and transnational/civil society measures and initiatives has been very important for the progress that has been achieved to tackle SALW proliferation and misuse over the last decade. New and reinforced initiatives to tackle SALW diversion therefore need to be designed to stimulate and use such interplay now.

At the declaratory level, clear statements of renewed emphasis and commitment to prevent and reduce SALW diversion *in all its aspects* are an important priority for all relevant UN,

international and regional organisations and frameworks, including within the UN PoA framework. The norms of preventing SALW diversion have been established sufficiently long that many diplomats and governments appear, wrongly, to believe that the necessary international work has been done in this area. It is important not only to re-launch efforts to address the problems, but also to elaborate on all of the important dimensions of such work.

The next opportunity within the UN PoA framework for developing such declarations probably relates to the planned 2010 BMS, following on to appropriate General Assembly resolutions and ultimately to agreement on substantial initiatives and programmes at the planned 2012 Review Conference. In the interim, *ad hoc* international meetings, similar to the international meetings sponsored by Canada in August 2007, should also be considered.

Just as in the lead-up to the 2001 UN small arms Conference, regional organisations could usefully develop and agree similar declarations, elaborating on all of the key dimensions of strategies to tackle SALW diversion and launching initiatives customised both to enhancing implementation in their own region and to promoting wider international awareness and co-operation. As discussed below, the regional initiatives would naturally build on progress so far, with important differences between regions with substantial existing guidelines and programmes and those which have yet really to take actions. The Wassenaar Arrangement, and other multilateral arrangements, could also usefully take such steps.

Possible initiatives and programmes to tackle diversion

While such renewed and elaborated declarations are significant and necessary, substantive initiatives are much more important. Previous Sections of this report (summarised above) have highlighted and prioritised numerous specific measures and programmes, which should be endorsed and supported at international and regional levels. In the following paragraphs we briefly highlight important areas for initiatives and programmes to enhance overall efforts to tackle diversion.

Within the formal UN framework, there is limited but significant immediate scope for enhancing comprehensive action on SALW diversion, building on existing agreed norms. Member States should be encouraged to provide more systematic and informative national reports, through the development of elaborated templates for reporting. These would be voluntary, and if necessary may have to combine limited improved templates from the UN ODA Secretariat with more specific and detailed templates developed and adopted by 'coalitions of the willing', including UNDP and other agencies and involving non-state experts.

Further, the positive atmosphere of the 2008 BMS should be rapidly followed up by initiatives to develop international voluntary guidelines on good practices addressing all of the key issues areas relating to SALW diversion, including those discussed in this Report. Formally, these will take time to develop consensually, at least up to the 2012 Review Conference. But the most important objective at present is to develop active information-sharing and consultation processes on relevant good practices at an international level, involving officials and experts with relevant responsibilities at national and regional levels. This may involve a range of informal international workshops and exchanges sponsored by groups of states, as well as workshops arranged by the UN ODA itself.

Finally at the international level within the UN PoA framework, there appears to be scope for enhanced mobilisation and facilitation of international co-operation and capacity-building assistance, using the ODA mechanisms for enhancing exchange of information and match-making between potential donors and recipients.

Some regional organisations have scope for more rapid and substantial initiatives to promote and enable measures to prevent and reduce SALW diversion. In particular, for example, the EU, OSCE, ECOWAS, Nairobi Protocol, OAS, and Nadi Framework countries have already demonstrated capacity and interest for action in this area through their recent development of regional commitments, good-practice guidelines, reporting practices, and co-operation and assistance programmes. In these regions, it makes sense to focus substantial new efforts to

enhance implementation of their existing commitments to tackle SALW diversion. These could usefully include a range of initiatives, including:

- enhanced regional reporting procedures, including detailed templates, to clarify progress in implementation and to exchange information on continuing gaps and challenges;
- further development of good-practice guidelines, to address the specific issues highlighted and priorities in this report but also to ensure that linkages are properly addressed in a co-ordinated way;
- moving from *ad hoc* bilateral co-operation and assistance projects to more sustained and comprehensive capacity-building assistance to develop and ensure effective overall national systems of laws regulations, procedures and practices addressing all of the types of authorised transfers and holdings relevant to SALW diversion, as outlined in this Report;
- establishment of co-operative mechanisms for peer review of national strategies, programmes and plans to implement regional, UN PoA and ITI commitments to prevent and reduce diversion (such peer review processes could be modelled on successful precedents in other issue areas – including mitigation of greenhouse gas emissions within the UN Framework Convention on Climate Change or OECD Development Assistance Committee peer reviews – where they have proved to be extremely valuable in assisting all participating states to identify inadequacies or problems or learn lessons from others’ experience);
- development, where possible and useful, of more elaborated and specific regional commitments that will help to prevent and reduce diversion;
- programmes to ensure more co-ordinated and co-operative controls on air and maritime transportation of SALW transfers (building for example on recent OSCE and Wassenaar Arrangement guidelines);
- programmes to promote tracing investigations under the ITI to trace lines of supply and diversion points for illicit SALW, particularly where these have been found in relation to supplies to countries in, or emerging from, conflict or to unauthorised armed groups;
- establishment of mechanisms to facilitate confidential information exchange and consultations on identified diversion points and supply lines of illicit SALW, to support law enforcement and disruption efforts and to help to prevent future diversion through these routes; and
- establishment of mechanisms to facilitate co-operation in assessments of risks of diversion to inform decisions on whether to authorise SALW transfers or holdings, both within and among members of the regional organisation concerned or in relation to transfers outside the region.

The Wassenaar Arrangement provides a key example of an international arrangement which has already taken substantive steps in some of these areas, which should be promoted and further developed. The Wassenaar Arrangement Best Practices for Effective Enforcement call for bilateral information exchange with regard to diversion risks is one of several illustrations of where it could rapidly contribute to wider international co-operation.

Regions or sub-regions that have made more modest progress towards effective regional commitments, guidelines and mechanisms to tackle SALW diversion will, in practice, need first to focus on getting started on substantive regional guidelines, reporting, consultations and assistance, and could learn valuable lessons from regions that have advanced further.

In this context, the importance of inter-regional co-operation can again be highlighted. This can help to widen international experience and knowledge, to promote co-operation and assistance between regions, and to reduce the isolation of well-intentioned states whose regional organisation is weak on this issue. For example, the inter-regional Synergies Conference of May 2008, sponsored by the OSCE and NATO, identified many areas where regional organisations could usefully increase their information exchange and co-operation. In the context of this Report, the important co-operation between Wassenaar Arrangement and ECOWAS members in recent years, which helped to ensure that ECOWAS consultation and

agreement had been secured before Wassenaar members authorised SALW transfers to West African countries, is notable.

Possible areas for inter-regional co-operation include all of the points highlighted above for regional organisations, adapted as necessary. The opportunities that inter-regional co-operation provides to develop better co-operation between exporting and importing states to prevent and reduce diversion are very important in this context.

Integrating measures to tackle SALW diversion into wider control programmes

This Report has focussed particularly on issues and priorities for preventing SALW diversion. It has emphasised the complexity and multi-dimensionality of SALW diversion processes and thus of the required prevention measures. This whole area is ripe for new, and urgently needed, initiatives and programmes at national, regional and international levels – to implement existing commitments.

It is important, however, to conclude by placing efforts to tackle SALW diversion into a wider context of efforts to prevent and reduce SALW proliferation and misuse. Diversion is not the only issue. Many problems of lack of control or misuse relate to SALW that are held by authorised users and which are not diverted. Moreover, efforts to address aspects of SALW diversion are directly relevant also to wider efforts to implement all aspects of the UN PoA and associated regional and international agreements.



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